

AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting Wednesday, November 20, 2024

11:30 A.M.

BOARD TO RECONVENE

Board Members: Anderson, Berjis, McLaughlin, Merz, Pelz, Pollard Roll Call:

CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT: ALL ITEMS LISTED WITH A "CA" OR "C" ARE CONSIDERED TO BE ROUTINE AND NON-CONTROVERSIAL BY KERN COUNTY HOSPITAL AUTHORITY STAFF. THE "CA" OR "C" 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

RECOGNITION

 Presentation by the Chief Executive Officer recognizing Kern Medical Center employees from the Human Resources Department – MAKE PRESENTATION

PUBLIC PRESENTATIONS

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

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

ITEMS FOR CONSIDERATION

CA

4) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on October 16, 2024 and special meeting on October 21, 2024– APPROVE

CA

Proposed Agreement with Aslan GhandForoush, D.O., a contract employee, for professional medical and administrative services in the Department of Medicine from November 26, 2024 through November 25, 2029, in an amount not to exceed \$5,000,000, plus applicable benefits

APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

Proposed Agreement with Alfred J. Coppola, Jr., M.D., an independent contractor, for professional medical services in the Department of Surgery from December 1, 2024 through November 30, 2027, in an amount not to exceed \$1,200,000 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

7) Proposed Quote 10024565-4 with Hill-Rom Company, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of a Tru System 7000 da Vinci surgical bed and protection plan, in an amount not to exceed \$115,119 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

8) Proposed Subscription Renewal Quote Q-1323241 with Lansweeper Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of product licenses in support of information technology asset management for a term of one year from December 18, 2024 through December 17, 2025, in an amount not to exceed \$16,001 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA 9)

Proposed Change Order No. 1 to Agreement 148-2024 with CBCM Services, Inc., an independent contractor, for installation of an emergency sewer line, increasing the maximum payable by \$33,598, from \$280,780 to \$314,378, to cover project completion – MAKE FINDING THAT THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO SIGN FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10%, FOR A TOTAL CONTRACT PRICE NOT TO EXCEED \$345,816

CA

10) Proposed Second Amendment to Agreement 2016-013 with the County of Kern for lease of a portion of the Multi-Use Warehouse at the Mount Vernon Complex, increasing the rental space from 1,200 square feet to approximately 2,400 square feet, and increasing the maximum payable by \$28,041, from \$28,041 to \$56,082, to cover the term – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

11) Proposed Agreement with Vigilanz Corporation, an independent contractor, containing nonstandard terms and conditions, for purchase of pharmaceutical software to improve regulatory compliance from November 20, 2024 through November 19, 2027, in an amount not to exceed \$214,609 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

12) Proposed acceptance of donation of travel and related expenses from Safety National and PRISM, for one Kern Medical Center employee to attend the HCCA "Healthcare Basic Compliance Academy" from December 9-12, 2024, in San Diego, California – APPROVE; ADOPT RESOLUTION

CA

13) Proposed Amendment No. 3 to Agreement 099-2023 with Alton Scott Thygerson, a contract employee, adding performance-based metrics for fiscal year 2024-2025 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

14) Proposed Engagement Letter and Professional Services Agreement with Moss Adams LLP, an independent contractor, regarding the audit of Kern County Hospital Authority Deferred Compensation Plan for Physician Employees financial statements and net assets available for benefits as of December 31, 2023, in an amount not to exceed \$35,000 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

Proposed Order Form Q-130142 with Inovalon Provider, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of Claims Management Pro Business Services software for a term of four years from December 1, 2024 through November 30, 2028, in an amount not to exceed \$1,311, 384 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

Proposed Ordering Document CPQ-3618871 with Oracle America, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of software integration services, effective November 20, 2024, until project completion, in an amount not to exceed \$129,514 –

APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

17) Report on Kern County Hospital Authority Construction Projects – RECEIVE AND FILE

CA

18) Proposed Product Purchase Agreement with Nielsen BioSciences, Inc., an independent contractor, containing nonstandard terms and conditions, for a one-time purchase of spherusol (a testing agent), effective November 20, 2024, in an amount not to exceed \$12,650 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 19) Proposed online purchase of satellite internet communication services from Space Exploration Technologies Corp., an independent contractor, containing nonstandard terms and conditions, , in an amount not to exceed \$500 per month APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO PURCHASE
- 20) Proposed retroactive Agreement with Baxter Healthcare Corporation, an independent contractor, containing nonstandard terms and conditions, for dialysis supplies from January 12, 2024 through December 31, 2026, in an amount not to exceed \$6,000 APPROVE
- 21) Request to pursue Federally Qualified Health Center (FQHC) Certification –
 APPROVE REQUEST; APPROVE FQHC BOARD MEMBER APPLICATION; DIRECT STAFF
 TO SEEK OUT QUALIFIED APPLICANTS FOR APPOINTMENT TO THE FQHC BOARD
- 22) Report on referral to staff from March 20, 2024 to address retroactive contracts and develop a process to minimize the placement of such items on future agenda RECEIVE AND FILE

CA

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

CA

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

CA

26) Claims and Lawsuits Filed as of October 31, 2024 – RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 27) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –
- 28) CONFERENCE WITH LEGAL COUNSEL FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Jeffry Huffman, an individual, Plaintiff, v. Kern County Hospital Authority, a California Public Entity; and DOES 1-25, inclusive, Defendants, Kern County Superior Court Case No. BCV-23-103540 –
- 29) Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) –
- 30) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –
- 31) CONFERENCE WITH LEGAL COUNSEL ANTICIPATED LITIGATION (Government Code Section 54956.9(e)(3)) Number of cases: Three (3) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection —

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, DECEMBER 11, 2024 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.

CA

26) <u>CLAIMS AND LAWSUITS FILED AS OF OCTOBER 31, 2024 – RECEIVE AND FILE</u>

- A) Claim in the matter of Silvia Monroy
- B) Claim in the matter of Jacqueline Laws
- C) Claim in the matter of Vicente Martinez Marin
- D) Claim in the matter of Joseph Ray Valverde
- E) Claim in the matter of Melinda Jackson
- F) Summons and Complaint in the matter of Aydyn Perez, by and through his guardian ad litem, Cassandra Koegel; and Cassandra Koegel, individually, Plaintiffs, v. Kern County Hospital Authority, D.B.A. Kern Medical Center; Antonio Garcia, M.D.; Yasser Salim Ratl Mrad, M.D.; Alicia Toncar, D.O.; Maggie Jiang, D.O.; Eneti Tagaloa, M.D.; and DOES 1 to 50, inclusive; Defendants, Kern County Superior Court Case No. BCV-24-103377
- G) Estate of Irene Rivera, by and through successor in interest, R.R.; R.R., a minor, by and through Guardian Ad Litem, Bertha Rivera; Bertha Rivera, individually; and Jose Rivera, individually, Plaintiffs, v. Kern County Sheriff's Office; a public entity; Kern County, a public entity; Sheriff Donny Youngblood, in his individual and official capacities; Kern County Hospital Authority, a public entity; and DOES 1 through 10, individually, jointly and severally, Defendant, United States District Court, Eastern District of California, Case No. 1:24-at-756



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting Wednesday, October 16, 2024

11:30 A.M.

BOARD RECONVENED

Board Members: Anderson, Berjis, McLaughlin, Merz, Pelz, Pollard

Roll Call: 4 Present; 2 Absent - McLaughlin, Pelz

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

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

BOARD ACTION SHOWN IN CAPS

PUBLIC PRESENTATIONS

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BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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DIRECTOR BERJIS HEARD REGARDING THE INCREASED INTEREST IN AND NUMBER OF APPLICATIONS RECEIVED FOR THE KERN MEDICAL CENTER RESIDENCY AND FELLOWSHIP PROGRAMS FOR THE ACADEMIC YEAR BEGINNING JULY 1, 2025

ITEMS FOR CONSIDERATION

CA

3) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on September 18, 2024 – APPROVED

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

4) Proposed Resolution establishing regular meeting dates of the Kern County Hospital Authority Board of Governors for calendar year 2025 –

APPROVED; ADOPTED RESOLUTION 2024-025

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

Proposed recission of Agreement 134-2024 and approval of Quote 0088604-3 with Philips Healthcare, a division of Philips North America LLC, an independent contractor, containing nonstandard terms and conditions, for telemetry software upgrades and maintenance, from August 1, 2024 through July 31, 2028, in an amount not to exceed \$30,120 – APPROVED: AUTHORIZED CHAIRMAN TO SIGN 174-2024

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

Proposed Change Order No. 2 to Agreement 025-2024 with Heredia Cabling Solutions, an independent contractor, for installation of electrical wiring related to the infant security system, increasing the maximum payable by \$4,640, from \$176,701 to \$181,341, to cover additional project costs –

MADE FINDING THAT THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(b)(3) OF STATE CEQA GUIDELINES; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 175-2024

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

7) Proposed Agreement with Leiters Health, an independent contractor, containing nonstandard terms and conditions, for purchase of sterile compound ophthalmic medications for a term of three years from October 16, 2024 through October 15, 2027, in an amount not to exceed \$150,000 –

APPROVED: AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 176-2024

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

8) Proposed Master Purchase Agreement with Qiagen, LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of Amnisure fetal test kits for a term of two years from October 16, 2024 through October 15, 2026, in an amount not to exceed \$30,000 –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 177-2024

Anderson-Merz: 4 Ayes: 2 Absent - McLaughlin, Pelz

CA

9) Proposed Quotation 136305245 with Draeger, Inc., an independent contractor, containing nonstandard terms and conditions, for repair of a jaundice meter, effective October 16, 2024, in an amount not to exceed \$2,145, plus applicable tax and shipping – APPROVED AGREEMENT 178-2024

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

10) Proposed Amendment No. 5 to Personal/Professional Services Agreement 21218 with Thyssenkrupp Elevator Corporation, an independent contractor, for elevator repair and maintenance services for the period August 3, 2018 through October 30, 2024, extending the term for three months from October 30, 2024 through January 31, 2025, and increasing the maximum payable by \$36,884, from \$779,178 to \$816,062, to cover the extended term – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 179-2024

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

Proposed Agreement with Charles D. Wong, D.O., Medical Corporation, an independent contractor, for professional medical services in the Department of Surgery from November 1, 2024 through October 31, 2027, in an amount not to exceed \$1,800,000 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 180-2024 Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

Proposed retroactive Amendment No. 1 to Agreement 153-2024 with Moh'd Akram Sbeih, M.D., a contract employee, for professional medical services in the Department of Surgery, amending the commencement date from September 23, 2024 to October 1, 2024 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 181-2024

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

Proposed Agreement with Rizal Lim, M.D., a contract employee, for professional medical services in the Department of Surgery from February 10, 2025 through February 9, 2028, in an amount not to exceed \$3,000,000, plus applicable benefits – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 182-2024 Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

Proposed Support Renewal to the Personal/Professional Services Agreement 33618 with JB Developers, Inc., an independent contractor, for timekeeping support and scheduling services from November 1, 2018 through October 31, 2024, extending the term for three years from November 1, 2024 through October 31, 2027, and increasing the maximum payable by \$90,480, from \$150,960 to \$246,400, to cover the extended term including any costs associated with hardware upgrades and software integration — APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 183-2024; AUTHORIZED CHIEF EXECUTIVE OFFICER TO APPROVE PURCHASES NOT TO EXCEED \$20,000 Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

15) Proposed Order Form to Master Subscription 00522 with Voluware, Inc., doing business as Valer, an independent contractor, for prior authorization and referral management services for

the period January 1, 2022 through October 31, 2024, extending the term for three years from November 1, 2024 through October 31, 2027, and increasing the maximum payable by \$530,398, from \$336,000 to \$898,998, to cover the extended term —

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 184-2024

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

Proposed acceptance of donation of travel and related expenses from Experian Health, Inc., for two Kern Medical Center employees to attend the Experian Health High-Performance Summit | 2024 in San Antonio, Texas, from November 10-13, 2024 – APPROVED; ADOPTED RESOLUTION 2024-026

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

17) Kern County Hospital Authority Chief Executive Officer report – RECEIVED AND FILED

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

Proposed payment of incentive compensation in the amount of \$15,493.60, less all applicable federal and state taxes and withholdings, pursuant to Agreement 099-2023 with Alton Scott Thygerson, a contract employee, for Chief Executive Officer services for the period July 19, 2023 through July 19, 2026, for completion of certain annual performance-based metrics for Fiscal Year Ended June 30, 2024 – APPROVED

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

- 19) Report on the status of the Kern Medical Center Electronic Health Record –
 GLENN GOLDIS, M.D., CHIEF MEDICAL OFFICER AND CHIEF MEDICAL INFORMATION
 OFFICER, AND SANDRA BAKICH, INTERIM CO-CHIEF INFORMATION OFFICER, MADE
 PRESENTATION; APPROVED; DIRECTED STAFF TO ISSUE REQUESTS FOR
 INFORMATION TO EPIC, MEDITECH AND ORACLE HEALTH; RECEIVED AND FILED
 Pollard-Anderson: 4 Ayes; 2 Absent McLaughlin, Pelz
- 20) Kern County Hospital Authority Chief Financial Officer report –
 CHIEF FINANCIAL OFFICER ANDREW CANTU HEARD; DIRECTOR ANDERSON HEARD
 REGARDING THE STATUS OF CASH FLOW PROJECTIONS; CHIEF EXECUTIVE
 OFFICER SCOTT THYGERSON AND MR. CANTU RESPONDED REGARDING PROGRESS
 ON THE DEVELOPMENT OF A CASH RESERVES PLAN; RECEIVED AND FILED
 Merz-Pollard: 4 Ayes; 2 Absent McLaughlin, Pelz

CA

21) Monthly report on What's Happening at Kern Medical Center – RECEIVED AND FILED

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

22) Claims and Lawsuits Filed as of September 30, 2024 – RECEIVED AND FILED

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

CA

23) Miscellaneous Correspondence as of September 30, 2024 – RECEIVED AND FILED

Anderson-Merz: 4 Ayes; 2 Absent - McLaughlin, Pelz

ADJOURNED AS KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNERS; RECONVENED AS KERN MEDICAL SURGERY CENTER, LLC BOARD OF MANAGERS **Pollard-Anderson**

C-24) Kern Medical Surgery Center, LLC, Administrative Report – RECEIVED AND FILED

Anderson-Pollard: 4 Ayes; 2 Absent - McLaughlin, Pelz

C-25) Proposed Resolution establishing regular meeting dates of the Kern Medical Surgery Center, LLC Board of Managers for calendar year 2025 – APPROVED; ADOPTED RESOLUTION 2024-002

Anderson-Pollard: 4 Ayes; 2 Absent - McLaughlin, Pelz

- C-26) Proposed Conflict of Interest Policy and Code for Kern Medical Surgery Center, LLC APPROVED; REFERRED TO KERN COUNTY BOARD OF SUPERVISORS FOR APPROVAL Anderson-Pollard: 4 Ayes; 2 Absent McLaughlin, Pelz
- C-27) Proposed retroactive MTAC Directed Trustee Agreement with Mid Atlantic Trust Company, an independent contractor, containing nonstandard terms and conditions, for the 401(k) Profit Sharing Plan to appoint Mid Atlantic Trust Company as the Directed Trustee of the Plan, effective September 10, 2024 –

 APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 186-2024

Anderson-Pollard: 4 Ayes; 2 Absent - McLaughlin, Pelz

C-28) Proposed credentialing recommendations – APPROVED

Anderson-Pollard: 4 Ayes; 2 Absent - McLaughlin, Pelz

ADJOURNED AS KERN MEDICAL SURGERY CENTER, LLC BOARD OF MANAGERS; RECONVENED AS KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNERS

Merz-Anderson

ADJOURNED TO CLOSED SESSION Pollard-Merz

CLOSED SESSION

- 29) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) SEE RESULTS BELOW
- 30) 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-1670-M SEE RESULTS BELOW

- 31) 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-1695-M SEE RESULTS BELOW
- 32) PUBLIC EMPLOYEE PERFORMANCE EVALUATION Title: Chief Executive Officer (Government Code Section 54957) SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION Merz-Pollard

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item 29 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR POLLARD, SECOND BY DIRECTOR ANDERSON; 2 ABSENT - MCLAUGHLIN, PELZ), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, RELEASE OF PROCTORING, REVISED PRIVILEGE REQUESTS, VOLUNTARY RESIGNATION OF PRIVILEGES, AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item 30 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-1670-M – HEARD; NO REPORTABLE ACTION TAKEN

Item 31 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-1695-M – HEARD; NO REPORTABLE ACTION TAKEN

Item 32 concerning PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) - HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, NOVEMBER 20, 2024 AT 11:30 A.M. **Pollard**

- /s/ Mona A. Allen
 Authority Board Coordinator
- /s/ Philip McLaughlin Chairman, Board of Governors Kern County Hospital Authority



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Special Meeting Monday, October 21, 2024

11:30 A.M.

BOARD RECONVENED

Board Members: Anderson, Berjis, McLaughlin, Merz, Pelz, Pollard

Roll Call: 5 Present; 1 Absent - McLaughlin

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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))

NO ONE HEARD

ITEMS FOR CONSIDERATION

CA

3) Proposed Renewal Order CRNR-CON0201699-1 with Oracle America, Inc., an independent contractor, containing nonstandard terms and conditions, extending the term for the Oracle Population Health Management Platform for one year from November 1, 2024 through October 31, 2025, in an amount not to exceed \$618,113 plus applicable tax – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 185-2024

Pollard Morz: 5 Avos: 1 Absent Mel aughlin

Pollard-Merz: 5 Ayes; 1 Absent - McLaughlin

ADJOURNED TO CLOSED SESSION Pelz-Pollard

CLOSED SESSION

4) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION Merz-Pollard

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item 4 concerning Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, NOVEMBER 20, 2024, AT 11:30 A.M. **Pelz**

- /s/ Mona A. Allen
 Authority Board Coordinator
- /s/ Amir Berjis, M.D.
 Vice Chairman, Board of Governors
 Kern County Hospital Authority



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed Agreement with Aslan GhandForoush, D.O., a contract employee, for professional medical services in the Department of Medicine

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve an Agreement with Aslan GhandForoush, D.O., for professional medical services in the Department of Medicine, Division of Cardiology. Dr. GhandForoush has worked full-time at Kern Medical since November 2016 in the role as Chief, Division of Cardiology in the Department of Medicine, and is board certified in internal medicine with subspecialty certifications in interventional cardiology and cardiovascular disease.

The proposed Agreement is for a term of five years from November 25, 2024 through November 25, 2029. Dr. GhandForoush will be paid an annual salary of \$750,000, which has been calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents the reasonable fair market value compensation for the services he will provide. In addition to his annual salary, Dr. GhandForoush will receive incentive compensation for his worked RVU productivity at a rate of \$63.99 per worked RVU generated in excess of 11,721 per employment year; excess 1:4 call coverage at a rate of \$800 per 24-hour day (Monday-Friday) and \$1,600 per 24-hour day (Saturday and Sunday); and after-hours clinic coverage at a rate of \$150 per hour. Dr. GhandForoush will continue to receive the same complement of benefits as all employed physicians, including participation in the physicians' pension plan, health care coverage, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical.

Therefore, it is recommended that your Board approve the Agreement with Aslan GhandForoush, D.O., for professional medical services in the Department of Medicine from November 25, 2024 through November 25, 2029, in an amount not to exceed \$5,000,000, plus applicable benefits, and authorize the Chairman to sign.

AGREEMENT FOR PROFESSIONAL SERVICES CONTRACT EMPLOYEE

(Kern County Hospital Authority - Aslan GhandForoush, D.O.)

This Agreement is made and entered in	nto this day of	, 2024, between
Kern County Hospital Authority, a local unit c	of government ("Authority")	, which owns and
operates Kern Medical Center ("KMC"), and A	Aslan GhandForoush, 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 Medicine 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 is specially trained, experienced, expert, and competent to perform 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. #069-2019, dated November 13, 2019), for the period November 26, 2019 through November 25, 2024; and
- (e) Each party expressly understands and agrees that Agt. #069-2019 is superseded by this Agreement as of the Commencement Date;

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

II. TERMS AND CONDITIONS

1. <u>Term.</u> The term of this Agreement shall be for a period of five (5) years, commencing as of November 25, 2024 (the "Commencement Date"), and shall end November 25, 2029 (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. <u>Employment.</u> Authority hereby employs Physician as Chief, Division of Cardiology 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.
- 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 <u>Services.</u> 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 <u>Use of Premises.</u> Physician shall use the Practice Sites as designated by Authority or KMC exclusively for the practice of medicine in the care and treatment of patients and shall comply with all applicable federal, state, and local laws, rules and regulations related thereto.

4.3 Qualifications.

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

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

- 4.3.2 <u>Board Certification</u>. Physician shall be board certified by the American Osteopathic Board of Internal Medicine in internal medicine and subspecialty certification in cardiology, and maintain such certifications at all times during the Term of this Agreement.
- 4.3.3 <u>Medical Staff Status.</u> 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 <u>TJC and ACGME Compliance.</u> 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 <u>Standards of Medical Practice.</u> 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 <u>Managed Care Contracting.</u> 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 <u>Authorization to Release Information.</u> 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 <u>Medical Records.</u> 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 professional medical services to other organizations, directly or indirectly, during the Term of this Agreement or any extensions thereof. Notwithstanding the foregoing or the exclusivity provision set forth in paragraph 4.1, Authority agrees that Physician may provide professional medical services as an independent contractor to other organizations for purposes of maintaining his skills as an interventional cardiologist. Physician agrees that he shall not provide similar services to other organizations during Authority work days between the hours of 8:00 a.m. and 5:00 p.m. (except on scheduled days off), or at any time when Physician has not completed the pre-determined clinic and work schedule assignments. Physician understands and agrees that, while engaged in services or activities outside KMC or the scope of this Agreement, Physician is not covered by the professional liability insurance provided by Authority under this Agreement during the performance of such services or activities, nor does the obligation of Authority under this Agreement to provide indemnification to Physician extend to other service agreements. If Physician engages in services or activities outside KMC or beyond the scope of this Agreement, Physician hereby agrees to indemnify and hold Authority and KMC harmless from and against any and all liability arising therefrom. Physician understands and agrees that the provision of services as an independent contractor shall be subordinate to his obligations and duties under this Agreement

- Proprietary Information. Physician acknowledges that during the Term of this 4.10 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 <u>Annual Compensation.</u> Physician shall work full time, which is a minimum of eighty (80) hours per biweekly pay period, and will be compensated with cash and other value as described below in this paragraph 5.1 ("Annual Salary").
 - 5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary of \$28,846.15 biweekly not to exceed \$750,000 annually. The Annual Salary shall be comprised of (i) a base salary for teaching and administrative services and (ii) payment for care of KMC patients. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units ("Worked RVU") based on the current MGMA Survey and fulfill all the duties set forth in Exhibit "A" during the Term of this Agreement.

- 5.1.2 <u>Biweekly Payment.</u> Physician shall be paid biweekly on the same schedule as regular Authority employees. The exact date of said biweekly payments shall be at the sole discretion of Authority. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.
- 5.1.3 <u>Fair Market Value Compensation</u>. 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 <u>Worked RVU Productivity Incentive.</u> Physician shall be compensated for each Worked RVU at the rate of \$63.99 ("RVU Effort"), less all applicable federal and state taxes and withholdings, for each Worked RVU in excess of 11,721 generated per Employment Year.
- 5.3 Excess Call Coverage. Authority shall pay Physician for interventional cardiology excess call coverage as follows: (i) Physician shall be paid a fixed fee of \$1,600, less all applicable federal and state taxes and withholding requirements, per twenty-four (24) hour day for every weekend and holiday of call coverage assigned that exceeds one in four (1:4) days (Saturday and Sunday; designated Authority holidays only); and (ii) Physician shall be paid a fixed fee of \$800, less all applicable federal and state taxes and withholding requirements, for every weekday night of call coverage assigned that exceeds one in four (1:4) days (Monday-Friday).
- 5.4 <u>After-hours Clinic Coverage.</u> Authority shall pay Physician an hourly rate of \$150 per hour, less all applicable federal and state taxes and withholdings, for after-hours clinic coverage (defined as scheduled appointments in the outpatient clinics on weekends or after 5:00 p.m. on weekdays).

5.5 Professional Fee Billing.

- 5.5.1 <u>Assignment.</u> 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.
- 5.5.2 <u>Remittance of Professional Fee Charges.</u> 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.

5.6 <u>Maximum Payable</u>. The maximum compensation payable under this Agreement shall not exceed \$5,000,000 over the five (5) year Term of this Agreement.

6. **Benefits Package.**

- 6.1 <u>Retirement.</u> 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 <u>Health Care Coverage.</u> 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 <u>Holidays</u>. 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 <u>Vacation.</u> 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 <u>Sick Leave</u>. 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 <u>CME Expense Reimbursement.</u> 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 <u>Flexible Spending Plan.</u> 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 <u>Unpaid Leave of Absence</u>. Physician may take an unpaid leave of absence in accordance with Authority policies in effect at the time the leave is taken.
- 6.11 <u>Social Security.</u> 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 <u>Deferred Compensation.</u> 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 <u>Disability Insurance</u>. 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 <u>Employee Assistance/Wellness Programs.</u> Physician shall be eligible to participate in any Authority-sponsored employee assistance and employee wellness programs.
- 6.15 <u>Limitation on Benefits.</u> Except as expressly stated herein, Physician shall receive no other benefits from Authority.
- 7. <u>Assignment.</u> 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. <u>Assistance in Litigation.</u> Upon request, Physician shall support and assist Authority as a consultant or expert witness in litigation to which Authority is a party.
- 9. <u>Authority to Incur Financial Obligation</u>. 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. <u>Captions and Interpretation.</u> 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. <u>Choice of Law/Venue</u>. 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. <u>Compliance with Law.</u> 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. <u>Confidentiality.</u> 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. <u>Conflict of Interest.</u> 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. <u>Counterparts.</u> 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. <u>Indemnification.</u> 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 the Practice Sites without approval by the Kern County Hospital Authority Board of Governors, including, without limitation, services or activities outside KMC or beyond the scope of this Agreement, 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. <u>Invalidity of a Portion</u>. 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. <u>Modifications of Agreement</u>. 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. <u>Nondiscrimination</u>. 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. <u>Non-waiver.</u> No covenant or condition of this Agreement can be waived except by the written consent of Authority. Forbearance or indulgence by Authority in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Physician. Authority shall be entitled to invoke any remedy available to Authority under this Agreement or by law or in equity despite said forbearance or indulgence.
- 24. **Notices.** Notices to be given by one party to the other under this Agreement shall be

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

Notice to Physician:

Notice to Authority:

Aslan GhandForoush, D.O. 6010 De La Guerra Terrace Bakersfield, California 93306

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

- 25. <u>Relationship.</u> 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. <u>Severability.</u> 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. <u>Sole Agreement.</u> 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 <u>Termination without Cause</u>. 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 <u>Immediate Termination</u>. 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 <u>Payment Obligations</u>. 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 <u>Vacate Premises.</u> 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 <u>No Interference.</u> 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 <u>No Hearing Rights.</u> 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. <u>Liability of Authority.</u> 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]

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

PHYSICIAN By Atlantage Control of the Control of t
Aslan GhandForoush, 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
Vice President & General Counsel Kern County Hospital Authority
Agreement.GhandForoush.101524

EXHIBIT "A" JOB DESCRIPTION Aslan Ghand Foroush, D.O.

<u>Position Summary:</u> Reports to Chair, Department of Medicine; serves as Chief, Division of Cardiology; serves as Director, Cardiovascular Services; serves as full-time attending physician faculty in the Department, residency program, and Division of Cardiology providing no fewer than eighty (80) hours per biweekly pay period; provides professional, comprehensive and safe clinical coverage for day-to-day operations, timely completion of therapeutic and diagnostic procedures, direct patient care, scholarly research and resident education; works collaboratively with clinic and Department staff as well as hospital administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience.

Essential Functions:

1. Clinical Responsibilities.

- Supervises residents and medical students while on service
- Supervises and ensures competence of mid-level activity
- Performs therapeutic and diagnostic procedures within the scope of practice of a cardiology specialist while on service
- Coordinates with faculty schedules and activities to provide service and improve efficiency for clinical activities
- Conducts daily inpatient cardiology rounds
- Provides outpatient clinic coverage at designated Practice Sites
- Provides coverage for the echocardiology lab, interventional and invasive cardiology services for the cardiac catheterization lab, and services for KMC patients requiring interventional cardiology services at other local area hospitals
- Provides weekend inpatient ward coverage and call coverage as assigned

2. Medical Education; Academic Responsibilities.

- Provides clinical mentoring to and evaluation of residents and medical students
- Establishes and maintains academic appointment at David Geffen School of Medicine at University of California, Los Angeles
- Serves as a mentor to internal medicine residents who desire to conduct research or other scholarly activity
- Demonstrates active involvement in continuing medical education
- Demonstrates active involvement in presentations, publications, and other scholarly activity at local, regional and national scientific societies in accordance with RRC program requirements
- Participates in development of Department curriculum
- Attends and participates in the Department didactic sessions as assigned
- Delivers assigned lectures to the internal medicine residents

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• Prepares residents for the cardiology portion of the internal medicine boards

3. Administrative Responsibilities.

A. Core Faculty:

- Assists in clinical and administrative integration efforts across KMC as appropriate for the department and the division, assisting with proper program planning, physician recruitment, faculty development, resource allocation, analysis, communication and assessment
- Gathers data through best practices and collaborates with other members of the
 Department to recommend services that will increase productivity, minimize
 duplication of services, increase workflow efficiency, and provide the highest quality of
 care to KMC patients
- Supports the Department Chair to develop monitoring tools to measure financial, access, quality and satisfaction outcomes
- Participates in the preparation, monitoring, review, and performance of clinical activity in the Department
- Participates in the quality improvement and risk management activities, including peer review and quality control functions as assigned to services in the Department
- Completes medical records in a timely fashion and work to improve the quality, accuracy, and completeness of documentation
- Works collaboratively with other clinical departments to further develop a cohesive and collaborative environment across departments with a focus of enhancing access to patient care for inpatient and outpatient services
- Follows and complies with the Medical Staff Bylaws, Rules, Regulations, and policies as well as Authority and KMC policies and procedures
- Attends Department staff meetings and the annual medical staff meeting
- Attends and actively participates in medical staff and hospital committees, as assigned
- Participates in other clinical, academic, and administrative activities, as assigned by the Department Chair

B. Director, Cardiovascular Services:

- Supervises the cardiology service, including the echocardiology lab, cardiac catheterization lab, outpatient clinics, and inpatient wards
- Manages the quality assurance work pertaining to the Division
- Ensures the cardiology service is monitored and evaluated for quality and appropriateness of care and that opportunities for continuous improvements are regularly reviewed and implemented
- Develops, monitors, reviews, and oversees performance of the Division budget

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- Provides support to the residency program director for didactic teaching and resident education
- Establishes goals and expectations for resident and medical student rotations
- Prepares the call schedule for the cardiology service
- Collaborates with Department leadership, all other KMC physician leadership, and hospital administration in the development of a comprehensive cardiology clinical program

Employment Standards:

Completion of an accredited residency program in internal medicine; completion of a fellowship in cardiology; two (2) years of post-residency experience in interventional and invasive cardiology

AND

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

AND

Certification by the American Osteopathic Board of Internal Medicine in internal medicinegeneral with subspecialty certification by the American Osteopathic Board of Internal Medicine in cardiology

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

[INTENTIONALLY LEFT BLANK]



EXHIBIT "B" AUTHORIZATION TO RELEASE INFORMATION

[TO BE 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.

10/28/24

Date





BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed Agreement with Alfred J. Coppola, Jr., M.D., Inc., an independent contractor, for professional medical services in the Department of Surgery

Recommended Action: Approve; Authorize the Chairman to sign

Summary:

Kern Medical requests your Board approve an Agreement with Alfred J. Coppola, Jr., M.D., Inc., an independent contractor, for professional medical services in the Department of Surgery. Dr. Coppola is a board-certified orthopedic surgeon and longtime member of the Kern County medical community. He will provide coverage for orthopedic-related clinic and surgical services as well as supervise residents and medical students assigned to the orthopedic surgery service. He will also serve as Medical Director of Stockdale Orthopedic Clinic.

The proposed Agreement is for a term of three years from December 1, 2024 through November 30, 2027. Dr. Coppola will be paid \$250 per hour for coverage at the Q Street Clinic and OR coverage based on a procedure-specific fee schedule set forth in Exhibit A to the Agreement. Dr. Coppola will bill and collect for the professional services he provides at Stockdale Clinic. The maximum payable under the Agreement will not exceed \$1,200,000 over the three-year term.

Therefore, it is recommended that your Board approve the Agreement with Alfred J. Coppola, Jr., M.D., Inc., for professional medical services in the Department of Surgery from December 1, 2024 through November 30, 2027, in an amount not to exceed \$1,200,000, and authorize the Chairman to sign.

AGREEMENT FOR PROFESSIONAL SERVICES INDEPENDENT CONTRACTOR

(Kern County Hospital Authority – Alfred J. Coppola, Jr., M.D., Inc.)

This Agreement is made and entered into this _	day of	, 2024, between
Kern County Hospital Authority, a local unit of govern	ment ("Authority")), which owns and
operates Kern Medical Center ("KMC"), and Alfred J.	Coppola, Jr., M.D.	, Inc., a California
professional medical corporation ("Contractor"), with i	ts principal place of	of business located at
P.O. Box 1927, Bakersfield, California 93303.		

I. RECITALS

- (a) Authority is authorized, pursuant to section 101852 of Part 4 of Division 101 of the Health and Safety Code, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and
- (b) Authority owns and operates KMC, a general acute care hospital located at 1700 Mount Vernon Avenue, Bakersfield, California, and affiliated clinics (collectively, the "Premises"), in which is located the Department of Surgery (the "Department"); and
- (c) Contractor is a California professional medical corporation with medical doctors (collectively, "Group Physicians" or individually, "Group Physician") who provide services on behalf of Contractor; and
- (d) Authority requires the assistance of Contractor to provide professional medical services to patients of KMC, as such services are unavailable from Authority resources, and Contractor desires to provide such services on the terms and conditions set forth in this Agreement; and
- (e) Contractor is specially trained, experienced, expert, and competent to perform such services;

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

II. TERMS AND CONDITIONS

- 1. **Term.** This Agreement shall be effective and the term shall commence as of December 1, 2024 (the "Effective Date"), and shall end November 30, 2027, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.
- 2. **Obligations of Contractor.**

- 2.1 <u>Specified Services</u>. Contractor through Group Physicians agrees to provide orthopedic and related surgical services at KMC, including but not limited to the services set forth below. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.
 - 2.1.1 <u>Clinical Responsibilities</u>. Group Physicians shall: (i) provide coverage for orthopedic-related clinic and surgical services; (ii) provide coverage at the Stockdale Location; (iii) provide coverage in the operating room at KMC or a KMC-designated surgery center; (iv) supervise mid-level providers; (v) supervise residents and medical students assigned to the orthopedic service; (vi) supervise procedures performed by residents and mid-level providers; (vii) perform therapeutic and diagnostic procedures within the scope of practice for an orthopedic surgeon; (viii) assist in the evaluation and, if feasible, the development of a fresh fracture clinic at Stockdale Clinic; (ix) serves as Medical Director of Stockdale Orthopedic Clinic.
 - 2.1.2 <u>Medical Education; Academic Responsibilities</u>. Group Physicians shall: (i) provide clinical mentoring to and evaluation of residents and medical students; and (ii) maintain board certification in orthopedic surgery.
 - 2.1.3 <u>Committee Assignments</u>. Group Physicians shall: (i) attend Department staff meetings and the annual medical staff meeting; and (ii) participate in medical staff committees as assigned by the president of the medical staff.
- 2.2 <u>Representations</u>. Contractor makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Contractor has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Contractor does not have any actual or potential interests adverse to Authority nor does Contractor represent a person or firm with an interest adverse to Authority with reference to the subject of this Agreement; and (iii) Contractor shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.
- 2.3 <u>Standard of Care</u>. 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 <u>Performance Standard</u>. Contractor shall perform all services hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. If Authority determines that any of Contractor's work is not in accordance with such level of competency and standard of care, Authority, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with Authority to review the quality of the work and resolve matters of concern; (b)

terminate this Agreement pursuant to the provisions of section 36; or (c) pursue any and all other remedies at law or in equity.

2.5 <u>Assigned Personnel</u>. Contractor shall assign only competent personnel to perform the services 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 the services hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from Authority. Group Physicians providing services under this Agreement include, without limitation, Alfred J. Coppola, Jr., M.D.

2.6 Qualifications of Group Physicians.

- 2.6.1 <u>Licensure/Board Certification</u>. Group Physicians shall at all times during the term of this Agreement be duly licensed physicians and surgeons in the state of California, practicing in the medical specialty of orthopedic surgery, and certified by the American Board of Orthopaedic Surgery in orthopedic surgery-general, and maintain such certification at all times during the term of this Agreement.
- 2.6.2 <u>Medical Staff Status</u>. Each Group Physician shall at all times during the term of this Agreement be a member in good standing of the KMC medical staff with "active" or "courtesy" staff status and hold all clinical privileges on the active or courtesy medical staff appropriate to the discharge of his or her obligations under this Agreement.
- 2.6.3 <u>TJC and ACGME Compliance</u>. Each Group Physician shall observe and comply with all applicable standards and recommendations of The Joint Commission and Accreditation Council for Graduate Medical Education.
- 2.6.4 <u>Training/Experience</u>. Each Group Physician shall have (i) major trauma experience at a level I or II trauma center, (ii) general orthopedic surgery experience in trauma, (iii) an academic background to include teaching and working in an academic medical center, experience working with other clinical departments, teaching residents and medical students, participating in hospital committees, and working on pathways and evidence-based guidelines, and (iv) ongoing acute care hospital experience.
- 2.7 <u>Rights and Duties</u>. Alfred J. Coppola, Jr., M.D. shall act as the authorized agent for Contractor in all matters relating to the performance of Group Physicians under this Agreement. Contractor shall, by contract, obligate Group Physicians to comply fully with all duties, obligations and restrictions imposed upon Contractor under this Agreement.
- 2.8 <u>Loss or Limitation</u>. Contractor shall notify KMC promptly of any loss, sanction, suspension or material limitations of any Group Physician's license to practice in the state of California, Controlled Substance Registration Certificate issued by the Drug Enforcement Administration, right to participate in the Medicare or Medicaid programs, or specialty qualifications for medical staff membership or clinical privileges.

- 2.9 <u>Standards of Medical Practice</u>. The standards of medical practice and professional duties of all Group Physicians providing services under this Agreement shall be in accordance with the KMC Medical Staff Bylaws, Rules, Regulations, and policies, the standards for practice established by the state Department of Public Health and all other state and federal laws and regulations relating to the licensure and practice of physicians, and The Joint Commission.
- 2.10 Medical Record Documentation. Contractor shall cause a complete medical record to be timely prepared and maintained for each patient seen by each Group Physician providing services under this Agreement. 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 Group Physicians will conform to the requirements for evaluation and management (E/M) services billed by teaching physicians set forth in the Medicare Carriers Manual, Part 3, sections 15016–15018, inclusive. All patient medical records related to KMC-owned and -operated 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.
- 2.11 Quality Improvement and Risk Management. Group Physicians shall participate in (i) the quality improvement and risk management programs of KMC and serve on such committees as may be required; (ii) ongoing quality improvement activities, such as audits, which will be conducted annually in the Department in order to evaluate and enhance the quality of patient care; and (iii) risk management activities designed to identify, evaluate and reduce the risk of patient injury associated with care. At a minimum, Contractor shall ensure that the quality improvement program consists of the following integrated components: (i) professional development that provides continuous performance feedback that is benchmarked, evaluated, and rated individually and collectively; (ii) clinical standards that are evidence-based and grounded in industry best practices; (iii) performance improvement that is outcomes-focused and based on quality indicators/metrics with quarterly reporting of same; and (iv) customer satisfaction that is feedback/survey-driven and objectively and comparatively measured, tracked/trended, and analyzed. The appropriate review mechanism will be applied in accordance with the provisions of the KMC Medical Staff Bylaws, The Joint Commission, and applicable law.
- 2.12 <u>Taxes</u>. 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.

- 2.13 <u>Medical Supplies; Drugs</u>. The parties agree that Contractor shall be solely responsible for the purchase of medical supplies and drugs with a cost that exceeds \$100 per single device or medical supplies or single unit dose for drugs.
- 2.14 <u>Nonexclusive Services</u>. 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 <u>Authority Designee</u>. Authority shall designate a primary contact, who will arrange for KMC staff assistance as may be required.
- 3.2 Space. KMC shall furnish for the use of Contractor such space and facilities as may be deemed necessary by KMC for the proper operation and conduct of the Department. KMC shall, in its sole discretion, determine the amount and type of space and facilities to be provided herein. Contractor shall use the space and equipment solely for the performance of the services required under this Agreement. Neither Contractor nor Group Physicians shall use such space or equipment for other business or personal use.
- 3.3 <u>Use Limitations on Space</u>. The use of any part of the space occupied by the Department for the general or private practice of medicine is prohibited. Contractor shall use the items furnished under this Agreement only for the performance of services required by this Agreement. This Agreement shall not be construed to be a lease to Contractor or any Group Physician of any portion of the Premises, and insofar as Contractor or Group Physicians may use a portion of said Premises, Contractor and Group Physicians do so as licensees only, and Authority and KMC shall, at all times, have full and free access to the same.
- 3.4 <u>Equipment</u>. KMC shall furnish for the use of the Department such equipment as is deemed necessary by KMC for the proper operation and conduct of the Department consistent with community standards. KMC shall keep and maintain this equipment in good order and repair and replace such equipment, as is reasonably necessary and subject to the usual purchasing practices of Authority and KMC and budget constraints.
- 3.5 <u>Services and Supplies</u>. KMC shall provide or arrange for the provision of janitorial services, housekeeping services, laundry and utilities, together with such other hospital services, including medical records, administrative and engineering services, and expendable supplies as KMC deems necessary for the proper operation and conduct of the Department.
- 3.6 <u>Control Retained in KMC</u>. In compliance with title 22, California Code of Regulations, section 70713 KMC will retain professional and administrative responsibility for services rendered under this Agreement. Contractor shall apprise KMC of recommendations,

¹ Applicable to Stockdale Location only.

plans for implementation and continuing assessment through dated and signed reports which shall be retained by KMC for follow-up action and evaluation of performance.

4. **Payment for Services.**

- 4.1 <u>Compensation</u>. As consideration for the services provided by Contractor hereunder, Authority will pay Contractor in accordance with the fee schedule set forth in this paragraph 4.1. All services are payable in arrears.
 - 4.1.1 <u>Stockdale Location</u>. Contractor shall be responsible to bill patients and third-party payers for all professional services rendered by Contractor and Group Physicians at 9300 Stockdale Highway, Bakersfield, California ("Stockdale Location"). Such billing shall comply with all applicable state and federal laws and is subject to the provisions of section 4.5 herein.
 - 4.1.2 <u>KMC Clinic Coverage</u>. Authority shall pay Contractor an hourly rate in the amount of \$250 per hour for scheduled coverage in the outpatient clinic at KMC (located at Q Street Clinic located at 3551 Q Street, Bakersfield, California).
 - 4.1.3 <u>KMC Operating Room Coverage</u>. Authority shall pay Contractor for surgical procedures performed in the KMC operating room in accordance with the fee schedule set forth in Exhibit "A," attached hereto and incorporated herein by this reference.
 - 4.1.4 <u>Medical Director Stipend</u>. Authority shall pay Contractor a fixed fee in the amount of \$2,000 per month, prorated for a partial month, for services as Medical Director of Stockdale Orthopedic Clinic.
 - 4.1.5 <u>Maximum Payable</u>. The maximum payable under this Agreement will not exceed \$1,200,000 over the three (3) year term of this Agreement.
 - 4.1.6 <u>Fair Market Value</u>. The parties hereby 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 <u>Limitations on Compensation</u>. Except as otherwise provided in paragraph 4.1 hereof, neither Contractor nor any Group Physician shall be entitled to any salary or other compensation from Authority or KMC, or to any employee benefits provided by KMC, including disability, life insurance, pension and annuity benefits, educational allowances, professional membership dues, and sick, holiday or vacation pay. Neither Authority nor KMC will withhold income taxes or pay Social Security or unemployment taxes for Contractor or any Group Physician, all such being the exclusive responsibility of Contractor and Group Physicians, which Contractor and Group Physicians agree to discharge fully.

- 4.3 <u>Invoices</u>. Invoices for payment shall be submitted in a form approved by KMC and list each service performed. Invoices and receipts shall be sent to KMC for review and processing within sixty (60) days of the date of service or payment will not be made. Payment shall be made to Contractor within thirty (30) days of receipt and approval of each invoice by KMC.
- 4.4 <u>Taxpayer Identification</u>. To ensure compensation is reported as paid to the proper party, Contractor will complete and execute IRS Form W-9 (Exhibit "B," attached hereto and incorporated herein by this reference), which identifies the taxpayer identification number for Contractor.

4.5 <u>Billing and Collection</u>.

- 4.5.1 <u>Group Billing and Charges</u>. Contractor shall be solely responsible for the processing, billing and collection of all charges to patients and third-party payers separately from KMC for the amount of the professional (i.e., "physician services") component of the services provided by Contractor hereunder at the Stockdale Location. Contractor expressly agrees as follows:
 - 1) <u>Schedule of Charges</u>. Contractor shall submit at least annually to KMC the current schedule of charges for services provided by Contractor at the Stockdale Location and shall notify KMC of any changes in that charge schedule.
 - 2) <u>Prevailing Charges</u>. Contractor shall be responsible for establishing the schedule of charges for the professional component of the services provided by Contractor at the Stockdale Location. The professional charges to patients for services provided by Contractor at the Stockdale Location shall be competitive with the prevailing charges in the medical community for similar services.
 - 3) <u>Hospital Charges</u>. KMC shall establish the amounts to be charged to patients for the "hospital services" component of the services rendered at the Stockdale Location and shall bill patients and third-party payers separately from Contractor for the amount of the hospital services component of services rendered.
 - 4) <u>Billing Generally</u>. Each party, at its own cost, shall be responsible for processing, billing and collecting from patients or third-party payers for services rendered at the Stockdale Location. In the conduct of its billing and collection practices and procedures, each party agrees that it will not, nor will it permit its employees or agents to, engage in any action that would violate federal, state or local law, including fair debt collection practices, reimbursement and state and federal anti-fraud and abuse laws.
 - 5) <u>Billing Compliance</u>. Contractor shall comply, and shall ensure that Group Physicians comply, with all applicable laws in connection with billing and coding for professional services provided by Contractor or Group Physicians

pursuant to this Agreement. Contractor shall adopt and maintain billing and coding compliance policies and procedures to ensure Contractor's compliance with applicable state and federal laws. KMC shall have reasonable access to Contractor's billing records in order to assure Contractor's compliance with this Agreement. Contractor shall promptly correct any billing errors documented by KMC.

4.5.2 <u>Reconciliation</u>. It is the intention of the parties that Authority be compensated and reimbursed for the allocated costs of the services and facilities provided by KMC to Contractor pursuant to this Agreement. Accordingly, on a monthly basis KMC shall review Contractor's records to reconcile the amounts collected by Contractor for professional services rendered by Contractor at the Stockdale Location. The parties agree that a reasonable allocated cost of the services and facilities provided by KMC for the benefit of Contractor pursuant to this Agreement is twenty percent (20%) of collected professional fees (the "Monthly Fee"). The Monthly Fee shall be paid by Contractor to KMC within thirty (30) days following completion of each monthly reconciliation.

4.5.3 Copayment Collection Services.

- 1) Appointment of KMC as Collection Agent. Contractor acknowledges and agrees that KMC shall serve as its agent solely for the purpose of collecting copayments from patients for the professional component of services provided by Contractor pursuant to this Agreement ("Copayments"). Contractor shall retain all legal right and claim to, and interest in, the Copayments. Contractor acknowledges and agrees that such appointment in no way guarantees collection or payment of the Copayments or otherwise imposes on Authority or KMC any obligation to pay Contractor for Copayments.
- 2) Scope of Copayment Collection Services. As collection agent for Contractor, KMC shall: (a) collect Copayments by cash, check, or credit card; (b) submit collected Copayments to Contractor's billing service; and (c) employ or contract with and train personnel to carry out any of the tasks described herein (collectively, the "Copayment Collection Services"). KMC shall provide Copayment Collection Services in accordance with its policies and procedures. Contractor shall coordinate and assist KMC as necessary for KMC's performance of the Copayment Collection Services.
- 3) <u>Indemnification</u>. Contractor shall indemnify and hold harmless Authority and KMC, and their respective directors, officers, employees, and agents, from and against any and all claims, causes of action, liabilities, losses, damages, penalties, assessments, judgments, awards, or costs, including reasonable attorneys' fees and costs (including the reasonable costs of Authority's in-house counsel), arising out of, resulting from, or relating to the provision of Copayment Collection Services.

- 4.5.4 Access to Records. The parties agree to permit each other's accountants and other appropriate representatives to have reasonable access during normal working hours to billing, patient, and reimbursement records relating to the professional services rendered by Contractor at the Stockdale Location for purposes of, and to the extent necessary to perform, billing, collection and accounting functions. Upon reasonable request, a party shall provide to the other appropriate billing information, including patient name and address, guarantor name and address, and insurance or other third-party payer information to assist the requesting party in billing and collection efforts.
- 4.6 <u>Professional Fee Billing</u>. KMC shall have the exclusive right to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by Contractor to KMC patients at KMC (excluding the Stockdale Location) during the term of this Agreement. All such professional fees generated by Contractor during the term of this Agreement, including both cash collections and accounts receivable, will be the sole and exclusive property of KMC, whether received by KMC or by Contractor and whether received during the term of this Agreement or anytime thereafter. Contractor hereby assigns all rights to said fees and accounts to KMC and shall execute all documents required from time to time by KMC and otherwise fully cooperate with KMC to enable KMC to collect fees and accounts from patients and third-party payers.
- Managed Care Contracting. Contractor shall cooperate, and shall ensure that 4.7 Group Physicians cooperate, in all reasonable respects necessary to facilitate KMC's entry into or maintenance of any third-party payer arrangements for the provision of services under any other public or private health and/or hospital care programs, including but not limited to insurance programs, self-funded employer health programs, health care service plans and preferred provider organizations. To enable Authority or KMC to participate in any third-party payer arrangements, Contractor and/or Group Physicians shall, upon request: (i) enroll as a provider (if required by the third-party payer), separate from Authority and KMC, with any thirdparty payer or intermediate organization (including any independent practice association) (each, a "Managed Care Organization") designated by Authority or KMC for the provision of professional services to patients covered by such Managed Care Organization; (ii) enter into a written agreement with such Managed Care Organization as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization; and/or (iii) enter into a written agreement with KMC regarding global billing, capitation or other payment arrangements as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization.
- 5. Access to Books and Records. Contractor shall make available, upon written request from Authority or KMC, the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized agent or representative, this Agreement, and Contractor's books, documents and records. Contractor shall preserve and make available such books, documents and records for a period of seven (7) years after the termination or expiration of this Agreement. If Contractor is requested to disclose books, documents or records pursuant to this section for any purpose, Contractor shall notify KMC of the nature and scope of the request, and Contractor shall make available, upon written request of KMC, all such books, documents or records.

- 6. Anti-referral Laws. Contractor acknowledges that it is subject to certain federal and state laws governing the referral of patients, which are in effect during the term of this Agreement. These laws include (i) prohibitions on payments for referral or to induce the referral of patients, and (ii) the referral of patients by a physician for certain designated health care services to an entity with which the physician (or his or her immediate family) has a financial relationship (Cal. Business and Professions Code sections 650 et seq.; Cal. Labor Code sections 139.3 and 139.31; section 1128B (b) of the Social Security Act; and section 1877 of the Social Security Act). The parties expressly agree that nothing contained in this Agreement shall require either the referral of any patients to, or order of any goods or services from Contractor or KMC. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party shall knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 U.S.C. section 1320a-7b).
- 7. <u>Assignment</u>. 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. <u>Audits, Inspection and Retention of Records</u>. Contractor agrees to maintain and make available to Authority accurate books and records relative to all its activities under this Agreement. Contractor shall permit Authority to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon Authority herein.
- 9. <u>Authority to Incur Financial Obligation</u>. It is understood that neither Contractor nor Group Physicians, in the performance of any and all duties under this Agreement, has any right, power or authority to bind Authority to any agreements or undertakings.
- 10. <u>Captions</u>. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 11. <u>Change in Law</u>. 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.
- 12. <u>Choice of Law; Venue</u>. 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.

- 13. <u>Compliance with Rules and Laws</u>. 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 or KMC, including but not limited to The Joint Commission, and with the Bylaws, rules, regulations and policies of Authority and KMC now in effect or hereafter enacted, each of which is made a part of this Agreement and incorporated herein by this reference.
- 14. <u>Compliance Program.</u> 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.

15. **Confidentiality.**

- 15.1 <u>Use and Disclosure Restrictions</u>. Neither party shall, without the written consent of the other, communicate confidential information of the other, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that the receiving party would protect its own confidential information. The foregoing obligations will not restrict either party from disclosing confidential information of the other party: (i) pursuant to applicable law; (ii) pursuant to the order or requirement of a court, administrative agency, or other governmental body, on condition that the party required to make such a disclosure gives reasonable written notice to the other party to contest such order or requirement; and (iii) on a confidential basis to its legal or financial advisors.
- 15.2 <u>Trade Secrets</u>. 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 that constitute its trade secrets. The parties shall not use any name, symbol, mark, or other proprietary information of the other party except as expressly permitted.
- 15.3 <u>Patient Information</u>. Contractor agrees not to disclose, and will ensure that Group Physicians 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 KMC patients, and Contractor will comply, and will ensure that Group Physicians comply, with all federal and state laws and regulations, all rules, regulations and policies of KMC and its Medical Staff, 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.

- 15.4 Medical Staff and Committee Records. All records, files, proceedings and related information of KMC and the medical staff and its committees pertaining to the evaluation and improvements of the quality of patient care at KMC shall be kept strictly confidential by Contractor and Group Physicians. Neither Contractor nor Group Physicians shall voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to written authorization by KMC, which may be given or withheld in the sole discretion of KMC and/or its Medical Staff.
- 15.5 <u>Business Associate Agreement</u>. By signing and/or acknowledging this Agreement, the parties hereby agree to comply with the HIPAA security and privacy regulations (in current or amended form) regarding the use or disclosure of Protected Health Information ("PHI"), and agree to comply with and execute the Business Associate Agreement set forth in Exhibit "D," attached hereto and incorporated herein by this reference.
- 15.6 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 or Group Physicians during and in connection with this Agreement shall remain the property of Authority at all times. Upon the expiration or termination of this Agreement, Contractor shall promptly deliver to Authority all such Documents, which have not already been provided to Authority in such form or format as Authority deems appropriate. Such Documents shall be and will remain the property of Authority without restriction or limitation. Contractor may retain copies of the above-described Documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Authority.
- 15.7 <u>Non-disparagement</u>. Each party agrees that it shall not make or cause to be made, any written (including, but not limited to, any emails, internet postings, remarks or statements) or verbal assertions, statements or other communications regarding the other party's business or each other which may be in any manner whatsoever defamatory, detrimental or unfavorable to such other party. Each party agrees that these non-disparagement covenants shall survive the termination of this Agreement.
- 16. <u>Conflict of Interest</u>. 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.

- 17. **Consent.** Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 18. Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and Authority acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and Authority acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 19. <u>Counterparts</u>. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- 20. **<u>Disqualified Persons.</u>** The parties mutually represent and warrant to one another that they and their respective representatives are not: (i) currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. section 1320a-7b-(f) (the "Federal health care programs") and/or present on the exclusion database of the Office of the Inspector General ("OIG") or the Government Services Administration ("GSA"); (ii) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits. This shall be an ongoing representation and warranty during the term of this Agreement and a party shall immediately notify the other party of any change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately upon written notice.
- 21. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to Authority is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.
- 22. <u>Immigration Compliance</u>. Contractor shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization

for employment in the United States has been verified, and shall provide KMC with a copy of such verification (8 U.S.C. § 1324). Contractor agrees to indemnify, defend, and hold harmless Authority, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section.

- 23. <u>Indemnification and Hold Harmless</u>. Contractor agrees to indemnify, defend and hold harmless Authority and Authority's directors, officers, members, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of Contractor or Contractor's officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives, but only to the extent the same is attributable in whole or in part to Contractor's acts or omissions. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of Authority; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of Contractor by any person or entity.
- 24. <u>Independent Contractor</u>. 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. <u>Informal Dispute Resolution</u>. Controversies between the parties with respect to this Agreement, or the rights of either party, or with respect to any transaction contemplated by this Agreement, shall be resolved, to the extent possible, by informal meetings and discussions among appropriate representatives of the parties.
- 26. <u>Insurance</u>. With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit "C," attached hereto and incorporated herein by this reference.
- 27. <u>Modifications of Agreement</u>. 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 obtaining of this Agreement with Authority. Contractor has received from Authority no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.
- 31. Nondiscrimination. Neither Contractor, nor any officer, agent, employee, servant or subcontractor of Contractor shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, ancestry, national origin, religion, sex, actual or perceived sexual orientation, marital status, age, pregnancy, medical condition, handicap or other prohibited basis, either directly, indirectly or through contractual or other arrangements.
- 32. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of Authority. Forbearance or indulgence by Authority in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Contractor. Authority shall be entitled to invoke any remedy available to Authority under this Agreement or by law or in equity despite said forbearance or indulgence.
- 33. <u>Notices</u>. 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:

Notice to Authority:

Alfred J. Coppola, Jr., M.D., Inc. P.O. Box 1927 Bakersfield, California 93303 Attn.: Its President 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. <u>Sole Agreement</u>. 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. **Termination.**

- 36.1 <u>Termination without Cause</u>. Either party may terminate this Agreement, without cause, upon ninety (90) days' prior written notice to the other party.
- 36.2 <u>Immediate Termination</u>. Authority shall have the right to terminate this Agreement at any time upon the occurrence of any one or more of the following events:
 - A) Breach of this Agreement by Contractor where such breach is not cured within thirty (30) calendar days after Authority gives written notice of such breach to Contractor;
 - B) Authority ceases operations;
 - C) Contractor is unable to obtain or maintain sufficient insurance, as required under this Agreement, for any reason;
 - D) Contractor makes an assignment for the benefit of creditors, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, dissolution, liquidation or other similar law of any jurisdiction;
 - E) Contractor is rendered unable to comply with the terms of this Agreement for any reason;
 - F) Contractor engages in conduct that, in Authority's good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of Authority or KMC;
 - G) Within a twelve (12) month period, Contractor has two (2) or more medical malpractice claims filed against him or her, or he or she becomes the subject of two (2) or more adverse proceedings by the Medical Staff regarding the performance of professional medical services;
 - H) Any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body, or any notice of a decision, finding, interpretation or action by any governmental, court or other third party which, in the opinion of

Authority, if or when implemented, would result in the arrangement between the parties under this Agreement to subject Authority or any of its employees or agents, to civil or criminal prosecution or monetary penalties on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement;

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

37. **Effect of Termination.**

- 37.1 <u>Payment Obligations</u>. In the event of termination of this Agreement for any reason, Authority shall have no further obligation to pay for any services rendered or expenses incurred by Contractor after the effective date of the termination, and Contractor shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.
- 37.2 <u>Vacate Premises</u>. Upon expiration or earlier termination of this Agreement, Contractor shall immediately vacate KMC, removing at such time any and all personal property of Contractor. Authority may remove and store, at Contractor's expense, any personal property that Contractor has not so removed.
- 37.3 <u>No Interference</u>. Following the expiration or earlier termination of this Agreement, Contractor shall not do anything or cause any person to do anything that might interfere with any efforts by Authority to contract with any other individual or entity for the provision of services or to interfere in any way with any relationship between Authority and any provider that may replace Contractor.
- 37.4 <u>No Hearing Rights</u>. Termination of this Agreement by Authority or KMC for any reason shall not provide Contractor or Group Physicians the right to a fair hearing or the other rights more particularly set forth in the KMC medical staff bylaws.

- 38. <u>Time of Essence</u>. Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.
- 39. <u>Liability of Authority</u>. 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.

ALFRED J. COPPOLA, JR., M.D., INC.
Alfred J. Coppola, Jr., M.D. Its President
KERN COUNTY HOSPITAL AUTHORITY
By Chairman Board of Governors APPROVED AS TO CONTENT:
By Scott Thygerson
Chief Executive Officer
APPROVED AS TO FORM: LEGAL SERVICES DEPARTMENT
By Vice President & General Counsel Kern County Hospital Authority

EXHIBIT "A"

OR FEE SCHEDULE

CPT Code	Description	Medi-Cal
Code	Description	Rate
20680	Removal of implant; deep (e.g., buried wire, pin, screw, metal band, nail, rod or plate)	\$151.90
23120	Claviculectomy; partial	\$358.52
23120		\$336.32
23412	Repair of ruptured musculotendinous cuff (e.g., rotator cuff) open; chronic	\$590.47
23430	Tenodesis of long tendon of biceps	\$505.96
23 130	Incision and drainage, pelvis or hip joint area; deep	ψ505.70
26990	abscess or hematoma	\$675.35
	Arthroplasty, acetabular and proximal femoral prosthetic	
	replacement (total hip arthroplasty), with or without	
27130	autograft or allograft	\$1,489.20
	Revision of total hip arthroplasty; both components, with	
27134	or without autograft or allograft	\$1,600.15
	Open treatment of femoral fracture, proximal end, neck,	
27236	internal fixation or prosthetic replacement	\$902.46
	Treatment of intertrochanteric, peritrochanteric, or	
	subtrochanteric femoral fracture; with intramedullary implant, with or without interlocking screws and/or	
27245	cerclage	\$934.10
27213	Arthroplasty, knee, condyle and plateau; medial AND	Ψ,5 1.10
	lateral compartments with or without patella resurfacing	
27447	(total knee arthroplasty)	\$1,489.20
	Manipulation of knee joint under general anesthesia	1 7
27570	(includes application of traction or other fixation devices)	\$77.81
	Open treatment of bimalleolar ankle fracture (e.g., lateral	
	and medial malleoli, or lateral and posterior malleoli, or	
	medial and posterior malleoli), includes internal fixation,	
27814	when performed	\$505.96
	Open treatment of trimalleolar ankle fracture, includes	
	internal fixation, when performed, medial and/or lateral	
27822	malleolus; without fixation of posterior lip	\$785.55
	Arthroscopy, shoulder, surgical; debridement, limited, 1	
	or 2 discrete structures (e.g., humeral bone, humeral articular cartilage, glenoid bone, glenoid articular	
	cartilage, biceps tendon, biceps anchor complex, labrum,	
	articular capsule, articular side of the rotator cuff, bursal	
	side of the rotator cuff, subacromial bursa, foreign	
29822	body[ies])	\$407.30

	Arthroscopy, shoulder, surgical; debridement, extensive, 3	
	or more discrete structures (e.g., humeral bone, humeral	
	articular cartilage, glenoid bone, glenoid articular	
	cartilage, biceps tendon, biceps anchor complex, labrum,	
	articular capsule, articular side of the rotator cuff, bursal	
	side of the rotator cuff, subacromial bursa, foreign	
29823	body[ies])	\$444.15
29023		Ψ44.13
	Arthroscopy, shoulder, surgical; decompression of	
	subacromial space with partial acromioplasty, with	
	coracoacromial ligament (i.e., arch) release, when	
20026	performed (list separately in addition to code for primary	ф. 421 .02
29826	procedure)	\$421.82
	Arthroscopy, knee, surgical; synovectomy, limited (e.g.,	
29875	plica or shelf resection) (separate procedure)	\$446.76
	Arthroscopy, knee, surgical; with meniscectomy (medial	
	AND lateral, including any meniscal shaving) including	
	debridement/shaving of articular cartilage	
	(chondroplasty), same or separate compartment(s), when	
29880	performed	\$551.00
	Arthroscopy, knee, surgical; with meniscectomy (medial	
	OR lateral, including any meniscal shaving) including	
	debridement/shaving of articular cartilage	
	(chondroplasty), same or separate compartment(s), when	
29881	performed	\$551.00
	Arthroscopically aided anterior cruciate ligament	
29888	repair/augmentation or reconstruction	\$674.61

EXHIBIT "B"

IRS FORM W-9

[TO BE ATTACHED]

EXHIBIT "C" INSURANCE

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

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

1. Workers' Compensation and Employers Liability Insurance:

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

2. General Liability Insurance:

- (a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- (b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, Authority requires and shall be entitled to coverage for the higher limits maintained by Contractor.
- (c) If Contractor has no Owned automobiles, the General Liability policy shall include Non-Owned and Hired Automobile Liability in the amount of \$1,000,000 combined single limit per accident.

- (d) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000, it must be approved in advance by Authority. Contractor is responsible for any deductible or self-insured retention and shall fund it upon Authority's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving Authority.
- (e) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 below for full Additional Insured wording.
- (f) The insurance provided to Authority as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by Authority.
- (g) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- (h) The policy shall cover inter-insured suits between Authority and Contractor and include a "separation of insureds" or "severability" clause, which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

4. 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. <u>Standards for Insurance Companies</u>: Insurers shall have an A.M. Best's rating of at least A;VII.
- 6. <u>Additional Insured Wording</u>: "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. <u>Claims Made Policies</u>: 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 or 3 above.
- (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
- (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
- (e) Contractor shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
- (f) Upon written request, certified copies of required insurance policies must be provided to Authority within 30 days.

- 9. <u>Policy Obligations</u>: Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
- 10. <u>Waiver of Subrogation</u>: Contractor hereby grants to Authority a waiver of any right to subrogation, which any insurer of said Contractor may acquire against Authority by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Authority has received a waiver of subrogation endorsement from the insurer.
- 11. <u>Primary Coverage</u>: 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.
- 12. <u>Material Breach</u>: 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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EXHIBIT "D" BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**BAA**") is entered into by and between Kern County Hospital Authority, a local unit of government, on behalf of Kern Medical Center ("**Covered Entity**"), and Alfred J. Coppola, Jr., M.D., Inc., a California professional medical corporation ("**Business Associate**") (each a "**Party**" and collectively the "**Parties**"), effective as of December 1, 2024 (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**"); and

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"); and

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 <u>45</u> C.F.R. § 164.501.

- 1.4 "**Disclose**" and "**Disclosure**" mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in 45 C.F.R. § 160.103.
- 1.5 "**Electronic PHI**" or "**e-PHI**" means PHI that is transmitted or maintained in electronic media, as set forth in 45 C.F.R. § 160.103.
- 1.6 "Protected Health Information" and "PHI" mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 160.103. Protected Health Information includes e-PHI.
- 1.7 "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended from time to time.
- 1.8 "Security Rule" shall mean the Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A and C, as may be amended from time to time.
- 1.9 "Services" shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to any service agreement(s) between Covered Entity and Business Associate which may be in effect now or from time to time (the "Underlying Agreement"), or, if no such agreements are in effect, then the services or functions performed by Business Associate that constitute a Business Associate relationship, as set forth in 45 C.F.R. § 160.103.
- 1.10 **"Subcontractor"** shall have the meaning given to such term under 45 C.F.R. § 160.103.
- 1.11 "Unsecured PHI" shall have the meaning given to such term under 42 U.S.C. § 17932(h), 45 C.F.R. § 164.402, and guidance issued pursuant to the HITECH Act including, but not limited to the guidance issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009) by the Secretary.
- 1.12 "Use" or "Uses" mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Business Associate's internal operations, as set forth in 45 C.F.R. § 160.103.
- 1.13 "**Workforce**" shall have the meaning given to such term under <u>45 C.F.R. §</u> <u>160.103</u>

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

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

- 2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate shall not Use or Disclose PHI other than as permitted or required by any Underlying Agreement, this BAA, or as Required by Law. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the Privacy Rule if so Used or Disclosed by Covered Entity, except that Business Associate may Use or Disclose PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and shall not Use and further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Business Associate may perform Services, including Data Aggregation for the Health Care Operations purposes of Covered Entity and de-identification of PHI in accordance with 45 C.F.R. § 164.514, if required by any Underlying Agreement or with the advance written permission of Covered Entity.
- 2.2 <u>Adequate Safeguards of PHI</u>. 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 confidentially, integrity, and availability of e-PHI that it creates, receives, maintains or transmits on behalf of Covered Entity and shall comply with Subpart C of 45 C.F.R. Part 164 to prevent Use or Disclosure of PHI other than as provided for by this BAA.

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or Subcontractors that is not specifically permitted by this BAA no later than twenty-four (24) hours days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section 2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or nonpermitted 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 <u>Breach of Unsecured PHI</u>. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) calendar days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.
- 2.3.3 <u>Data Breach Notification and Mitigation Under Other Laws</u>. 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 conducted by a state agency or Attorney General; (iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency to notify individuals impacted or potentially impacted by a State Breach.
- 2.4 <u>Mitigation</u>. 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 <u>Use of Subcontractors</u>. 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.

- 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 <u>Amendment of Protected Health Information</u>. 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 <u>Delegated Responsibilities</u>. 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.
- Associate agrees to make 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 <u>Minimum Necessary</u>. Business Associate (and its Subcontractors) shall, to the extent practicable, limits 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 <u>Acknowledgement</u>. Business Associate acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA, the HITECH Act, and the HIPAA Rules. Business Associate shall comply with all applicable state privacy and security laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

ARTICLE III OBLIGATIONS OF COVERED ENTITY

3.1 <u>Covered Entity's Obligations.</u>

- 3.1.1 Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.
- 3.1.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.
- 3.1.3 In the event Covered Entity agrees with an Individual to any restrictions on Use or Disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or if Covered Entity determines that it is obligated to accommodate a reasonable request of an Individual to receive communications of PHI pursuant to 45 C.F.R. § 164.522(b), Covered Entity promptly shall notify Business Associate of the same, as well as any revocation or modification of the same, and Business Associate thereupon shall observe such restriction or accommodation (or revocation or modification, if any, thereof) to the extent applicable to its Use or Disclosure of PHI hereunder, notwithstanding any other provision hereof, except as otherwise required by law.
- 3.1.4 Covered Entity agrees to obtain any consent or authorization that may be required under HIPAA or any other applicable law and/or regulation prior to furnishing Business Associate with PHI.
- 3.1.5 Covered Entity shall not request Business Associate to make any Use or Disclosure of PHI that would not be permitted under HIPAA if made by Covered Entity. Covered Entity agrees to fulfill its obligations under this BAA in a timely manner.

ARTICLE IV TERM AND TERMINATION

- 4.1 <u>Term.</u> 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 <u>Termination for Cause</u>. 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 <u>Disposition of Protected Health Information Upon Termination or Expiration.</u>
- 4.4.1 Upon termination or expiration of this BAA, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, PHI shall be returned in a mutually agreed upon format and timeframe.
- 4.4.2 If return or destruction is not feasible, Business Associate shall: (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains the PHI; (d) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions set out in Sections 2.1 and 2.2 above, which applied prior to termination; and (e) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

ARTICLE V MISCELLANEOUS

- 5.1 <u>Regulatory References</u>. 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 <u>Amendment</u>. The Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Rules, or the HITECH Act.
- 5.3 Relationship to Underlying Agreement Provisions. In the event that a provision of this BAA is contrary to a provision of an Underlying Agreement, the provision of this BAA shall control. Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered an amendment of and supplement to such Underlying Agreement.
- 5.4 <u>Headings</u>. 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 <u>Insurance</u>. In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the security or privacy obligations of Business Associate, its officers, employees, agents and Subcontractors under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.
- 5.7 <u>Assistance in Litigation or Administrative Proceedings</u>. Business Associate shall make itself and any Subcontractors or members of its Workforce assisting Business Associate in the performance of its obligations under this BAA available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claim of violation of the HIPAA or other applicable laws relating to privacy or security.

- 5.8 <u>Indemnification</u>. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, Business Associate hereby agrees to indemnify and hold harmless Covered Entity and its respective officers, directors, managers, members, employees and agents from and against any and all losses, damages, fines, penalties, claims or causes of action and associated expenses (including, without limitation, costs of judgments, settlements, court costs and attorney's fees) resulting from Business Associate's (including its employees, directors, officers, agents, or other members of its Workforce, and its Subcontractors) breach of PHI or violation of the terms of this BAA, including but not limited to failure of Business Associate to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.
- 5.9 <u>Legal Actions</u>. 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 <u>Requests from Secretary</u>. Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any inquiry by the Secretary concerning any actual or alleged violation of the Privacy Rule or the Security Rule.
- 5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

Business Associate's Notice Address:

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

Alfred J. Coppola, Jr., M.D., Inc. P.O. Box 1927Bakersfield, CA 93303

Attn.: Its President

- 5.13 <u>Relationship of Parties</u>. 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 <u>Survival</u>. 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 <u>Interpretation</u>. 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 <u>Governing Law; Applicable Law and Venue</u>. 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 <u>Waiver of Provisions</u>. 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 <u>Assignment and Delegation</u>. Neither this BAA nor any of the rights or duties under this BAA may be assigned or delegated by either Party hereto.
- 5.19 <u>Disclaimer</u>. 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 <u>Certification</u>. To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or Consultants may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures, and records, as may be necessary for such agents or Consultants to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HIPAA Rules, the HITECH Act, or this BAA.

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

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

COVERED ENTITY:	BUSINESS ASSOCIATE:
The Kern County Hospital Authority on	Alfred J. Coppola, Jr., M.D., Inc.
behalf of Kern Medical Center	Of CODE and
Title: Chairman, Board of Governors	Title: Its President
Date: November 20, 2024	Date: November 7, 2024



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed purchase of a Hill Rom Tru System 7000 da Vinci operating room bed for use with the da Vinci robotic system

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board to approve the proposed purchase of a Hill Rom Tru System 7000 da Vinci operating room bed for use with the existing da Vinci robotic system.

Hill Rom is the preferred vendor of choice by surgeons for this operating room bed and the bed will be paid for by a grant. The current operating room bed is outdated and not sufficiently compatible with the hospital's robotic system. The new table will synchronize patient movement with the robotic system, providing increased patient safety and decrease length of surgery. The total cost of this Agreement is \$115,119 which includes the hardware and protection plan.

Counsel is unable to approve due to the terms and conditions containing non-standard terms. The Agreement is not governed by California law. California law provides public entities, such as the Authority, with statutory safeguards from litigation. These safeguards allow public entities to investigate, settle, and or avoid litigation all together. The terms also include a one and a half percent (1 % %) late fee on any overdue payments. Despite attempts Counsel unsuccessful in negotiating these terms.

It is recommended that your Board approve the purchase of the Hill Rom Tru System 7000 da Vinci operating room bed and protection plan in an amount not to exceed \$115,119 and authorize the Chairman to sign.



Customer Name: Kern Medical

Customer Number: 10642986

Quote Number: 10024565-4

Account Manager: Calvin Lepire

949.322.2376

calvin lepire@baxter.com

Expiration Date: -10-24-2024 02-14-2025





Thank you for your inquiry. Our quote is subject to our General Terms and Conditions, available upon request.

Best Regards,

Calvin Lepire

calvin lepire@baxter.com

949.322.2376

Item	Item Description	Qty	Unit Price	Net Price	Extended Net Price
112011	TruSystem 7000dV Standard Table Package A HealthTrust Surgical Tables - HPG-63914	1	78,342.00	78,342.00	78,342.00
PTP-TS7000DV-3	*Protection+, 3 years, TS7000dV OR Table	1	12,853.12	12,853.12	12,853.12
111920	dV SmartCare Complete 2 Year	1	0.00	0.00	0.00
1798326	Cable remote control TS7000 (dV) A HealthTrust Surgical Tables - HPG-63914	1	1,015.40	1,015.40	1,015.40
		Total f	for Products o	ınd Services	\$ 92,210.52
FRT-TABLE	Freight OR Table	1	1,500.00	1,500.00	1,500.00
				Taxes	6,546.99
				Grand Total	\$ 100,257.51

Financing options available. For more information visit hillrom.com/financial-services or contact your Hillrom representative.

To place an order, email PO to Orders surgical@baxter.com.

Please make all PO's payable to Hill-Rom Company, Inc. referencing quote number 10024565-4 on your order.

Baxter is not currently able to make a representation or certification as to the country of origin of the components of equipment or supplies offered under this agreement. Baxter is diligently working to confirm information regarding country of origin for the equipment and/or supplies being offered.





Optional Service Plans

ltem	Item Description	Qty	Unit Price	Net Price	Extended Net Price
PTP-TS7000DV-1	*Protection+, 1 year, TS7000dV Surgical Table	3	4,953.76	4,953.76	14,861.28
				Total Price	\$ 14,861.28
				Total	\$ 14,861.28

^{*}Purchases of SERVinity (f/k/a SmartCare) Service programs require Customer entering into a separate service agreement. This Quotation only establishes the pricing as it pertains to service programs.

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HILL-ROM COMPANY, INC. ("HILLROM") SURGICAL SOLUTIONS STANDARD TERMS AND CONDITIONS

- 1. GROUP PURCHASING ORGANIZATION (GPO) PARTICIPATION: To the extent Purchaser is a member of a GPO and any products on Hillrom's quotation are covered under an agreement with Purchaser's designated GPO, then Purchaser's purchase of such products shall be governed by the terms and conditions of the applicable GPO agreement and any terms and conditions stated herein under these "Surgical Solutions Standard Terms and Conditions" shall be of no force or effect. Any products on Hillrom's quotation not covered under a GPO agreement with Purchaser's designated GPO shall be subject to the "Surgical Solutions Standard Terms and Conditions" set forth herein.
- 2. ACCEPTANCE: Hillrom makes all quotations and accepts orders only on the terms and conditions stated herein (this "Agreement") except as expressly set forth under Section 1. No conditions stated by Purchaser shall be binding upon Hillrom if in conflict with, inconsistent with, or in addition to the terms and conditions stated herein, unless expressly accepted in writing and signed by Hillrom's appointed management representative. Once Hillrom accepts order, additional charges will apply for any subsequent change orders required by Purchaser. If applicable, orders cannot be entered into production until all drawings are completed and signed off.
- 3. PRICES; SHIPPING: All prices are: (a) Hillrom's current prices and are effective only for the time period as stated in the quotation; (b) net Freight on Board (FOB) Destination with freight charges and related insurance prepaid and added to invoice. Purchaser shall be billed for all applicable sales and other taxes until such time as Purchaser provides a tax-exempt certificate (resale certificate) to Hillrom with respect to such taxes. Applicable taxes will be calculated and billed at time of invoicing.
- 4. PAYMENT TERMS: For projects requiring installation, a 25% non-refundable deposit on the products sold is required at time of order. The balance of the order less installation costs, as well as shipping charges, will be invoiced at time of shipment. The remaining balance, including installation services, will be invoiced upon customer's installation acceptance, but in no case will this exceed 10 days from the time installation is completed as determined by Hillrom. Where installation is not included in the purchase price, 100% of the purchase price will be invoiced at time of shipment. Credit cards will not be accepted for payment except for consumables and small spare parts/accessories. Payment terms are Net 30 Days from date of invoice. Unless waived by Hillrom in writing, overdue undisputed invoices shall be subject to a late payment charge equal to the lesser of one and one half percent ($1^{1}/2\%$) per month or the maximum rate allowed by law. Purchaser agrees to pay Hillrom for any and all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Hillrom to collect any amounts owed to it under this Agreement.
- 5. INSTALLATION (GENERAL): For projects requiring installation, installation charges will be itemized in Hillrom's sales quote and installation responsibilities are defined in detail in the Hillrom Pre-Installation Manual, which will be provided to Purchaser upon request. Hillrom installation charges include the attachment of the Hillrom equipment onto the previously installed mounting systems (installed by others), the connection and setup of the low voltage for the light controls via the wall control panels, and the assembly of the Hillrom equipment and accessories. Electrical work, medical gas connections, and structural work are NOT included in the Hillrom installation charge and such work shall be the responsibility of Purchaser. Installation charges are also valid for onsite training and supervision of union contractors if installation by union trades is required. Hillrom personnel must be present onsite for training and supervision of union installation of Hillrom equipment to validate the product warranty. Installation charges do not include the cost associated with hiring union labor. Union labor installation costs are the responsibility of the customer/ contractor. Also, Beacon Medaes columns are contractor-installed and Hillrom is not responsible for the pre-installation or installation of these columns. These columns are also the responsibility of Beacon Medaes for service and warranty.

6. INSTALLATION (NON-HILLROM VIDEO AND CABLE PULLS): Hillrom will complete non-Hillrom video and communication cable pulls during the production of Hillrom product as follows: Hillrom will complete the pulls at NO CHARGE if the cables are received by Hillrom at 1046 LeGrand Blvd., Charleston SC 29492 no later than two weeks prior to the production date of the product. The cables MUST BE LABELED WITH THE NAME OF THE FACILITY AND EQUIPMENT THAT IT SHOULD BE PULLED THROUGH when shipped as well as detailed instructions for the cable pull. Hillrom is not responsible for lost or damaged cables. If cables are NOT received prior to the shipment of the product then there will be a fee of \$1000 per mount for non-Hillrom cable pulls completed by Hillrom at the installation site and additional travel charges may apply if a return trip is required.

7. INSTALLATION (HELIONTM INTEGRATED SURGICAL SYSTEM): Installation charges will be itemized in Hillrom's sales quote and installation responsibilities are defined in detail in the Hillrom Pre-Installation Manual, which will be provided to Purchaser upon request. Hillrom will provide required cable and complete cable pulls, through Purchaser provided conduit as specified in the Pre-Installation Manual, in the room where the HelionTM Integrated Surgical System ("Helion") is being installed from the in room components to the Helion rack. Any additional cable pulls or installation requirements from the Helion rack to the customer's network outside the room will be the responsibility of Purchaser.

8. SOFTWARE LICENSE GRANT; RESTRICTIONS.

a. Unless a separate software license agreement is entered into between Hillrom and Purchaser, the following terms and conditions in this Section 6 ("Software License Grant; Restrictions") govern the use of any software provided by Hillrom in connection with the purchase of a product under this Agreement, including any embedded software, updates, upgrades, enhancements, or modifications provided by Hillrom to Purchaser from time to time (collectively, the "Software"). The Software and all documentation related thereto, whether on disk, in read only memory, or any other media or in any other form, is licensed and not sold by Hillrom to Purchaser, and is for use only in connection with the product and subject to these terms and conditions, and Hillrom reserves all rights not expressly granted to Customer.

b. Unless a subscription/term Software license has been purchased by Purchaser (in which case the license term shall be set forth in the applicable Hillrom quotation), Hillrom hereby grants to Purchaser a perpetual, non-exclusive, non-transferable, limited license to use for Purchaser's internal business purposes the Software in the products, along with all third-party software that Hillrom may have purchased, licensed, or otherwise acquired from third parties and delivered to Purchaser in machine-readable object code form as part of the products and related product documentation, subject to the license scope and other restrictions set forth in this Section. Without Hillrom's prior written consent, Purchaser will not: (i) copy, sublicense, distribute, rent, lease, loan, resell, modify or translate the Software or any portions thereof, or create derivative works based thereon; (ii) directly or indirectly decompile, disassemble, reverse engineer or otherwise attempt to learn the source code, structure or algorithms underlying the Software; (iii) provide service bureau, time share or subscription services based on the Software; (iv) remove, obscure or modify any markings, labels, or any notice of the proprietary rights, including copyright, patent, and trademark notices of Hillrom, its corporate affiliates, or its licensors; (v) use the Software in any other manner except as expressly set forth herein; or (vi) install the Software in any other hardware or network server other than may be provided by Hillrom or is explicitly authorized by Hillrom in writing for running the Software (collectively, "Restrictions"). This Section does not convey to Purchaser any rights to patents, copyrights, trade secrets, trademarks, or any other rights, title, or interest in the embedded software, but only a limited right of use terminable in accordance with the terms of this Agreement. Further, no license is granted to Purchaser in the human readable code of the Software (source code), and Purchaser agrees that Purchaser shall not access the source code or have any rights therein. All title, ownership rights.

c. Hillrom may immediately terminate the Software license granted under this Section 6 in the event of any breach of this Section by Purchaser. In the event of any termination, Purchaser's license(s) to access or use the Software will immediately terminate, and Purchaser shall destroy and erase all copies of such Software in its possession or control and provide written certification to Purchaser that it has complied with this provision. Early termination of this Agreement shall not entitle Licensee to any refund or reimbursement of any previously paid fees. If Purchaser has purchased a subscription/term license, such license shall automatically terminate upon expiry of such subscription/term, unless earlier terminated under this Section 6.

d. To learn more about "free" or "open source" software that may be used by Hillrom in the Software, visit http://www.hill-rom.com/opensource.

- e. Purchaser is not entitled to any updates, support or maintenance of the Software, unless provided explicitly herein or unless Purchaser purchases maintenance and support services, which can be found at https://www.hillrom.com/GSSserviceoptions/ or can be provided by Hillrom upon request. Maintenance and support services (including, but not limited to, any new versions, bug fixes, and patches) provided by Hillrom will be subject to such agreement.
- f. The purchase of a maintenance and support services program, which includes Software support and maintenance, as set forth in the previous Section 7.e, is mandatory in conjunction with the purchase of Helion. The maintenance and support services program will commence initially upon the date of shipment of the Helion system and continue for twelve (12) months. Thereafter the program must be renewed on an annual basis. The purchase of a maintenance and support services program provides updates, support and maintenance of the Software and remote technical assistance. The maintenance and support services program fees are due and payable annually in advance of the applicable support period. In the event Purchaser elects not to participate in the maintenance and support services program, Purchaser shall not be entitled to receive maintenance and support services, including updates, support or maintenance of the Software and remote technical assistance. Purchasers who fail to participate and who subsequently seek to enroll in the maintenance and support services program shall pay a reinstatement fee in addition to the annual maintenance and support services program fee for the year of participation.
- g. Purchaser hereby acknowledges and agrees that Hillrom has the right to collect, store, process, maintain, upload, sync, transmit, share, disclose, aggregate, analyze, and use non-individually identifiable data created by the Software ("Data") to facilitate the provision of functionality for the Software, including but not limited to, performance optimization, quality assurance, software updates, and other services (if any) to Purchaser, or to otherwise improve Hillrom's products or to provide services or technologies to Purchaser. Such Data typically includes, but is not limited to, information regarding the characteristics, status, and usage of the Software. Hillrom shall own all right, title, and interest in and to such Data and any aggregations, analyses, reports, programs, and output based on or including such Data ("Derivative Data") and shall retain all such Data and Derivative Data after termination of this Agreement.
- 9. DELIVERY AND RECEIPT: Shipment of any products purchased hereunder is subject to Hillrom's availability schedule. Hillrom shall make every reasonable effort to meet delivery dates quoted or acknowledged. However, Hillrom will not be liable for its failure to meet such dates. Orders may be subject to special handling and delivery charges, including storage fees, if applicable. Purchaser, or Purchaser's representative, is responsible for receiving, offloading and moving Hillrom equipment upon delivery. If Purchaser, or Purchaser's representative, requires Hillrom to make an extra trip to receive the equipment, then additional charges will apply for the trip. Purchaser, or Purchaser's representative, is responsible for providing all material handling equipment for receipt and movement of the equipment. If Hillrom is required to secure required material handling equipment, then appropriate charges will apply. Upon uncrating and unwrapping, the disposal of all packaging waste is the responsibility of Purchaser.

- 10. MEDICAL CARE: Purchaser acknowledges and agrees that it has full and sole responsibility for the delivery of medical care to its patients, and any use of or reliance by Purchaser or its healthcare providers upon the Software or the Product shall not diminish or alter such responsibility. Hillrom is not engaged in the practice of medicine. Any Software is an information tool only and is not a substitute for the competent human intervention and professional judgment of your healthcare providers in diagnosing and treating patients.
- 11. CONFIDENTIALITY: To the extent Hillrom is legally acting as a business associate, as such term is defined at 45 C.F.R. 160.103, to Purchaser, then Hillrom and Purchaser will enter into a business associate agreement.
- 12. REMOTE SUPPORT. To the extent applicable to the product purchase, Purchaser acknowledges and agrees that Hillrom will utilize a remote service tool to provide warranty services and technical support to Purchaser. The remote access tool will utilize either a VNC viewer or browser-based access to remotely access the IP address of the system while using a provided VPN to connect to the hospital network. Purchaser's designated representative will notify Hillrom's Technical Support Center upon discovery of any deficiency in the Helion system and will describe the deficiency to Hillrom with adequate specificity to ensure Hillrom may identify and verify the problem. A Hillrom Technical Support Representative will, if available, access Purchaser's Helion system via remote access, as previously described, to verify the malfunction. For Purchaser's not allowing Hillrom remote access capabilities, and where Purchaser does not have a current service and maintenance agreement, Purchaser may be subject to Hillrom's then current rates for on-site service.
- 13. LIMITED WARRANTY: Hillrom warrants to the original purchaser that the products sold hereunder shall be free from defects in material and workmanship for a period of (i) one (1) year for all surgical lighting, surgical tables (including Allen® Advanced Table), Helion® integrated system, surgical table pads (including gel pads, Vacu-Gel®, Vacu-Form®, made to order OR table pads, FlexiFormTM, Allen® Hug-U-Vac® and foam positioners), boom brakes and other booms parts (except for boom bearings), and trial or refurbished items; (ii) two (2) years for all Allen® branded products, except as specifically set forth in "(i)" and (ii) five (5) years for LED elements and boom bearings. In addition, Hillrom will replace up to one (1) remote control unit for each surgical table for a period of one (1) year after delivery of the surgical table. Hillrom's obligation under this warranty is expressly limited to supplying replacement parts and/or service for, or replacing, at its sole option, any product which is, in the sole discretion of Hillrom, found to be defective. The foregoing warranty does not include disposable or consumable items (with the limited exception of the single replacement of the remote control unit for up to one (1) year after the delivery date). The warranty period shall begin on the date of installation where installation is included in the purchase price and on the date of shipment where installation is not included in the purchase price. This warranty shall be void, and Hillrom will not provide any warranty services under this Agreement, in the following circumstances: (i) if the parts and/or systems have been subjected to misuse or abuse, inadequate or improper maintenance, unauthorized reconfiguration, modification, or relocation of the product, improper site preparation, operation outside of the environmental specifications for the product, or use with delivery devices or accessories not approved by Hillrom; (ii) Hillrom will not provide warranty services on any electronical work or cabling external to the product; and (iii) Hillrom will not provide warranty services on any equipment manufactured by a third party that is connected to a Hillrom product, unless such third party product was purchased through Hillrom. HILLROM'S OBLIGATIONS UNDER THIS WARRANTY SHALL NOT INCLUDE ANY LIABILITY FOR DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OR DELAYS. NO EMPLOYEE OR REPRESENTATIVE OF HILLROM IS AUTHORIZED TO CHANGE THIS WARRANTY IN ANY WAY OR GRANT ANY OTHER WARRANTY. EXCEPT FOR THIS LIMITED WARRANTY, HILLROM MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS OR SERVICES. HILLROM SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 14. LIMITATION OF LIABILITY: HILLROM'S LIABILITY ON ANY CLAIM OF ANY KIND, INCLUDING NEGLIGENCE, FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THE PERFORMANCE OR THE BREACH OF THE TERMS HEREOF OR FROM THE DESIGN, MANUFACTURE, SALE, DELIVERY, RESALE, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, REPAIR, OPERATION OR USE OF ANY PRODUCTS SOLD BY HILLROM TO PURCHASER, SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE PRODUCTS WHICH GIVE RISE TO THE CLAIM. IN NO EVENT WILL HILLROM BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR RELATED TO THE TERMS HEREOF (INCLUDING LOSS OF

PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), HOWSOEVER ARISING, EITHER OUT OF BREACH OFTHIS AGREEMENT, INCLUDING BREACH OF WARRANTY, OR IN TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE), EVEN IF THE OTHER PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEN OR UNFORESEEN.

15.COMPLIANCE WITH LAW: Purchaser shall, in connection with these Terms and Conditions and any sales to which they relate, comply with all applicable federal and state laws, regulations, and other authorities, specifically including but not limited to the federal health care program anti-kickback law, 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback Law"). As part of the cost reporting process or otherwise, Purchaser may be obligated to report and provide information concerning any discounts, rebates, or other price reductions provided in connection with any sales from Hillrom to Purchaser, pursuant to 42 U.S.C. § 1320a-7b(b)(3)(A) (the discount exception to the Anti-Kickback Law) and/or 42 C.F.R. § 1001.952(h)(the discount safe harbor to the Anti-kickback Law), other federal or state laws, or agreement with third party payers. Purchaser hereby acknowledges its legal obligations to fully and accurately report the discounts, rebates and/or other price reductions it receives under these Terms and Conditions and any sales to which they relate, per these authorities. Purchaser should retain these Terms and Conditions (and any other documentation of discounts, rebates, or other price reductions) and make such information available to federal or state health care programs or other payers upon request.

16.NOTICE OF CLAIMS: Purchaser shall inspect the products upon receipt or, where installation is included in the purchase price, upon installation by Hillrom authorized personnel and shall notify Hillrom in writing of any claims for shortage or breach of warranty within 30 days after Purchaser discovers, or should have discovered, facts upon which the claim is based. Failure of Purchaser to give written notice of a claim within the time period or in the form specified above shall be deemed to be a waiver of such claim. No action for breach of any term of this contract of sale or any other duty of Hillrom with respect to these products may be commenced beyond the warranty period.

17.CANCELLATION; RETURNED GOODS: Orders may not be canceled except by written notice received by Hillrom prior to shipment. A restocking charge of twenty-five percent (25%) of the net price will be applied for the cancellation of standard items. Charges for the cancellation of any special items will be based on non-recoverable expenses incurred by the Hillrom in filling the order plus twenty-five percent (25%) of the net price. Hillrom will accept returns of product only in accordance with Hillrom's standard returned goods policy, which will be provided to Purchaser upon request.

18.DESIGN CHANGES; SPECIFICATIONS: The designs and specifications of all products sold are subject to change without notice and, in the event of any such changes, Hillrom will have no obligation whatsoever to make similar changes in products previously ordered. Specifications and drawings and any other information shall remain the property of Hillrom and are subject to recall at any time. Such information shall not be disclosed or used for manufacture of any products.

19.SECURITY INTEREST: Hillrom shall retain a security interest in the products until Hillrom has received full payment including taxes. Purchaser agrees to sign and deliver to Hillrom any additional documents required by Hillrom to protect its security interest. If Purchaser defaults or Hillrom deems itself insecure or the products in danger of confiscation, the full amount unpaid shall immediately become due and payable at the option of Hillrom and on proper notice to Purchaser, Hillrom may retake possession of the products wherever located without court order and can resell or retain according to the laws of the state where the products are located. The products shall not be considered a fixture if attached to any realty. Purchaser shall assume all loss relating from damage to the products occurring after the products have been delivered to Purchaser and shall provide adequate insurance therefore at all times until the purchase price shall have been fully paid. Hillrom reserves the right to request proof of such insurance at any time prior to full payment along with a statement from such insurer limiting cancellation or changes to said policy within ten (10) days after written notice of same to Hillrom



- 20.COMPLETE AGREEMENT; CONFLICTING AND ADDITIONAL TERMS: This Agreement contains the complete agreement of the parties with respect to the subject matter hereof. All products from Hillrom will be provided on the terms and conditions set forth in this Agreement. The terms of this Agreement will govern over any conflicting terms in individual purchase orders, and all additional terms (other than the dates, product type and quantity terms of such order) in individual purchase orders will be disregarded in their entirety unless otherwise explicitly agreed to in a writing signed by an authorized representative of each party.
- 21.ACCEPTANCE: Purchaser's issuance of a purchase order, upon acceptance by Hillrom, shall constitute a contract between the parties and is Purchaser's affirmative acknowledgement and acceptance of Hillrom's product proposal and the associated terms and conditions of sale accompanying such product proposal.
- 22. AMENDMENT: No amendment or modification of this Agreement shall be effective or binding upon either party unless committed to in writing and signed by a duly authorized representative(s) of each of the parties.
- 23.SEVERABILITY: Each and every paragraph, sentence, clause, term and provision of this Agreement shall be severable, and if any portion of this Agreement shall be held or declared to be illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other portions hereof, and the remainder of this Agreement, disregarding such invalid portion, shall continue in full force and effect as though such void provision had not been contained herein.
- 24.FORCE MAJEURE: Either party shall be excused from any delays in schedules or failure to perform any of its obligations, except payment obligations, under this Agreement caused by floods, strikes or other labor disturbances, fires, accidents, wars, delays of carriers, inability to obtain raw materials, failures of normal sources of supply, restraints of government, or any other similar or dissimilar cause beyond either party's reasonable control. No such delay or failure shall be considered a breach of either party's obligations under this Agreement.
- 25.GOVERNING LAW: The validity, interpretation, and performance of these terms and conditions of sale and the related purchase order shall be governed by and construed in accordance with the laws of the State of California.

- 26. INSURANCE: Hillrom reserves the right to maintain an insurance program or self-insure during the Term of the Agreement to cover product liability, general liability, and property damage risks against any insurable claim or claims, which might or could arise regarding Products purchased from Hillrom. General liability will contain a minimum combined single limit of liability for bodily injury and property damage in the amounts of n ot less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Upon request, Hillrom shall provide Purchaser a certificate of insurance or letters of self-insurance. The types and limits of insurance shall include: (i) Workers Compensation Insurance in accordance with limits imposed by applicable state law; and (ii) Business Automobile Liability, with not less than \$1 million per occurrence.
- 27. INDEMNIFICATION: Hillrom agrees to indemnify, defend and hold harmless PURCHASER and PURCHASER's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of counsel, expert fees, costs of staff time, and investigation costs) asserted by a third party and alleging bodily injury, including death, or property damage (each, a "Claim") to the extent the Claim arises out of Hillrom's officers, agents, employees, independent contractors, sub-contractors of any tier, or authorized representatives breach of these terms or its negligence or willful misconduct. Further, Hillrom shall indemnify, defend and hold PURCHASER, its officers, agents, servants and employees harmless from liability of any nature or kind as a result of PURCHASER's use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, or articles or appliances furnished or used under any Contract. Hillrom has no obligation to indemnify, defend, or hold harmless PURCHASER hereunder to the extent the Claim arises out of PURCHASER's breach of these terms or the negligence or willful misconduct of the PURCHASER or its personnel.
- 28. DISQUALIFIED PERSONS: Hillrom 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 PURCHASER), (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. Hillrom 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"), Hillrom shall immediately notify PURCHASER and such individual shall be immediately removed by Hillrom from any functions involving (i) the claims development and submission process, and (ii) any healthcare provider contact related to PURCHASER patients; provided, however, that if Hillrom is directly involved in the Enforcement Action, any agreement between PURCHASER and Hillrom shall terminate immediately.
- 29. NON-COLLUSION CONVENANT: Hillrom represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with PURCHASER. Hillrom has received no incentive or special payments, nor considerations, not related to the provision of services under this Agreement from PURCHASER.
- 30. GOVERNMENT ENTITY: Hillrom is aware that PURCHASER is a government entity and is subject to the California Public Records Act, Cal.Govt.Code § 79 200.000 et seq., the Brown Act, Cal.Govt.Code § 54950 et seq., and other laws pertaining to government entities. Information required by law to be disclosed will not be considered Proprietary and Confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation.
- 31. The liabilities or obligations of PURCHASER with respect to its activities pursuant to this Contract shall be the liabilities or obligations solely of PURCHASER and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.
- 32. NOTWITHSTANDING ANYTHING THE CONTRARY, HILLROM'S LIMITATIONS OF LIABILITY SHALL NOT APPLY TO, AFFECT, OR LIMIT: (i) ANY OF HILLROM'S DUTIES TO INDEMNIFY PURCHASER IN ACCORDANCE WITH THIS AGREEMENT AND/OR (ii) ANY THIRD PARTY CLAIMS.

page 10 of 10

IN WITNESS WHEREOF, the undersigned duly authorized officers or signatories of the parties hereby agree to the updated terms and conditions in this Quote #10024565-4.

HILL-ROM COMPANY, INC.

- D-

Print name: Taylor Baum

Title: Head of Sales Date: 11-Sep-2024

KERN MEDICAL

By:

Print name: Phil McLaughlin

Title: Chairman, Board of Governors

Date: November 20, 2024

REVIEWED ONLY
NOT APPROVED AS TO FORM
By Phillip Jenkins

General Service Terms and Conditions

General. These General Service Terms and Conditions are applicable to units of equipment covered under one of the following programs offered by Hill-Rom, Inc., on behalf of its subsidiaries and affiliates (collectively, "Hill-Rom"): SmartCare" Prevention Service, SmartCare" Response Service, SmartCare Tomplete Service, SmartCare Tomplete Service or any other program* as described at www.hill-rom.com/usa/service-options

Rom's Proposal, these General Service Terms and Conditions, the terms of the selected Service Program(s) as described at www.hill-rom.com/usa/service-options and Customer's Purchase/Service Order. The Agreement shall supersede any other oral or written representation between the parties regarding the subject matter. Hill-Rom's Proposal, these Effective Date and Entire Agreement. The Effective Date of the Agreement for the service program is stated on Hill-Rom's Proposal. The entire Agreement is comprised of Hill-General Service Terms and Conditions and the applicable Service Program descriptions shall prevail over any conflicting provisions in Customer's Purchase/Service Order.

Covered Services. Hill-Rom will provide the services under the selected Service Programs for the units of equipment covered under this Agreement. Hill-Rom and Customer shall comply with the applicable terms and conditions of the selected Service Programs as described at www.hill-rom.com/usa/service-options which are incorporated herein by Exclusions. Modifications, upgrades to equipment and any repairs and/or services on accessories are excluded. Repairs, parts and/or any other service to equipment caused by catastrophe, acts of nature or malfunction resulting from faulty maintenance, improper repair, abuse, damage and/or alteration by any party other than Hill-Rom are also excluded.

ights, and equipment management systems. However, Customer is responsible at its sole expense to provide all parts to complete the repairs and to provide applicable service manuals unless agreed otherwise. Hill-Rom will not be liable if Customer's request for or Hill-Rom's provision of repair services on non-Hill-Rom branded products voids a warranty Non-Hill-Rom Products. Hill-Rom will provide requested repair services for non-Hill-Rom branded products, with the exception of non-Hill-Rom branded operating room tables, or service agreement from any third party. Renewal of Term. Upon expiration of the Agreement, the parties may mutually agree to renew the Agreement in writing pursuant to pricing of a new Service Proposal and Purchase/Service Order.

and all costs and expenses (including without limitation reasonable attorneys' fees) incurred by Hill-Rom to collect any amounts owed to it, enforce any of its rights or seek any of overdue invoices shall be subject to a late payment charge equal to the lesser of 11% per month or the maximum rate allowed by law. Customer agrees to pay Hill-Rom for any organization within 10 days after invoice date, Customer shall still remain liable hereunder. Customer is advised that the Customer may be obligated to properly reflect and/or mail payments to: Hill-Rom Company, Inc., PO Box 643592, Pittsburgh, PA 15264-3592. Wire transfer information is available upon request. Unless waived by Hill-Rom in writing, its remedies hereunder. In the event Customer has directed that the charges hereunder be billed to another person or organization, and payment is not made by such person or report any discount, rebate or reduction in price in its costs claimed or charges made to federal (e.g. Medicare) or state (e.g. Medicaid) health care programs requiring such Payment Terms. Invoices are payable net 30 days from date of invoice. Unless the Proposal from Hill-Rom Company, Inc. or TRUMPF Medical Systems, Inc. includes other options, disclosure. The invoices provided by Hill-Rom to Customer may not reflect the net cost to the Customer. Customer shall make written request to Hill-Rom in the event Customer requires additional information in order to meet applicable reporting or disclosure obligations. Suspension of Performance. If Customer fails to make a timely payment, Hill-Rom reserves the right to suspend services upon 5 days written notice unless either: (a) Hill-Rom receives full payment, (b) the parties agree to written payment arrangements, or (c) Customer notifies Hill-Rom in writing of dispute with outstanding balance.

other covered service is performed. Hill-Rom's exclusive obligation and Customer's exclusive remedy is for Hill-Rom to re-perform any defective service. To view or print the Limited Warranty. Hill-Rom warrants that each piece of equipment covered under this Agreement will be in good operating condition at the time the preventive maintenance or standard Hill-Rom Warranty, please refer to the attached file: Click here to download file. For specific warranty information on Hill-Rom® products and parts, please see the user



NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER REMEDIES. IN NO CASE SHALL HILL-ROM BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES OR DELAYS. NO EMPLOYEE OR REPRESENTATIVE OF HILL-ROM IS manual or service manual. Additional information about replacement parts can be found online at our website, https://partsonline.hill-rom.com. THE FOREGOING WARRANTY CONSTITUTES THE SOLE WARRANTY MADE BY HILL-ROM AND IS IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED OR STATUTORY, INCLUDING BUT AUTHORIZED TO CHANGE THIS WARRANTY IN ANY WAY OR GRANT ANY OTHER WARRANTY.

ndirectly (i) induce any individual who has provided services to Customer on behalf of Hill-Rom within the six (6) month period immediately preceding the expiration or termination of this Agreement to terminate such relationship with Hill-Rom (or any affiliate thereof), or (ii) assist, coordinate or otherwise offer employment to, employ, or retain as an ndependent contractor any individual who is or had been employed by Hill-Rom (or any affiliate thereof) at any time within the six (6) month period immediately preceding such Non-Solicitation. During the term of the Agreement and for a period of twelve (12) months following its expiration or termination, Customer agrees that it will not directly or offer or retention without first paying to Hill-Rom a finder's fee equal to six (6) months of the average monthly billings made under the Agreement.

Limitation of Liability. Hill-Rom shall not be liable for loss or damages due to delays resulting from any cause beyond Hill-Rom's control. Such delays will extend Hill-Rom's period of performance under applicable warranty or service programs. IN NO EVENT SHALL HILL-ROM BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Customer must make claims for shortages or errors within a reasonable time. Hill-Rom reserves the right to use remanufactured or used components that meet new component specifications and are warranted as new. Miscellaneous. Both parties shall comply at all times with applicable federal and state laws and regulations. A printed version of these General Service Terms and Conditions and the terms of the Service Programs shall be admissible in judicial or administrative proceedings to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. The Agreement shall be governed by the laws of the State of Indiana, exclusive of its choice of laws provisions.

^{*} Previous service programs include OnSchedule" Program, Preventative+® Program, Extended Warranty Program, Priority" Program, Asset Protection Program, Essential^{5M} Service Program



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed Subscription Renewal Quote Q-1323241 with Lansweeper Inc.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Quote Q-1323241 with Lansweeper Inc., a Texas corporation, for the purchase of product licenses to a software subscription in support of Information Technology Asset Management. This product is required for Kern Medical to maintain compliance with the Health Insurance Portability and Accountability Act (HIPAA) security standards outlined in 45 C.F.R. § 164.310(d). HIPAA requires entities to maintain an inventory of all assets that access or contain Electronic Protected Health Information and this product will be used to meet this requirement. The product is also critical for Information Systems staff to identify issues and resolve end user problems with equipment, as well as assist in the budgeting process for asset lifecycle.

The 1-year cost for the subscription and support will not exceed \$16,001 as referenced below:

Quote No. Q-1323241:

Subscription	Costs
Lansweeper Asset quantity 8,000 – 1 Year	\$16,000.87

The Agreement contains non-standard terms and conditions and cannot be approved as to form by Counsel due to the possibility that Cloud services would be hosted on a public cloud (although not using cloud services at this time); no indemnification by Lansweeper, we only indemnify Lansweeper; licensed content will transferred to Lansweeper and can be disclosed by applicable law; Lansweeper may permanently erase content if our account becomes delinquent; we grant Lansweeper a non-exclusive license to use our aggregate content and metadata; Lansweeper has no liability for product failures, nor claims of infringement or intellectual property rights in the use of the product; Lansweeper's total liability is limited to the cost of the quote; Lansweeper may amend the terms and conditions at any time; and the terms and conditions are governed by Texas law.

Due to these non-standard terms and conditions, Information Systems staff worked diligently to find another vendor that maintained a comparable product that would work within our current system and our budget, but was unsuccessful. Therefore, it is recommended that your Board approve the proposed Quote with Lansweeper Inc. for the purchase of product licenses and support for a one (1) year term beginning on December 18, 2024 through December 17, 2025, with a cost of \$16,001 and authorize the Chairman to sign.

Prepared by: Lula Ramirez

Email: Iula.ramirez@lansweeper.com Quote Expires On: December 28, 2024



Client:

Kern Medical 1700 Mount Vernon Ave. 93306 Bakersfield California United States

Subscription Start Date: 2024-12-18

Payment Term: Net 30

Lansweeper Inc.

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

Quote Q-1323241

Product	Number of Assets/ Agents	List Price	Term	Subtotal	One-time Discount	Net Price
Lansweeper Pro	8,000	USD 19,188.00	1-Y	USD 19,188.00	USD 3,187.13	USD 16,000.87

An overview of the features and functionalities entailed in the Lansweeper subscription plan can be found here.

Total

USD 16,000.87

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

To proceed with the purchase, please send your PO to sales@lansweeper.com

Authorized Signature
Phil McLaughlin
Printed Name
Chairman, Board of Governors
Title
November 20, 2024
Date

Notes:

Lansweeper.com

This quote is subject to our Terms of Use (https://www.lansweeper.com/terms-of-use/) and identifies the details of your Paid Subscription. The capitalized terms used in this quote will have the meaning assigned to them in our Terms of Use (lansweeper.com/terms-of-use). "Quantity" refers to the number of Assets for a Paid Subscription or the number of Help Desk-Agents for a Help Desk-Agent Subscription.

Please refer to our Terms of Use (<u>lansweeper.com/terms-of-use</u>) for our payment conditions. Payment term is NET thirty (30) days from invoice date, except if otherwise stipulated on this quote or the subsequent invoice. Lansweeper reserves the right to contract and bill the Product licenses provided herein through Lansweeper NV, Lansweeper, Inc. or Cleverbridge AG/Inc. ("Cleverbridge") based on the customer's final invoicing details. In the latter case, Cleverbridge's payment conditions shall apply.

This offer is noncommittal and does not create any agreement between you and Lansweeper, unless this offer and the Terms of Use (lansweeper.com/terms-of-use) are acknowledged and accepted by you. Purchase orders are only binding when accepted by Lansweeper. The submission of a purchase order implies the acceptance of our offer and our Terms of Use (lansweeper.com/terms-of-use). Any purchase or other conditions mentioned on your purchase order are expressly excluded and shall be null and void.

Lansweeper, Inc. is a limited liability company existing under the laws of the State of Delaware, United States, with its principal business address at 11044 Research Boulevard, Building D, Suite D-500, Austin, Texas 78759.

BE +32 52 696 696

US +1 917 382 3697

UK +44 203 695 7908

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REVIEWED ONLY NOT APPROVED AS TO FORM

By Shannon Hochstein
Kern County Hospital Authority



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed Change Order No. 1 to Agreement 148-2024 with CBCM Services, Inc.

Recommended Action: Make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; Approve; Authorize Chairman to sign; Authorize the Chief Executive Officer to sign future change orders in an amount not to exceed 10%, for a total contract price not to exceed \$345,816

Summary:

Kern Medical requests your Board approve proposed Change Order No. 1 to the Agreement with CBCM Services, Inc., in the amount of \$33,598 to repair the lateral sewer line in C Wing that runs from the 4th Floor to the kitchen sewer line outlet. This line failed, requiring an immediate need for repairs. Contractor opened the floor at the damaged line in the kitchen dishwashing area, made repairs and replaced the concrete. Floor tiles will be replaced once the original scope of work is complete.

On August 21, 2024, your Board approved an agreement with CBCM Services, Inc., in the amount of \$280,780 with authorization for the Chief Executive Officer to execute future change orders in an amount not to exceed 10% of the total contract price totaling \$308,859, to make repairs to the C Wing sewer lines that run from the kitchen, under medical records and outside the building.

This proposed Change Order No. 1 in the amount of \$33,598 exceeds 10% of the total contract price, requiring your Boards approval.

Therefore, it is recommended that your Board make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; approve the Change Order with CBCM Services, Inc., in the amount of \$33,598 for a new total of \$314,378; authorize the Chief Executive Officer to sign future Change Orders up to 10% of the contract amount, for a new potential not to exceed amount of \$345,816; approve and authorize Chairman to sign.

CHANGE ORDER

PROJECT:

C Wing Sewer Line Repairs - Emergency Project

1700 Mt. Vernon Avenue

Bakersfield, CA 93306

PROJECT NO.:

CONTRACT NO.:

10138

148-2024

CONTRACTOR:

CBCM Services, Inc.

3232 Chester Lane

Bakersfield, CA 93306

CHANGE ORDER NO.:

One (1)

DATE:

November 20, 2024

DESCRIPTION OF CHANGE

ADD

DEDUCT

Provide all labor, materials and equipment to complete

1. an emergency repair to the C Wing lateral sewer line

that flows into the kitchen.

CHANGE ORDER NO. 1 TOTAL (ADD)

ORIGINAL CONTRACT PRICE NEW CONTRACT AMOUNT

\$33,597.56

\$33,597.56

\$280,780.20

\$314,377.76

REASON FOR CHANGE

 The C Wing lateral sewer line that runs from the 4th floor to the kitchen tie in failed and needed to be repaired to continue kitchen operations.

**

**

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

CONFORMANCE WITH SPECIFICATIONS:

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

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

SUBM	IITTED BY: CBCM Services, Inc.	APPR	OVED AS TO CONTENT:
BY:	Chris Bruff 10-30-2024 Chris Bruff	BY:	Aspen Street Architects, Nate Morgan
	OVED AS TO FORM: Services Department Phillip Jenkins Hospital Counsel	BY:	Scott Thygerson, CEO
KERN	COUNTY HOSPITAL AUTHORITY		
BY:	Board of Governors, Chairman "KCHA"		



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed Second Amendment to Lease Agreement for the Multi-Use Warehouse at the Mount Vernon Medical Complex

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical is requesting your Board approve the proposed Second Amendment to the Lease Agreement of the Multi-Use Warehouse at the Mount Vernon Medical Complex with County of Kern, to increase the rental space.

On July 1, 2016, your Board approved a seven (7) year Agreement with the County of Kern for the lease of the Coroner and Probation Warehouse located on Mount Vernon and College Avenue. On June 24, 2023, Kern Medical exercised the option to extend the Agreement for an additional three years, extending the term to June 23, 2026.

On July 17,2024, your Board approved the First Amendment to the Lease Agreement which provide a rental credit in the amount of \$6,678 for overpaid rent.

This proposed Second Amendment will increase the rental space from 1,200 square feet to a total of approximately 2,400 square feet for additional emergency management equipment/supplies storage space. This additional space will be leased at a rate of \$0.63 sf/per month, with a 3% annual increase, and double the maximum payable of the Agreement, from \$28,041 to \$56,082, for the remainder of the term.

Therefore, it is recommended that your Board approve the Second Amendment to the Lease Agreement for the Multi-Use at the Mount Vernon Medical Complex with County of Kern increasing the rental space from 1,200 square feet to approximately 2,400 square feet and double the maximum payable of the Agreement, from \$28,041 to \$56,082, through June 30, 2026, the remainder of the term.

SECOND AMENDMENT TO AGREEMENT FOR LEASE OF A PORTION OF THE MULTI-USE WAREHOUSE AT THE MOUNT VERNON MEDICAL COMPLEX, BAKERSFIELD

(County of Kern – Kern County Hospital Authority)

THIS SECOND AMENDMENT	TO AGREEMENT FOR LEASE ("Second Amendment")
is made and entered on	_, 2024 ("Execution Date") by and between the COUNTY
OF KERN, a political subdivision of the	e State of California ("County"), and the KERN COUNTY
HOSPITAL AUTHORITY, a county hos	spital authority, which owns and operates Kern Medical Center
("Lessee"). County and Lessee are referred	d to individually as a "Party" and collectively as the "Parties."

RECITALS:

- **A.** County owns real property and a warehouse building referred to as the Coroner's/Probation Warehouse ("**Building**") located off of Mount Vernon Avenue and College Avenue in Bakersfield, County of Kern, State of California.
- **B.** Lessee requires storage space within a portion of the Building to support its operations at Kern Medical Center.
- **C.** On April 20, 2016, the Parties entered into an agreement to allow Lessee to use a portion of the Building as storage ("**Agreement**").
- **D.** On July 17, 2024, the Parties amended the Agreement to revise the size of the leased premises and address a rent credit.
- **E.** The Parties desire to amend the Agreement to increase total square footage of the leased premises.

AGREEMENT:

1. Section 1 "Premises" of the Agreement is deleted and replaced with the following:

For and in consideration of the terms, covenants, and conditions contained in this Agreement, County leases to Lessee, and Lessee leases from County, an approximate 2,400-

square foot portion of the Building, which is located off of Mount Vernon Avenue and College Avenue, Bakersfield, County of Kern, state of California, and is depicted on the site plan attached the Agreement as **Exhibit** "A."

- 2. Section 6.b "Rent Option Term" of the Agreement shall be edited to add the following to the end thereof:
 - **b.** Option Term Commencing July 1, 2023, the amount of monthly rent for the 3-year option term shall be \$0.63/sf per month.
- 3. <u>Ratification of Agreement</u>: Except as modified by this Second Amendment, all terms and conditions of the Agreement shall be in full force and effect. All rights provided to County in this Second Amendment are in addition to those provided in the Agreement and those provided by law.
- 4. <u>Authority to Execute</u>: Each of the individuals executing this Second Amendment on behalf of Lessee and County represent and warrant that he or she is duly authorized to execute and deliver this Second Amendment on behalf of Lessee or County, respectively, and that this Second Amendment is binding upon Lessee and County, respectively, in accordance with its terms.

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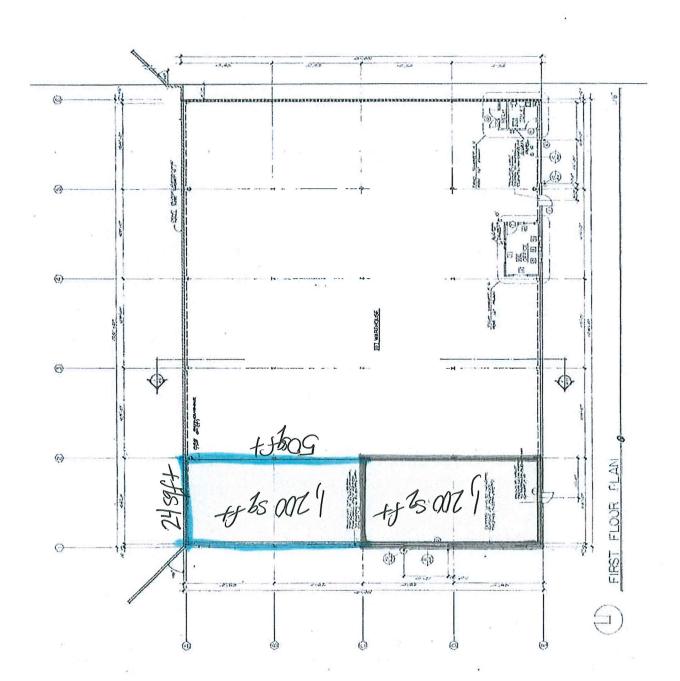


The Parties have executed this Second Amendment on the Execution Date.

COUNTY OF KERN	KERN COUNTY HOSPITAL AUTHORITY
By Geoffry Hill, Geoffrey Hill, Chief General Services Officer "County"	ByChair Board of Governors "Lessee"
APPROVED AS TO CONTENT: County Administrative Office	APPROVED AS TO CONTENT Kern County Hospital Authority
By Isaac Preston Isaac Preston, Senior CAO Officer	By Scott Thygerson, Chief Executive Officer
APPROVED AS TO FORM: Office of County Counsel	APPROVED AS TO FORM: Legal Services Department
By Brian Van Wyk, Brian Van Wyk, Deputy County Counsel	By Hillip Jenkins, Hospital Counsel









BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed agreement with Vigilanz Corporation to purchase software as a service

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed agreement with Vigilanz Corporation for SaaS-based clinical surveillance and patient safety technology. Vigilanz surveillance technology continuously monitors data from the electronic health record to improve medication safety, maximize efficiencies, and generates alerts to help clinicians make appropriate drug therapy decisions. This software is will help improve regulatory compliance (e.g. TJC, NHSN, and CDC Antimicrobial Stewardship) and enhance patient safety. The total cost of the agreement for the three (3) year term is \$214,609.

Counsel is unable to approve the terms and conditions as they contain non-standard terms. The non-standard terms include the lack of a termination for convenience and the Agreement is not governed by California law. California law provides public entities, such as the Authority, with statutory safeguards from litigation. These safeguards allow public entities to investigate, settle, and/or avoid litigation all together. Despite numerous attempts, Counsel was unsuccessful in negotiating these terms. Finally, the Agreement provides limited indemnification for third-party claims against the Authority.

Kern Medical recommends that your Board approve the proposed agreement with Vigilanz Corporation for a period of three (3) years in an amount not to exceed \$214,609 and authorize the Chairman to sign.

VigiLanz.

SOFTWARE AS A SERVICE (SAAS) AGREEMENT

Date: November 7, 2024

CUSTOMER:

Name: Kern County Hospital Authority on behalf of Kern Medical Center ("Customer")

Address: 1700 Mount Vernon Ave, Bakersfield, CA 93306

Contact Name: Jeff Jolliff **Title:** Director of Pharmacy Programs and Education

Telephone: 661-326-2191 E-Mail: jeff.jolliff@kernmedical.com

VIGILANZ:

Name: VigiLanz Corporation, a Delaware corporation ("VigiLanz")

Address: 4010 W Boy Scout Blvd #900, Tampa, FL 33607

Contact Name: Richard Malone Title: VP, Sales

Telephone: 615-500-2981 E-Mail: richard.malone@inovalon.com

BACKGROUND

- A. VigiLanz is engaged in the business of providing access to and use of certain online Solutions (defined below), and data mapping, consulting, training and other implementation services; and
- B. Customer is interested in obtaining access to and use of such Solutions and services from VigiLanz.

SIGNATURES

By signing below, the undersigned certify that they have read and understand, and agree to be legally bound by, the terms and conditions of this Software as a Service (SaaS) Agreement and the accompanying exhibits (collectively the "Agreement"), as of the date first set forth above.

VigiLanz Corporation

Customer

DocuSigned by:	
By: Eron kelly D35AC2CA9B6E400	By:
Name: Eron Kelly	Name: Phil McLaughlin
Title: Corporate President	Title: Chairman, Board of Governors
Date: 11/7/2024	Date: November 20, 2024



AGREEMENT

In consideration of the foregoing recitals and the mutual promises hereinafter set forth, the Parties hereby agree as follows:

Article I. Definitions.

- 1.1. <u>Access Exception</u> means the exceptions listed in Exhibit 2-3.
- 1.2. <u>Action</u> has the meaning set forth in Section 11.1.
- 1.3. <u>Additional Feeds</u> has the meaning set forth in Exhibit 1.
- 1.4. <u>Authorized User</u> means the employees and agents of Customer authorized by Customer to use the Solutions pursuant to the terms and conditions of this Agreement.
- 1.5. <u>Staffed Bed Count</u> has the meaning set forth in Section 3.3.
- 1.6. <u>Confidential Information</u> has the meaning set forth in Section 8.1.
- 1.7. <u>Customer Data</u> means all data and information received or retrieved from Customer, including Health Information and Patient Data, but not including Derived Data or De-Identified Data.
- 1.8. <u>Customer Systems</u> means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.
- 1.9. <u>Critical Issue</u> means a broad based issue identified by the Customer which prohibits the use of the Solutions. For clarity sake, this does not include data questions or data mapping affecting an individual rule but rather that which affects either all rules or a broad scope of rules thereby prohibiting the effective use of the Solutions.
- 1.10. <u>De-Identified Data</u> has the meaning set forth in Section 4.6.
- 1.11. <u>Derived Data</u> means information and data derived, created, calculated or established by or through the output of the Solutions, including but not limited to, non-identifiable alerts and their associated time stamps, but does not include any Identifiable Health Information, Patient Data or Customer Data supplied to VigiLanz.
- 1.12. <u>Disclosing Party</u> has the meaning set forth in Section 8.1.
- 1.13. <u>Documentation</u> means any manuals, instructions or other documents or materials that VigiLanz

- provides or makes available to Customer in any form or medium whether oral or written and which describe the functionality, components, features or requirements of the Solutions or VigiLanz Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof, as all of the forgoing may be updated or amended by VigiLanz from time-to-time.
- 1.14. <u>Effective Date</u> means the date first set forth at the top of page 1 of this Agreement.
- 1.15. <u>Fees</u> has the meaning set forth in Section 3.1.
- 1.16. <u>Force Majeure Event</u> has the meaning set forth in Section 13.1.
- 1.17. Harnful Code means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Customer or any Authorized User from accessing or using the Solutions or VigiLanz Systems as intended by this Agreement. Harmful Code does not include any VigiLanz Disabling Device.
- 1.18. <u>Health Information</u> means any information, whether oral or recorded in any form or medium, that (a) is created or received by Customer; and (b) relates to the past, present, or future physical or mental health or condition of a patient of Customer; or the provision of health care to a patient of Customer.
- 1.19. <u>HIPAA Regulations</u> means the Health Insurance Portability and Accountability Act of 1996 and Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, as applicable, as well as all applicable state privacy laws and regulations.
- 1.20. <u>Implementation Phase</u> has the meaning set forth in Section 2.3(b).
- 1.21. <u>Indemnitee</u> has the meaning set forth in Section 11.3.
- 1.22. <u>Indemnitor</u> has the meaning set forth in Section 11.3.

- 1.23. <u>Initial Term</u> has the meaning set forth in Section 9.1.
- 1.24. <u>Intellectual Property Rights</u> means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- 1.25. <u>Law</u> means any applicable and required statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof.
- 1.26. <u>Losses</u> has the meaning set forth in Section 11.1.
- 1.27. Open Rule Library or ORL means a database of rules, some but not all of which reference medical literature and which may or may not be evidence-based, that: (a) are constructed by VigiLanz experts, (b) are constructed by Customer and /or other customer, (c) are accessible to all VigiLanz customers, including Customer, and (d) require vetting, adoption and adaption by Customer and its Authorized Users before being placed in production or otherwise used by Customer.
- 1.28. <u>Patient Care</u> has the meaning set forth in Section 4.7.
- 1.29. <u>Patient Data</u> means data relating to one or more specific Customer patient(s) that has not been deidentified.
- 1.30. <u>Permitted Use</u> means use of the Solutions or VigiLanz Materials by an Authorized User (a) for the benefit of Customer, (b) solely for Customer's clinical purposes in connection with Customer's inpatient clients, and (c) for each Solution, exclusively for the Purpose identified on Exhibit 1.
- 1.31. <u>Person</u> means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.
- 1.32. <u>Preliminary Project Plan</u> has the meaning set forth in Exhibit 2-7.
- 1.33. <u>Process</u> means to take any action or perform any operation or set of operations that the Solutions are capable of taking or performing on any data, information or other content. <u>Processing</u> and <u>Processed</u> have correlative meanings.
- 1.34. <u>Project Plan</u> has the meaning set forth in Section 2.3(b).
- 1.35. <u>Purpose</u> means the purpose for which a Solution is intended, as specifically identified on Exhibit 1

- 1.36. <u>Receiving Party</u> has the meaning set forth in Section 8.1.
- 1.37. <u>Renewal Term</u> has the meaning set forth in Section 9.2.
- 1.38. <u>Solution Rules</u> means the rules specified by Customer and agreed to by VigiLanz to be used in connection with the Solutions that provide the basis to issue the applicable notifications, alerts, and warnings generated by the Solutions and other functions that the Solutions may perform, as further detailed in Exhibit 2-5.
- 1.39. <u>Solutions Software</u> means the VigiLanz software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that VigiLanz provides remote access to and use of as part of the Solutions.
- 1.40. <u>Solutions</u> means the solutions identified and selected on Exhibit 1 as included within this Agreement and which may be accessed remotely from the VigiLanz Systems pursuant to the terms of this Agreement.
- 1.41. <u>Specifications</u> means the specifications for the Solutions set forth in Exhibit 2-1 through Exhibit 2-5 and the Documentation.
- 1.42. <u>Support Phase Date</u> means thirty (30) days after the list of Authorized Users provided by Customer have been granted access to the Solutions. Following occurrence of the Support Phase Date, VigiLanz may deliver to Customer a notice memorializing the date thereof.
- 1.43. <u>Term</u> has the meaning set forth in Section 9.2.
- 1.44. <u>VigiLanz Disabling Device</u> means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by VigiLanz or its designee to disable Customer's or any Authorized User's access to or use of the Solutions automatically with the passage of time or under the positive control of VigiLanz or its designee.
- 1.45. <u>VigiLanz Materials</u> means the Solutions Software, Specifications, Documentation, Solution Rules, Open Rule Library and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by VigiLanz or VigiLanz Personnel in connection with the Solutions or otherwise comprise or relate to the Solutions or VigiLanz Systems.

- 1.46. <u>VigiLanz Personnel</u> means each Person involved in the performance of Solutions as employees, agents, licensors or independent contractors of VigiLanz.
- 1.47. <u>VigiLanz Systems</u> means the information technology infrastructure used by or on behalf of VigiLanz in providing the Solutions and receiving Customer Data, whether operated directly by VigiLanz or through the use of third-party services.

Article II. Solutions and Services.

- 2.1. Grant. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, following the Support Phase Date (or as earlier necessary in order to facilitate the Support Phase Date and training), VigiLanz agrees to grant and hereby grants Customer and its Authorized Users a royalty free, non-exclusive, nontransferable, non-sublicensable right to access and use the Solutions at the locations identified in Exhibit 3 for the Permitted Use and otherwise in accordance with the Specifications and terms and conditions hereof. Customer shall be responsible and liable for the acts and omissions of each Authorized User to the same extent as if such acts or omissions were by Customer and Customer shall ensure its Authorized Users' compliance with the terms of this Agreement. Solutions are sold based on the features and functions that exist as of the date of this Agreement, unless customized in accordance with Section 2.5.
- 2.2. <u>Training & Support.</u> VigiLanz will provide pre and post implementation training on the use and applications of the Solutions as set forth in Exhibit 2-2. The Solutions include VigiLanz' standard customer support services as described in Exhibit 2-1.

2.3. <u>Delivery and Implementation.</u>

- (a) VigiLanz will provide Customer with the standard Documentation for the Solutions within a reasonable timeframe following execution of this Agreement.
- The Preliminary Project Plan setting forth a preliminary list of tasks and implementation plan for the Solutions will be provided as part of Documentation. VigiLanz will provide Customer with a final project plan ("Project Plan") once data is validated and Customer dependencies completed. The parties shall work together in good faith to implement the Solutions according to the Project Plan. The implementation phase of the Solutions shall begin when all feeds/data points necessary for day-to-day functionality of the Solutions are made available for validation by VigiLanz as part of the standard implementation roll-out ("Implementation Phase"). Customer acknowledges and agrees that there may be additional costs if the Implementation Phase must be delayed or split into multiple phases due to Customer delays, including without limitation, (a) delays related to data feed and data point submissions; (b) adding

- additional facilities, locations, or outpatient facilities; (c) resourcing delays caused by Customer; (d) unexpected downtime caused by Customer; (e) requiring additional users to be trained that are not contemplated by this Agreement; (f) workflow changes and/or continued changes to rules or form content; and (g) any other delay caused by Customer.
- (c) Following commencement of validation and acceptance testing under the Project Plan, acceptance of the Solutions shall occur when (i) there are no unresolved Critical Issues; and (ii) Customer is able to use, for clinical purposes, that portion of the Solutions derived from or through, as applicable, (A) the data feeds agreed upon by the parties as part of the Project Plan, or (B) if purchased by Customer, the Middleware Application and any Additional Feeds. Notwithstanding the forgoing, acceptance of the Solutions shall automatically be deemed to have occurred if Customer uses any such Solution in a live clinical environment.
- (d) Customer acknowledges and agrees that the timeframes set forth in the Project Plan are contingent upon a number of factors controlled exclusively by Customer, including but not limited to, how long it takes to complete Customer deliverables, order of completion of Customer deliverables, Customer roles and resource availability, and if there are multiple hospitals, whether all hospital data feeds or sources are consistent and whether all hospitals utilize the same base source system(s).
- 2.4. Equipment. Except as otherwise expressly provided in this Agreement, VigiLanz has and will retain sole control over the operation, provision, maintenance and management of the Solutions and VigiLanz Materials, including the: (i) VigiLanz Systems; (ii) selection, deployment, modification and replacement of the Solutions Software; and (iii) performance of any support services and any maintenance, upgrades, corrections and repairs.

2.5. Changes and Customization.

- (a) <u>VigiLanz Changes</u>. VigiLanz reserves the right, in its sole discretion, to make any changes to the Solutions and VigiLanz Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of VigiLanz' Solutions to its customers, (ii) the competitive strength of or market for VigiLanz' Solutions or (iii) the Solutions' cost efficiency or performance; or (b) to comply with Law; provided that any change under subsection (a)(ii) may not have a material adverse effect on the performance or functionality of the Solutions.
- (b) <u>Customer Customization.</u> Any Customer proposed modifications, enhancements and/or changes unique to Customer, including, but not limited to, listening for, mapping and processing data or data feeds

- not listed in Exhibit 2-4, support of migration to a different source system after the commencement of implementation under the Project Plan, and custom interfaces, reports and data queries shall be considered a "Customization." All Customizations have to be approved by VigiLanz and documented in a written statement of work signed by both parties. Unless otherwise agreed in writing by the parties, VigiLanz will provide Customization services at the rate of \$250 per hour.
- 2.6. <u>Suspension of Solutions.</u> VigiLanz may suspend Customer's or an Authorized User's access to the Solutions or VigiLanz Materials if: (a) Customer fails to pay within five (5) days after VigiLanz gives notice of any overdue Fees; (b) VigiLanz receives a judicial or other governmental demand or order or law enforcement request that requires VigiLanz to do so; or (c) VigiLanz believes, in its good faith and reasonable discretion, that Customer or any Authorized User is using the Solutions (i) fraudulently or unlawfully or (ii) in breach of this Agreement ("Service Suspension"). If the event giving rise to Service Suspension (a) or (c) is not cured within thirty (30) days of the suspension date, then upon written notice to Customer, VigiLanz may terminate this Agreement in accordance with Section 9.3.
- 2.7. <u>Use Restrictions.</u> Customer shall not use the Solutions or VigiLanz Materials beyond the scope of the access granted in this Agreement. Except as this Agreement expressly permits, Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to:
- (a) copy, modify or create derivative works or improvements of the Solutions or VigiLanz Materials;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Solutions or VigiLanz Materials to any Person;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Solutions or VigiLanz Materials, in whole or in part;
- (d) bypass or breach any security device or protection used by the Solutions or VigiLanz Materials;
- (e) input, upload, transmit or provide to or through the Solutions or VigiLanz Systems, any information or materials that are unlawful, injurious, or contain, transmit or activate any Harmful Code;
- (f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Solutions, VigiLanz Systems or VigiLanz's provision of Solutions to any third party, in whole or in part;

- (g) remove, delete, alter or obscure any trademarks, Specifications, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Solutions or VigiLanz Materials, including any copy thereof;
- (h) access or use the Solutions or VigiLanz Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any Law;
- (i) access or use the Solutions or VigiLanz Materials for purposes of competitive analysis of the Solutions or VigiLanz Materials, the development, provision or use of a competing software service or product or any other purpose that is to the VigiLanz' detriment or commercial disadvantage; or
- (j) access or use a Solution, or any aspect thereof or VigiLanz Materials related thereto, to support workflows, departments or initiatives for a purpose outside of, in addition to or different than the Purpose.

Article III. Fees; Payment Terms.

- 3.1. <u>Fees.</u> Customer shall pay VigiLanz the implementation and training fee, annual license fee, and other fees set forth in Exhibit 4 ("Fees") and in accordance with the payment terms set forth in Exhibit 4. Fees are subject to an annual increase of three percent (3%).
- 3.2. <u>Fee Increases.</u> Prior to commencement of each Renewal Term, VigiLanz may increase Fees for the following Renewal Term by providing written notice to Customer at least forty-five (45) calendar days prior to the commencement of such Renewal Term and Exhibit 4 will be deemed amended accordingly.
- 3.3. Bed Count Compliance. Customer understands and agrees that the Fees for inpatient use of the Solutions are predicated upon the total inpatient staffed bed count of all hospitals authorized to use the Solutions under Exhibit 4 ("Staffed Bed Count"). The parties acknowledge and agree that the Staffed Bed Count reflected on Exhibit 4 is true and accurate as of the execution of this Agreement. VigiLanz shall annually review and update the Staffed Bed Count and upon an increase in Staffed Bed Count the Fees shall be adjusted on a pro-rata basis to reflect the increase in Staffed Bed Count. VigiLanz shall send written notice to Customer of the updated Staffed Bed Count and any increase in Fees due under this Section. Customer shall pay the additional Fees within thirty (30) days of receiving the invoice.
- 3.4. <u>Audit.</u> VigiLanz or its nominee (including its accountants and auditors) may, on ten (10) days' notice, inspect and audit Customer's use of the Solutions under this Agreement at any time during the Term. All such audits shall be conducted during regular

business hours, and no more frequently than once in any twelve (12) month period and in a manner that does not unreasonably interfere with Customer's business operations. Customer shall make available all such books, records, equipment, information and personnel, and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of VigiLanz with respect to such audit. If the audit determines that Customer's use of the Solutions Software exceeded the most recently established Staffed Bed Count, Customer shall pay to VigiLanz all amounts due for such increased Staffed Bed Count, plus interest on such amounts, as calculated with regard to late payments under Exhibit 4. If the audit determines that such increase is more than twoand one-half percent (2.5%) of the most recently established Staffed Bed Count, Customer shall also pay to VigiLanz all reasonable costs incurred by VigiLanz in conducting the audit. Customer shall make all payments required under this Section within thirty (30) days of the date of written notification of the audit results.

- 3.5. Payment Disputes. If, prior to the due date for payment under any invoice, Customer notifies VigiLanz in writing that it disputes all or any portion of an amount invoiced, both parties will use commercially reasonable efforts to resolve the dispute within thirty (30) calendar days of VigiLanz' receipt of the notice. If any amount remains disputed in good faith after such thirty (30) day period, either party may escalate the disputed items to the parties' respective executive management to attempt to resolve the dispute. The parties agree that at least one of each of their respective executives will meet (which may be by telephone or other similarly effective means of remote communication) within ten (10) calendar days of any such escalation to attempt to resolve the dispute. If the parties' executive managers are unable to resolve the dispute within ten (10) calendar days of such meeting, either party thereafter may file litigation in a court of competent jurisdiction.
- 3.6. <u>No Deductions or Setoffs.</u> All amounts payable to VigiLanz under this Agreement shall be paid by Customer to VigiLanz in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than a deduction or withholding of tax as may be required by Law).

Article IV. Additional Obligations.

4.1. <u>Customer Systems and Cooperation.</u>
Customer shall at all times during the Term: (a) provide
VigiLanz Personnel with such access to Customer
Systems as is necessary for VigiLanz to provide the
Solutions in accordance with this Agreement and the
Specifications; and (b) provide all cooperation and
assistance as VigiLanz may reasonably request to enable
VigiLanz to exercise its rights and perform its obligations
under and in connection with this Agreement. Except with
regard to the Solutions provided under this Agreement,

Customer assumes sole responsibility for acquiring any and all licenses or rights (and maintenance agreements) to other software or hardware necessary for Customer's use of the Solutions.

- 4.2. <u>Information Security.</u> Customer is required to deliver, via Customer interfaces on a transactional basis (unless otherwise agreed to by both Parties), all Customer Data via a secure virtual private network (VPN) to the VigiLanz Systems and shall deliver the Customer Data in formats such as set forth in Exhibit 2-4. At all times during the Term, Customer and its Authorized Users will use current antivirus and security protection for its internal systems, will install all critical Harmful Code protection program updates (e.g., security patches and antivirus updates) according to current industry and regulatory standards and will otherwise comply with all laws, rules and regulations applicable to Customer in the conduct of its activities under this Agreement.
- 4.3. <u>Effect of Customer Failure or Delay.</u> VigiLanz is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement, or resulting from an Access Exception.
- 4.4. <u>Corrective Action and Notice.</u> If Customer becomes aware of any actual or threatened activity prohibited by Section 2.7, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Solutions and VigiLanz Materials); and (b) notify VigiLanz of any such actual or threatened activity.
- 4.5. <u>Solution Rules</u>. Solution Rules are the sole responsibility of Customer and its Authorized Users. Customer acknowledges and agrees that any Solution Rule in the Open Rule Library, including those provided by VigiLanz Personnel shall serve solely as templates. Customer shall be solely responsible for all decisions regarding or pertaining to the adaption, adoption, creation, revision, deletion, approval, acceptance, accuracy, integrity and completeness of any and all Solution Rules. Any Solution Rules created by Customer may be incorporated into the Open Rule Library to be used by all VigiLanz customers.
- 4.6. <u>HIPAA Compliance.</u> Both parties shall abide by the Business Associate Agreement ("BAA") attached hereto as Exhibit 5. In compliance with HIPAA, VigiLanz may create de-identified Protected Health Information from Customer Data ("De-Identified Data") in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and may use, retain and disclose such De-

Identified Data to the extent not prohibited by HIPAA. Upon de-identification, VigiLanz shall be deemed to own all right, title, and interest in the De-Identified Data.

Patient Care. Customer and its Authorized Users will rely on their own discretion, experience and judgment in patient care, medical diagnosis, treatment, utilization management, and quality management, including without limitation, determining the correctness, completeness, timeliness, and suitability of data made available by the Solutions and VigiLanz Materials (collectively, "Patient Care"). Customer acknowledges that the professional duty to a patient in the provision of healthcare services lies solely with the healthcare professionals providing direct patient care or pharmacy services and Customer and its Authorized Users shall be solely responsible for all decisions and actions taken or not taken involving Patient Care for their respective patients and clients resulting from or in any way related to the use of the Solutions or VigiLanz Materials or the data made available thereby. ACCORDINGLY, CUSTOMER, FOR ITSELF AND ON BEHALF OF ITS AUTHORIZED USERS, WAIVES ANY CLAIMS AGAINST VIGILANZ AND VIGILANZ PERSONNEL FOR ANY LOSS, DAMAGE, CLAIM, OR COST RELATING TO OR RESULTING FROM CUSTOMER'S USE OR MISUSE OF THE SOLUTIONS AND VIGILANZ MATERIALS OR THE DATA MADE AVAILABLE THEREBY FOR PATIENT CARE.

Article V. Data Backup.

The VigiLanz Systems are programmed to perform routine data backups. In the event of any loss, destruction, damage or corruption of Customer Data caused by the VigiLanz Systems or Solutions, VigiLanz will, as its sole obligation and liability and as Customer's sole remedy, use commercially reasonable efforts to restore the Customer Data from the then most current backup of such Customer Data, it being understood that Customer is responsible for the backup of Customer Data on the Customer Systems.

Article VI. Security.

- 6.1. <u>VigiLanz Systems and Security</u>
 <u>Obligations</u>. The VigiLanz Systems will employ commercially reasonable security measures and standards, including current antivirus protection and installation of all critical Harmful Code protection program updates (e.g., security patches and antivirus updates) according to current industry and regulatory standards.
- 6.2. <u>Customer Control and Responsibility</u>. Customer has and will retain sole control and responsibility for: (a) the content, accuracy, and use of Customer Data and transmission of Customer Data by or on behalf of Customer; (b) all information, instructions and materials provided by or on behalf of Customer or any

- Authorized User in connection with the Solutions; (c) the operation, maintenance and management of, and all access to and use of Customer Systems; (d) the security and use of Customer's and its Authorized Users' access credentials; and (e) all access to and use of the Solutions and VigiLanz Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' access credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.
- 6.3. Access and Security. Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all access credentials and protect against any unauthorized access to or use of the Solutions; and (b) control the content, and use of Customer Data, including Customer's uploading or other provision of Customer Data for Processing by the Solutions.
- 6.4. <u>Insurance</u>. During the Term, VigiLanz will keep and maintain the following insurance: (i) comprehensive and general liability insurance of \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate, (ii) worker's compensation limits as required by California Law, (iii) technology/professional media, network security and privacy insurance of \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate, and (iv) an umbrella policy of \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate.

Article VII. Intellectual Property Rights.

- 7.1. Solutions and VigiLanz Materials. All right, title and interest in and to the Solutions, Solution Rules, Derived Data and VigiLanz Materials, including all Intellectual Property Rights therein, are and will remain with VigiLanz. Customer has no right, license or authorization with respect to any of the Solutions or VigiLanz Materials except as expressly set forth in Section 2.1 or the applicable third-party license, in each case subject to Section 2.7. All other rights in and to the Solutions and VigiLanz Materials are expressly reserved by VigiLanz and the respective third-party licensors and nothing in this Agreement grants any additional right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Solutions or VigiLanz Materials, whether expressly, by implication, estoppel or otherwise.
- 7.2. <u>Customer Data</u>. As between Customer and VigiLanz, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 7.3.

- 7.3. <u>Consent to Use Customer Data.</u>
 Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data: (a) to VigiLanz and the VigiLanz Personnel as are necessary or useful to perform the Solutions; and (b) to VigiLanz as are necessary or useful to enforce this Agreement and exercise its rights and perform its obligations hereunder.
- 7.4. Government Users. If Customer is or is deemed to be a U.S. Government agency ("Government"), Customer agrees that the Solutions are a commercial item that have been developed at private expense and not under a Government contract. Government rights relating to the Solutions are limited to those rights applicable to Customer under this Agreement, which is binding on Government users in accordance with Federal Acquisition Regulation 48 C.F.R. Section 12.212 for non-defense agencies and/or Defense FAR Supplement 48 C.F.R. Section 227.7202-1 for defense agencies.

Article VIII. Confidentiality.

- Confidential Information. In connection 8.1. with this Agreement each party (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (as the "Receiving Party"). Subject to Section 8.2, "Confidential Information" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including the terms of this Agreement and information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as "confidential". Without limiting the foregoing: the Solutions and all VigiLanz Materials (including any source code, object and algorithms relating thereto, all methods or concepts utilized therein, development level documentation, and all similar technical information pertaining to the same) are the Confidential Information of VigiLanz. Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the Receiving Party at the time of disclosure; (c) rightfully obtained by the Receiving Party on a non-confidential basis from a third party; or (d) independently developed by the Receiving Party.
- 8.2. Protection of Confidential Information. Subject to Section 8.4, the Receiving Party shall limit disclosure to those employees, contractors or agents who have a need to know and shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. Each Party agrees to protect the confidentiality of the Confidential Information of the other Party in the same manner that it

- protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either Party exercise less than reasonable care in protecting such Confidential Information.
- Compelled Disclosures. If the Receiving Party is compelled by Law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party (if allowable by law) with prior notice of such compelled disclosure and reasonable assistance (at Disclosing Party's cost) if the Disclosing Party wishes to contest the disclosure. Vigilanz acknowledges that Customer is a public entity subject to public disclosure laws. Nothing in this Agreement shall be construed to prevent Customer from compliance with any law or legal process. Notwithstanding, in such event Customer receives a request for information relating to this Agreement pursuant to such public disclosure laws. Customer shall provide prompt notice to VigiLanz of such request and provide VigiLanz an opportunity to contest such disclosure to the extent the applicable public disclosure laws provides for exceptions to the requirement for disclosure.
- 8.4. <u>Period of Confidentiality</u>. Each party will comply with Article VIII during the Term and for three (3) years after it terminates. With respect to Confidential Information that constitutes a trade secret under the laws of any jurisdiction, each party shall continue to comply with Article VIII until the Confidential Information loses its trade secret status other than due to an act or omission of the receiving party.

Article IX. Term and Termination.

- 9.1. <u>Initial Term</u>. The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of this Agreement's express provisions, will continue in effect until three (3) years from the Support Phase Date (the "Initial Term").
- 9.2. <u>Renewal</u>. This Agreement can be renewed upon the mutual written agreement of the parties setting for the term for such renewal (each a "Renewal Term" and together with the Initial Term, the "Term").
- 9.3. <u>Termination</u>. In addition to any other express termination right set forth in this Agreement, this Agreement may be terminated upon written notice:
- (a) by VigiLanz, if Customer fails to pay any unpaid amounts for thirty (30) days after Customer's receipt of written notice of Service Suspension or if Customer fails to pay any amount when due hereunder more than two (2) times in any twelve (12) month period;
- (b) by either party, if the other party commits a material breach of any provision of this Agreement, and either that breach cannot be cured or, if it can be cured, it is not cured by the breaching party within

- thirty (30) days after the breaching party's receipt of written notice of such breach;
- (c) By VigiLanz if the Customer fails to achieve the Support Phase Date within twenty-four (24) months of the Effective Date of this Agreement; or
- (d) by either party, if the other Party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors and such filing is not withdrawn or dismissed within sixty (60) days of filing.
- 9.4. <u>Effect of Expiration or Termination</u>. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:
- (a) all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate and VigiLanz will disable all Customer and Authorized User access to the Solutions and VigiLanz Materials;
- (b) VigiLanz shall immediately (i) destroy Customer's Confidential Information, including Customer Data, or (ii) at Customer's written request, return to Customer such documentation and tangible materials requested by Customer, in the form kept by VigiLanz in the ordinary course of business or in a form agreed to by the parties subject to Section 9.5.
- (c) Customer shall immediately (i) return to VigiLanz, or at VigiLanz' written request, destroy VigiLanz's Confidential Information, including VigiLanz Materials; and (ii) permanently erase VigiLanz's Confidential Information from all systems Customer directly or indirectly controls;
- (d) notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information in its then current state and solely to the extent and for so long as required by Law. VigiLanz may also retain Customer Data in its backups, archives and disaster recovery systems until such Customer Data is deleted in the ordinary course, and all information and materials described in this Section will remain subject to all confidentiality, security and other applicable requirements of this Agreement;
- (e) if Customer terminates this Agreement pursuant to Section 9.3(b) or VigiLanz terminates this Agreement pursuant to Section 9.3(c), Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and VigiLanz will refund to Customer Fees paid in advance for Solutions that VigiLanz has not provided as of the effective date of termination;
- (f) if VigiLanz terminates this Agreement pursuant to Section 9.3 or if Customer

- terminates this Agreement other than as set forth in Section 9.3(b), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees, on receipt of VigiLanz' invoice therefor.
- (g) unless otherwise agreed by the parties, VigiLanz shall not provide any post-termination transition support.
- 9.5. Return of Customer Data. In the event Customer desires for VigiLanz to return Customer Data as described in Section 9.4(b), Customer shall notify VigiLanz in writing no later than thirty (30) days after the effective date of termination. In the event Customer requests an extension of time (past the thirty (30) days), VigiLanz may, in its sole discretion, charge Customer a fee for such extension, to compensate VigiLanz for the personnel costs in returning Customer Data. VigiLanz shall have no obligation to maintain or return Customer Data sixty (60) days after the effective date of termination, and may thereafter, unless prohibited by law, permanently delete in such a manner as prevents recovery through normal means, all Customer Data in its systems or otherwise in its possession and VigiLanz will not be responsible or liable for any deleted Customer Data after such time.
- 9.6. <u>Surviving Terms</u>. The provisions in Section 2.7, Article VIII, Section 9.4, this Section 9.5, Article X, Article XI, Article XII and Article XIV, and any other right or obligation that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement.

Article X. Representations and Warranties.

- 10.1. <u>Mutual Representations and Warranties</u>. Each party represents and warrants to the other party that:
- (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;
- (b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement;
- (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and
- (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

- arrants that the Solutions provided under this Agreement will be provided and perform in substantial accordance with the Specifications. If, during the Term, the Solutions do not perform as warranted, VigiLanz agrees to use commercially reasonable efforts to correct the errors which Customer gives written notice of. It is not a breach of warranty if a problem or issue with the Solutions is as a result of, or was caused in whole or in part by, an Access Exception.
- and Warranties. Customer represents and warrants to VigiLanz that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data necessary to grant VigiLanz the right to access, receive and/or Process such Customer Data as contemplated by this Agreement and that such access, receipt, and/or Processing of Customer Data made available to VigiLanz does not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any Law.
- 10.4. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 10.1 AND SECTION 10.2, ALL SOLUTIONS AND VIGILANZ MATERIALS ARE PROVIDED "AS IS" AND VIGILANZ HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND VIGILANZ SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. Some states or jurisdictions do not allow the exclusion of implied warranties, or limitations on how long an implied warranty may last, so the above limitations may not apply to Customer. To the extent permissible, any implied warranties are limited to thirty (30) days from delivery.

Article XI. Indemnification.

shall indemnify, defend and hold harmless Customer and its directors, officers, employees, permitted successors and permitted assigns from and against all claims, losses and liabilities, including reasonable attorney's fees, resulting from any claim, suit, action or proceeding ("Claims") relating to a third party Claim alleging that the Solutions or VigiLanz Materials infringe or misappropriate any U.S. Intellectual Property Right of such third-party; provided, however, that VigiLanz shall have no indemnification obligation under this Section 11.1 to the extent the Claim is based on or arising out of: (a) Customer's unauthorized use of the Solutions or VigiLanz Materials that does not conform with the terms of this

- Agreement or the Specifications (including Access Exceptions); (b) any Customer Data, Solution Rules, Customer Systems or other Customer materials provided by Customer or used in combination with the Solutions or VigiLanz Materials; or (c) any modifications or changes made to the Solutions or VigiLanz Materials under Customer's specifications or directions by or on behalf of any person other than VigiLanz. This indemnification obligation is subject to Section 11.3 below. VigiLanz's indemnification obligations related to Protected Health Information is addressed in the BAA.
- shall indemnify, defend and hold harmless VigiLanz and its directors, officers, employees, contractors, agents, successors and assigns from and against all third party Claims, and causes of action resulting from or arising out of: (a) Customer's diagnosis, care and treatment of Customer's patients; or (b) alleging that Customer Data, Solution Rules, Customer Systems or other Customer materials, infringe or misappropriate any Intellectual Property Right of such third-party. This indemnification obligation is subject to Section 11.3 below.

11.3. Indemnification Procedure.

- (a) Each Party shall promptly notify the other Party in writing of any Losses for which such Party believes it is entitled to be indemnified pursuant to this Article XI. The party seeking indemnification (the "Indemnitee") shall cooperate with the other party (the "Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Losses and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section will not relieve the Indemnitor of its obligations under this Section except to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure. In any defense under this Section, Indemnitor shall not make any admission, statement of liability or wrongdoing of any nature, acknowledgement, or make any statement that imposes any obligation on Indemnitee or other representation on behalf of or about Indemnitee without the express prior written permission of Indemnitee. The Indemnitor must obtain the prior written consent of the Indemnitee before entering into any settlement of any Action or ceasing to defend any Action.
- (b) The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. If the Indemnitor has assumed the defense pursuant to this Section, then the Indemnitee, at any time when it believes in good faith that (i) it has additional defenses available to it which are different or in addition to those available to the Indemnitor, or its interests are adverse to the interests of

the Indemnitor's, (ii) the Indemnitor has failed or is failing to use reasonable efforts to reasonably prosecute or defend such claim, (iii) such claim for indemnification relates to or arises in connection with any criminal proceeding, indictment, or investigation in which the Indemnitee has been named, or entails injunctive relief, in each case, may assume the defense and otherwise deal with such proceeding in good faith with counsel of its choice and seek indemnification therefor in accordance with this Section, as applicable.

11.4. Mitigation. If any of the Solutions or VigiLanz Materials are, or in VigiLanz' opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the Solutions or VigiLanz Materials is enjoined or threatened to be enjoined, VigiLanz may, at its option and sole cost and expense: (a) obtain the right for Customer to continue to use the Solutions and VigiLanz Materials materially as contemplated by this Agreement; (b) modify or replace the Solutions and VigiLanz Materials, in whole or in part, to seek to make the Solutions and VigiLanz Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Solutions and VigiLanz Materials, as applicable, under this Agreement; or (c) by written notice to Customer, terminate this Agreement with respect to all or part of the Solutions and VigiLanz Materials, and require Customer to immediately cease any use of the Solutions and VigiLanz Materials or any specified part or feature thereof, provided that, subject to Customer's compliance with its post-termination obligations set forth in Article IX, Customer will be entitled to a refund of any amounts pre-paid for Solutions not yet provided. This Section 11.4 sets forth Customer's sole remedies and VigiLanz' sole liability and obligation for any actual, threatened or alleged claims that this Agreement or any subject matter hereof (including the Solutions and VigiLanz Materials) infringes, misappropriates or otherwise violates any third party Intellectual Property Right, including with regards to its indemnification obligation under Section 11.1.

Article XII. Limitations of Liability.

12.1. <u>Limitation on Damages</u>. EXCEPT FOR CUSTOMER'S BREACH OF SECTION 2.7 USE RESTRICTIONS, OR EITHER PARTY'S WILLFUL MATERIAL BREACH OF ARTICLE VIII – CONFIDENTIALITY, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER

ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PARTIES AGREE THAT THE SOLUTIONS AND VIGILANZ MATERIALS ARE TOOLS TO BE USED AT CLINICIAN DISCRETION, THAT VIGILANZ DOES NOT PRACTICE MEDICINE, PHARMACY OR NURSING AND, THEREFORE, LOSSES RELATED TO MEDICAL MALPRACTICE AND SIMILAR CLAIMS OR CAUSES OF ACTION ARE CONSEQUENTIAL DAMAGES AND WAIVED UNDER THE PRECEDING SENTENCE.

- 12.2. CAP ON MONETARY LIABILITY. EXCEPT FOR CUSTOMER'S BREACH OF SECTION 2.7 – USE RESTRICTIONS, OR EITHER PARTY'S WILLFUL MATERIAL BREACH OF ARTICLE VIII -CONFIDENTIALITY OR SECTION 11 - MUTUAL INDEMNIFICATION, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF \$250,000 OR THE AMOUNTS ACTUALLY PAID BY OR DUE FROM CUSTOMER UNDER THIS AGREEMENT FOR THE SOLUTIONS DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.
- 12.3. Exceptions. Except for actions of non-payment or breach of either party's Intellectual Property Rights, no action (regardless of form) arising out of this Agreement may be commenced by either party more than two (2) years after the cause of action has accrued. Furthermore, no provision or obligation contained in this Agreement, including the terms of Articles VIII or XII, shall operate to limit or expand VigiLanz' obligations and limitations of liability under the BAA.

Article XIII. Force Majeure.

No Breach or Default. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any payment obligation), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "Force Majeure Event"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest. embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial

government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event continues substantially uninterrupted for a period of ninety (90) days or more.

13.2. Changes. Events beyond VigiLanz's reasonable control may require changes to Fees and estimated completion dates. Without limiting the forgoing, if VigiLanz reasonably determines that the passage of Law or any action taken by a governmental or public authority has a materially adverse effect on VigiLanz's ability or cost to fulfill its obligations hereunder, then the parties shall negotiate in good faith for modifications to this Agreement that eliminate such adverse effect. Any change in the scope of services must be agreed to in writing by both parties before VigiLanz performs work that would increase the cost of the customization project.

Article XIV. Miscellaneous.

- 14.1. <u>Relationship of the Parties</u>. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 14.2. Notices. All notices under this Agreement shall be in writing and addressed to a party at the address set forth on the first page of this Agreement (or to such other address or such other person that such party may designate from time to time). Notices shall be deemed to have effectively been given: (a) personal delivery with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or e-mail, (confirmed delivery), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third business day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.
- 14.3. <u>Interpretation</u>. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to incorporated into this Agreement as if they were set forth verbatim herein. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.
- 14.4. <u>Entire Agreement</u>. This Agreement, the exhibits, statements of work, together with any other

- documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between this Agreement, the related exhibits, schedules, attachments and appendices and any other documents incorporated herein, the following order of precedence governs: (a) the exhibits, schedules, attachments and appendices to this Agreement as of the Effective Date; (b) the main body of the Agreement; and (c) third, any other documents incorporated herein by reference.
- 14.5. <u>Assignment</u>. Neither party may assign their rights or obligations without the express prior written consent of the other party, which consent may not be unreasonably withheld. Notwithstanding the foregoing, this Agreement may be assigned if there is a sale, merger or acquisition of all or a majority of the assets of either party, or if there is a sale of a controlling interest of either party to this Agreement. Any purported assignment in violation of this Section is void.
- 14.6. <u>No Third-Party Beneficiaries</u>. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 14.7. Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each party. No waiver by any party of any of the provisions hereof shall be effective unless set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure or delay in exercising any rights under this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right preclude any further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 14.8. <u>Severability</u>. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 14.9. Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Article VIII, Section 14.9 or, in the case of Customer, Section 2.7 or Section 4.4, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be

entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

- 14.10. Non-Solicitation. Each Party acknowledges that the personnel of the other Party represent a significant investment in recruitment and training, the loss of which would be detrimental to that Party's current and future business and profits. Accordingly while this Agreement is in effect and for a period of two (2) years following expiration or termination of this Agreement, VigiLanz and Customer agree neither will directly or indirectly engage, solicit or participate in the solicitation of or attempt to solicit in any manner, the employing party's employees or consultants to become its employee, consultant or contractor without first receiving written consent of the employing party, and shall not seek to interfere with the working relationship of any such individual and the Party with which it currently has a relationship. Such non-solicitation shall not prohibit general solicitation such as job fairs or general advertising for available employment positions used in the ordinary course of either Party's business, consistent with past practices, nor shall it apply to "cold calls" from employee search firms where none of the prospect, his or her position or his or her firm has been identified to the search firm, directly or indirectly, by the Party that has retained the search firm.
- 14.11. Record Retention. If required, the parties agree to comply with the access to books, documents and records of subcontractors' provisions of Section 952 of the Omnibus Reconciliation Act of 1980 (P.L. 96-499), and 42 C.F.R., Part 420, Subpart (D), Section 420,300, et seg. In accordance with these provisions, the parties will, upon proper written request made in conformance with 42 C.F.R. 420.304, allow the Secretary of Health and Human Services, and its duly authorized representatives access to this Agreement and to the parties' books, documents and records (as defined in 42 C.F. R., Part 4240, as amended), which shall be deemed by the parties to supersede this provision and be made a part of this Agreement by reference. Unless it is legally required, this paragraph does not require either party to disclose Confidential Information or proprietary information.
- 14.12. <u>Certification of Eligibility</u>. Each party represents and warrants to the other party that: (a) the

- representing party is not currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. Section 1320 a-7b(f) (the "Federal health care programs"); (b) neither party has been convicted of a criminal offense related to the provision of health care items or services but has not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs, and (c) neither party is under investigation or otherwise aware of any circumstances which may result in that party being excluded from participation in the Federal health care programs. This shall be an ongoing representation and warranty during the term of the agreement and each party shall immediately notify the other party of any change in the status of the representation and warranty set forth in this section (including any threatened, proposed or actual exclusion of such party or any similar action against any of its employees). In the event a party is excluded, debarred, or otherwise ineligible to participate in the Federal health care programs, that party shall be considered in default of the agreement, and the other party may immediately terminate this Agreement for cause and without penalty (including liquidated damages, if any).
- 14.13. <u>Counterparts</u>. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- 15. <u>Liabilities</u>. The liabilities or obligations of Customer with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Customer and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.
- 16. <u>Non-collusion Covenant</u>. VigiLanz represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with Customer. VigiLanz has received no incentive or special payments, nor considerations, not related to the provision of services under this Agreement from Customer.

EXHIBIT 1

DESCRIPTION OF SOLUTIONS

The following Solutions of the DMS are included under this Agreement. During implementation of the indicated VigiLanz Solution, Customer will select from existing reports and Solution Rules or Event templates for inclusion in the initial deployment of the Solutions.

Dynamic Pharmacy SurveillanceTM **(DPS):** A product designed to support Pharmacists in Pharmacy departments. DPS robust rules engine monitors patient data in near real time and alerts pharmacists to potential intervention opportunities – empowering them to intervene and prevent medication-related harm.

Dynamic Anti-Microbial StewardshipTM (AMS) **Solution:** A product designed to support Pharmacists in Pharmacy departments or antimicrobial stewardship team members. VigiLanz takes the best practices of an antimicrobial stewardship program and translates them into a set of actionable rules.

VigiLanz Clinical and Quality Management Services: Product supports Quality Assurance or Improvement departments or other individuals tasked with addressing the defined service. Includes automated real-time monitoring of system-wide clinical data into actionable alerts that enable earlier identification, intervention and analysis to support clinical, quality improvement, research, cost containment and patient outcome initiatives.

Customer has selected the following VigiLanz Clinical and Quality Management Services:

Service	Description
Opioid Stewardship/Pain	Discrete service related to assuring proper control of pain, use of
Control	pain medications, and support of opioid stewardship initiatives.

VigiLanz Connect (the "Middleware Application")

This Solution is a middleware application that provides system integration (including, but not limited to EMR Platforms) through universal application programming interfaces and a unified data model. EMR Platform(s) of Customer to be connected to the remaining Solutions using the Middleware Application. Supported EMR Platforms are MEDITECH and Cerner.

Subject to Section 4.7 of the Agreement, by including corresponding additional Fees in Exhibit 4, Customer elects to receive the ability to write back pharmacy clinical documentation and comments entered into the acknowledgement page of the VigiLanz DPG or AMS Solution to the agreed upon document within the Cerner EMR for the same patient (the "Cerner Write Back Option").

If the Middleware Application is selected and purchased:

• Notwithstanding any terms of the Agreement related to "data feeds" and/or requiring the delivery of data feeds in a particular format (e.g., HL7), if the Middleware Application is selected and included hereunder, the Customer Data required to utilize the remaining Solutions shall be retrieved utilizing the Middleware Application, except to the extent that the EMR Platform utilized by Customer necessitates delivery of a certain portion or aspect of Customer Data via a data feed or feeds under Sections (a)-(d) of Exhibit 2-4 (each an "Additional Feed").

• With regard to the Middleware Application, the following text shall be deemed to replace Sections (a) and (b) of Exhibit 2-4:

"Customer shall deliver to VigiLanz access and VPN connection to the applicable EMR Platform tool kit (e.g., Interconnect, MPages, etc.)."

The original Sections (a) and (b) of Exhibit 2-4 still apply with regard to any Additional Feeds.

• If Customer is receiving the Middleware Application under this Agreement, then the warranty provided in the first sentence of Section 10.2 of the Agreement shall not apply to such Solution, and, for the limited purpose of application to such Solution, Section 10.2 of the Agreement shall be deemed to read as follows:

"VigiLanz warrants that the Middleware Application will perform substantially in conformance with the Documentation associated with the functionality licensed for the EMR Platform selected in Exhibit 1 for a period of one (1) year from the Effective Date. If the Middleware Application does not perform as warranted, VigiLanz shall, at its option and as Customer's exclusive remedy for breach of the forgoing warranty, (a) repair or replace the Middleware Application so that it conforms to the limited warranty set forth in this Section, or (b) terminate the Middleware Application, provide for the use of HL7 to deliver data feeds and refund to Customer a pro-rata portion of the Fees paid for such Middleware Application for the then current Term. It is not a breach of warranty if a problem or issue with the VigiLanz Solutions is as a result of, or was caused in whole or in part by, an Access Exception."

Dynamic SSO (Single Sign-on)TM

HOSTING, MAINTENANCE AND SUPPORT

Hosting

VigiLanz will provide Customer access to the Solutions in Exhibit 1 to this Agreement from the VigiLanz Systems. The hosted environment will be maintained by the VigiLanz Systems owner and manager, TierPoint Midwest, LLC, or successor thereto. The VigiLanz Systems will be accessible to Customer except as specified elsewhere in this Agreement. Unless otherwise agreed to, only the Patient Data stipulated in this Agreement will be hosted and stored.

Maintenance

VigiLanz will apply upgrades, major releases updates and patches to its Solutions from time to time. VigiLanz will notify Customer of planned outages related to maintenance. There is no additional fee for these maintenance services.

VigiLanz Support Contact

Subject to the requirements and obligations of the hospital primary support contact person discussed below, VigiLanz will provide web accessible service support to Customer. The support details are listed below. Customers will submit service requests via the VigiLanz secured online submission system. VigiLanz neither encourages nor permits a Customer sending or submitting PHI via unsecured email transmission or any other unsecured method.

Service Level Agreement

Customer shall promptly notify VigiLanz of any technical issues experienced with the Solutions. A VigiLanz technician will respond to Customer's notification of a technical issue with the Solutions within the designated response time in the chart below. VigiLanz' ability to resolve any identified issues is highly dependent upon the availability of Customer resources and such resources will need to be made available in order to resolve issues in a timely manner. No technical issue exists if the technical issues are the result of an Access Exception.

Priority	Description	Response Time
Priority 1	Solution Service Functional Standstill Users with established accounts cannot gain access to the Solution	4 hours from notification thru the parties' established channels for critical support
Priority 2	Major Solution Service Problem that limits access to core functionality with the system and affects all Solution Users	4 hours from notification to VigiLanz thru the established channels for critical support
Data or data feeds interrupted for longer than 15 minutes		
	Users experiencing error which affect all Solution users and limit the ability to utilize the Solution with no workaround	

Priority 3	Minor Solution Service Problem for which a workaround is available or has minimal impact to workflow	1 Business Day
	User receiving error messages which do not interrupt normal workflow	
Priority 4	Rule or Form modifications or additions	3 Business Days
	General questions and clarifications	

Customer Clinical Support Contact

Customer will select one (1) or more primary internal clinical super user for each solution specialty to act as liaison with VigiLanz clinical personnel. The super user shall receive training by VigiLanz to enable him or her to be the first line respondent to internal Customer Authorized User inquiries about issues concerning the Solutions and rule development.

Customer Technical Contacts

Customer will designate one (1) or more primary and alternate technical representatives who will act as point(s) of contact for VigiLanz regarding connectivity and data interface issues.

Scheduled Downtime

Customer acknowledges and agrees that VigiLanz will conduct regularly scheduled downtime, during which the Solutions will be temporarily unavailable, two (2) times per month, between approximately 11:00 p.m. and 7:00 a.m., Eastern Standard Time, and for no more than four (4) to six (6) hours at a time unless a longer downtime is expected and communicated via notice at least seven (7) days in advance ("Regularly Scheduled Downtime"). In addition to Regularly Scheduled Downtime, VigiLanz shall notify Customer at least two (2) days in advance of all other scheduled outages of the Solutions ("Scheduled Downtime"). Scheduled Downtime shall be scheduled between the hours of 11:00 p.m. and 7:00 a.m., Eastern Standard Time; and occur no more frequently than once per month; provided that VigiLanz may request Customer's approval of extensions of Scheduled Downtime and such approval by Customer may not be unreasonably withheld or delayed.

TRAINING

Training

Implementation Training:

In connection with the Implementation Phase, VigiLanz will provide clinician directed webinar training as follows and as applicable in accordance with the Solutions in Exhibit 1:

- For each of DPS, AMS and ICM Up to four (4) hours of training for Authorized Users and one (1)
 additional one-hour training session for hospital administrators responsible for managing other
 Authorized Users.
- For <u>each</u> of Temporalytics: Sepsis Prediction, Dynamic Safety Surveillance, and each VigiLanz Clinical and Quality Management Service selected Up to two (2) 1-hour sessions for purposes of training groups of Authorized Users.

During the Implementation Phase, implementation training sessions are provided for Customer's Authorized Users prior to the Support Phase Date at a mutually convenient date and time and in accordance with the final Project Plan. Customer will identify Authorized Users who have the required expertise and Patient Data permissions, to be trained by VigiLanz. Customer understands that users will be trained on live Patient Data from the Customer's facility. The selected staff members are provided with in-depth training on the VigiLanz Solutions as specified in this Agreement.

Additional Post Implementation training:

VigiLanz will provide ongoing support training to clinician(s) for each Solution to which access is purchased pursuant to this Agreement and as set forth herein. VigiLanz will supplement clinically directed training with proprietary on-line tools. After the-Support Phase Date questions and training requests will be submitted via the VigiLanz support portal.

VigiLanz is a SaaS (Software as a Service) and as such VigiLanz's level of support remains the same as it did during the Implementation Phase. As a result, some issues found in the Implementation Phase will be handled in the Support Phase, which lasts for the entirety of the Term of the Agreement.

-After the Support Phase Date, comprehensive Authorized User training will be made available via recorded training modules, recorded training sessions, VigiLanz webinars and/or clinical training calls. The type, manner and extent of the training to be provided will be in the sole discretion of VigiLanz in consultation with and reflecting the needs of the Customer.

VigiLanz (but not Customer) may elect to record training sessions.

IMPLEMENTATION AND NETWORK SERVICES

IMPLEMENTATION

Implementation Scope:

VigiLanz and Customer management teams will work together to implement and install the Solutions in Exhibit 1. VigiLanz will provide Customer with a technical checklist, which, when returned, will be used to provide an initial project plan, that will be further refined once Customer technical checklist tasks are completed, and VigiLanz resources assigned. VigiLanz will then provide a final project plan that will provide tasks, timelines, and responsibilities and/or roles for each task. VigiLanz and Customer will hold bi-weekly project status meetings during the Implementation Phase. The timing of these meetings will be mutually agreed upon by VigiLanz and appropriate Customer personnel. An additional fee may be charged if more than two weekly calls outside the normal, scheduled calls are needed during the Implementation Phase. Customer may request additional status and clinical meetings during the Implementation Phase for an additional Fee.

Network Services:

Subject to the limitations and exceptions found below and elsewhere in this Agreement, VigiLanz will provide 24/7 secure access to the Solutions in Exhibit 1 via the VigiLanz web application for Customer and its Authorized Users. Secure point-to-point VPN access will be established between Customer and the VigiLanz Systems for the secure transmission of transactional HL7 data.

Access Exceptions:

The following are exceptions to the requirements to provide access hereunder: (a) any act or omission by Customer or any Authorized User that does not comply with this Agreement and the Specifications; (b) Customer's negligence, or delay in performance hereunder.; (c) Customer's or its Authorized User's lack of Internet connectivity; (d) any Force Majeure Event; (e) failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by VigiLanz pursuant to this Agreement; (f) Regularly Scheduled Downtime or Scheduled Downtime; (g) any issues related to Patient Care; (h) VigiLanz' disabling, suspension or termination of the Solutions or VigiLanz Materials as permitted by Article II of the Agreement; or (i) with regard the Solution Rules, the items listed in (i)-(vi) of Exhibit 2-5.

INFORMATION ACCURACY

(a) Customer is required to deliver to VigiLanz the agreed upon data feeds delineated in part (b) below on a transactional basis in HL7 format in accordance with VigiLanz specifications via a secure virtual private network (VPN) or other mutually agreed upon secure channel, connecting Customer to the VigiLanz Systems for implementation to commence.

The following are the data feeds included under this Agreement. Basic Data Feeds or Data Sources

None. Customer shall deliver to VigiLanz access and VPN connection to the applicable EMR Platform tool kit (e.g., Interconnect, MPages, etc.).

Further Data Feeds or Data Sources

None. Customer shall deliver to VigiLanz access and VPN connection to the applicable EMR Platform tool kit (e.g., Interconnect, MPages, etc.).

- (b) Customer and its agents and subcontractors shall be solely responsible for the accuracy and integrity of any and all Customer Data and any other data and information received by VigiLanz or provided to VigiLanz by Customer or Customer's designees, including without limitation all other data and information that relates to patients, physicians, drugs or other pharmaceutical supplies and products, and any other information or data used, inputted, linked or downloaded into the VigiLanz Systems, whether historical, present or future-oriented.
- (c) Not all data elements in Customer's EHR will be imported into VigiLanz systems and those that are may be formatted differently. VigiLanz will ensure all relevant data elements to the Solution's functionality are imported in a usable format to maintain the features of the Solutions. VigiLanz is not a replacement for Customer's EHR.

SOLUTION RULES & OPERATION OF THE SOLUTIONS

Standard Solution Rules are developed, tested and supported by VigiLanz clinical staff at no charge to Customer. Solution Rules and all their components are the proprietary property of VigiLanz and may never be copied, provided to third-parties, used to create derivative works or otherwise used outside the scope of this Agreement and in connection with use of the Solutions. Solution Rules are for the sole purpose of workflow support within the VigiLanz Solution suite and VigiLanz is under no obligation to provide Customer with any content lists of Solution Rules or their components.

VigiLanz users are able to view the principal components of Solution Rules and create, modify, test and deploy custom Solution Rules at their site for use within their Solutions' workflow. Customer shall follow the customization process set forth in Section 2.5 to request new Solution Rules or where data timing, structure, or results are changed by Customer.

VigiLanz users at all client sites are able access and use the sample rules in the Solution Rules library (the "Open Rule Library"). VigiLanz clinical support staff may push rules from the Open Rule Library directly to client sites to satisfy new Solution Rule requests in alignment with the purchased Solution(s). New unique rules created at any Customer site are automatically added to the Solution Rules library and become VigiLanz's property and can be used by other VigiLanz clients. Customer may submit a written support ticket requesting a rule not be added to the Open Rule Library. VigiLanz will evaluate Customer's request but is not obligated to make the rule confidential.

The efficient operation of Solution Rules is dependent on the quality, timing and the consistency of Customer Data. VigiLanz tests Solution Rule performance extensively and makes every attempt to assure targeted, effective, and near real-time rule performance. Without limiting (i)-(ix) below, VigiLanz does not guaranty or warrant the performance of any Solution Rule and expressly disclaims any such guaranty or warranty. Customer is responsible for and is expected to validate the performance of the Solution Rules it uses as part of implementation and Acceptance Testing and as new Solution Rules are needed. The Solution Rules (and the Solutions) will not be deemed to be operating improperly as a result of the issues or problems set forth below:

- (i) The contents or structure of a Solution Rule utilized by Customer in conjunction with the Solutions.
- (ii) Issues related to or caused by an interruption or delay in data feeds from Customer to VigiLanz unless caused by or under the reasonable control of VigiLanz, however an interruption or delay in data feeds from Customer to VigiLanz will not be construed to be a Solutions Rule that is operating improperly.
- (iii) Issues related to Customer's modifications or changes in data components such as lab nomenclature changes, medication formulary changes, etc. unless VigiLanz was notified of and agreed to accommodate such modifications or changes and failed to do so in the agreed upon time frame.
- (iv) Issues related to accessing the VigiLanz Systems that are not caused by VigiLanz.
- (v) Customer Data submitted to VigiLanz that is not structured and discrete data.
- (vi) Mutually agreed upon customization for data processing, data interpretation and rules or actions based upon set key word or predefined terms and definitions.
- (vii) Any other Access Exceptions.

EXHIBIT 3

CUSTOMER FACILITIES/ENTITIES

Kern Medical - 1700 Mount Vernon Ave, Bakersfield, CA 93306

If Customer is entering this Agreement for use of the Solutions by or on behalf of one or more other Persons (including its affiliates), then Customer represents, warrants and covenants that it has the authority to bind such Persons to this Agreement and that Customer and all such Persons shall be liable under this Agreement.

EXHIBIT 4

FEE SCHEDULE

TOTAL SOLUTIONS COST Implementation and Training Fee –

\$3,500

- Solutions Implementation
- Project Status Meetings and Agreed Upon Clinical Meetings
- Program Walk-Through
- Up to 4 hours of Web Based Solution Training
- Set-Up and Interface of Solutions
- Data feed validation, data import, and data mapping
- Rule creation and validation, report
- Report refinement and validation

STAFFED BED COUNT = 196

Solutions Access and Use Annual License Fee – Year 1

\$68,300

 Pharmacy, Anti-Microbial Stewardship, Opioid Stewardship, and VigiLanz Connect

<u>SaaS Services:</u> Real time rules & reports build, ad-hoc reporting, data mining, intervention tracking/reporting, mapping of all data feeds in contract, single-sign on (SSO) hosting, maintenance, upgrades, and support

Managed Services Annual Fee - Year 1

Included

<u>Services:</u> Ongoing training (as needed), ongoing rules development via VigiLanz, ongoing report development via VigiLanz, Customer specific rules/reports requests, Customer Quarterly Best-Practices Reviews (BPRs)

Additional Items Annual Fee - Year 1

N/A

Periodic Updates and Upgrades (excluding modifications)

\$0

*Each additional data feed in excess of the data feeds included in Implementation and Training Fee, as set forth in Exhibit 2-4 may cost an additional fee.

* The pricing set forth in this Exhibit 4 is contingent on the parties signing this Agreement by July 29, 2024.

Fees Invoicing and Payment: If applicable, Customer shall provide VigiLanz a purchase order number for invoicing purposes. The first year Annual License Fee shall be paid as follows: (a) fifty percent (50%) of the first year Annual License Fee and the Implementation and Training Fee (total of \$37,650) shall be invoiced by VigiLanz upon execution of this Agreement; and (b) the remaining fifty percent (50%) of the first year Annual License Fee (total of \$34,150) shall be invoiced by VigiLanz upon the Support Phase Date. Thereafter, the Annual License Fee will be invoiced by VigiLanz semi-annually beginning on the first anniversary of the Support Phase Date.

All payments are due within thirty (30) days of the invoice date. Without limiting any of VigiLanz' other rights or remedies, whether at law, in equity or under this Agreement, if Customer fails to pay any undisputed Fees within thirty (30) days of the applicable due date, VigiLanz shall have the right to: (a) assess late charges in an amount equal to the lesser of one and one-half percent (1.5%) per month or the maximum allowable under Law (the "Late Charge"); and/or (b) suspend (i) access to the Solutions, (ii)

performance of the services provided by VigiLanz hereunder, and/or (iii) terminate this Agreement. Any such suspension or termination will not relieve Customer from paying any outstanding Fees plus the Late Charge.

Sales and Use Tax: In addition to the foregoing, unless Customer provides documentation that it is exempt from sales and/or use taxes, those tax obligations will be added to this Agreement and included in the applicable invoice in the event sales and/or use taxes are not included in the invoice submitted to Customer, that Customer agrees to indemnify, defend and hold VigiLanz harmless from any sales and or use taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder. Customer also agrees to reimburse VigiLanz for all reasonable costs incurred including reasonable attorney fees in collecting past due sales and/or use taxes.

Professional and Other Services: Customization and other professional services rendered by VigiLanz not already covered by this Agreement will be invoiced upon the terms set forth in a statement of work. Customer shall have thirty (30) days from the receipt of such an invoice to make payment for undisputed amounts.

Customer Billing and Accounts Payable Contact: To facilitate the submission and processing of invoices and payments, Customer shall provide the following information:

Accounts Payable Contact Information:

- 1. Name and Title: Han Nguyen, Accountant III
- 2. Phone Number: 661-862-4133
- 3. Email Address for Accounts Payable: accountspayable@kernmedical.com

or

han.nguyen@kernmedical.com

Company Information:

- 4. Tax ID Number: 47-5618278
- 5. Is Customer exempt from sales tax? \square Yes \square No (select the appropriate box)

If Customer selected "Yes" to the Question 5, Customer shall attach a copy of the sales tax exemption certificate to this Agreement.

Billing Requirements and Related Information:

- 6. Email Address to Send Invoices: accountspayable@kernmedical.com
- 7. Are original invoices required to be mailed? \square Yes \square No (select the appropriate box)
- 8. If Customer answered "Yes" to Question 7, Mailing Address to Send Invoices:

ο.	ii Customer answered Tes to Question 7, Manning Address to Send invoices.	
9.	Are purchase orders required to process invoices? ☐ Yes ☑ No (select the appropriate box)	
	If Customer selected "Yes" to Question 9, Customer shall attach purchase order form as part of	
	this Agreement.	
10. Other Customer Requirements for Processing Payments:		

EXHIBIT 5

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 VigiLanz Corporation, a Delaware Corporation, ("Business Associate") (each a "Party" and collectively the "Parties"), effective as of date of the last signature to this 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 <u>45</u> C.F.R. § 164.501.
- 1.4 "**Disclose**" and "**Disclosure**" mean, with respect to PHI, the unauthorized release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in 45 C.F.R. § 160.103.
- 1.5 "**Electronic PHI**" or "e-PHI" means PHI that is transmitted or maintained in electronic media, as set forth in 45 C.F.R. § 160.103.
- 1.6 "Protected Health Information" and "PHI" mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 160.103. Protected Health Information includes e-PHI.
- 1.7 "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended from time to time.
- 1.8 "Security Rule" shall mean the Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A and C, as may be amended from time to time.
- 1.9 "Services" shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to any service agreement(s) between Covered Entity and Business Associate which may be in effect now or from time to time (the "Underlying Agreement"), or, if no such agreements are in effect, then the services or functions performed by Business Associate that constitute a Business Associate relationship, as set forth in 45 C.F.R. § 160.103.
- 1.10 **"SubContractor"** shall have the meaning given to such term under <u>45 C.F.R. §</u> 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

- Permitted Uses and Disclosures of Protected Health Information. Business Associate shall not Use or Disclose PHI other than as permitted or required by any Underlying Agreement, this BAA, or as Required by Law. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the Privacy Rule if so Used or Disclosed by Covered Entity, except that Business Associate may Use or Disclose PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and shall not Use and further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Business Associate may perform Services, including Data Aggregation for the Health Care Operations purposes of Covered Entity. Business Associate may de-identify PHI in accordance with 45 C.F.R. § 164.514, may use, retain, and disclose such de-identified data in any manner not prohibited under applicable law.
- 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 confidentially, 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 unauthorized Use or Disclosure that is made by Business Associate, members of its Workforce, or SubContractors that is not specifically permitted by this BAA, the Underlying Agreement, or Required by Law and which Business Associate becomes aware of no later than five (5) business

days after becoming aware of such Security Incident or unauthorized 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 unauthorized 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. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports 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 nonpermitted Disclosure. If Business Associate or Covered Entity, in its review of this initial report, reasonable 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) business days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. If Covered Entity is required to provide notice pursuant to 45 C.F.R. §§ 164.404 to 164.408, then subject to Section 5.8 of this BAA, Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses incurred by Covered Entity in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach, but only to the extent that: (A) the Unsecured PHI was in Business Associate's possession, custody, or under Business Associate's control at the time of the Breach; and (B) such Breach did not arise out of or in connection with any act or omission by Covered Entity to comply with applicable laws and regulations.
- 2.3.3 <u>Data Breach Notification and Mitigation Under Other Laws</u>. 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 reasonably

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 the extent legally permissible) to: (i) reasonably cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) reasonably 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) work in good faith with Covered Entity to mutually determine 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) reasonably assist with the implementation of any decision by Covered Entity or any State agency to notify individuals impacted or potentially impacted by a State Breach.

- 2.4 <u>Mitigation</u>. 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 <u>Use of SubContractors</u>. 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.
- 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) business days of receipt of a request for access to PHI from an Individual.
- 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) business days of receipt of a request for amendment of PHI from an Individual.
- 2.8 <u>Accounting</u>. 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) business 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 <u>Delegated Responsibilities</u>. 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.
- Associate agrees to make 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.
- 2.11 <u>Minimum Necessary</u>. Business Associate (and its SubContractors) shall, to the extent practicable, limits 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 <u>Acknowledgement</u>. Business Associate acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA, the HITECH Act, and the HIPAA Rules. Business Associate shall comply with all applicable state privacy and security laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

ARTICLE III OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity's Obligations.

- 3.1.1 Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.
- 3.1.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.
- 3.1.3 In the event Covered Entity agrees with an Individual to any restrictions on Use or Disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or if Covered Entity determines that it is obligated to accommodate a reasonable request of an Individual to receive communications of PHI pursuant to 45 C.F.R. § 164.522(b), Covered Entity promptly shall

notify Business Associate of the same, as well as any revocation or modification of the same, and Business Associate thereupon shall observe such restriction or accommodation (or revocation or modification, if any, thereof) to the extent applicable to its Use or Disclosure of PHI hereunder, notwithstanding any other provision hereof, except as otherwise required by law.

- 3.1.4 Covered Entity agrees to obtain any consent or authorization that may be required under HIPAA or any other applicable law and/or regulation prior to furnishing Business Associate with PHI.
- 3.1.5 Covered Entity shall not request Business Associate to make any Use or Disclosure of PHI that would not be permitted under HIPAA if made by Covered Entity. Covered Entity agrees to fulfill its obligations under this BAA in a timely manner.

ARTICLE IV TERM AND TERMINATION

- 4.1 <u>Term.</u> Subject to the provisions of Section 4.1, the term of this BAA shall be the term of any Underlying Agreement.
 - 4.2 <u>Termination of Underlying Agreement.</u>
- 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 <u>Termination for Cause</u>. 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 not to be less than thirty (30) calendar 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 <u>Disposition of Protected Health Information Upon Termination or Expiration.</u>

- 4.4.1 Upon termination or expiration of this BAA, Business Associate shall destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI.
- 4.4.2 If destruction is not feasible, Business Associate shall: (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) destroy 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 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) 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 <u>Regulatory References</u>. 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 <u>Amendment</u>. The Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Rules, or the HITECH Act.
- 5.3 Relationship to Underlying Agreement Provisions. In the event that a provision of this BAA is contrary to a provision of an Underlying Agreement, the provision of this BAA shall control. Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered an amendment of and supplement to such Underlying Agreement.
- 5.4 <u>Headings</u>. 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 may cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction and seek 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 <u>Insurance</u>. Business Associate will maintain the level(s) of applicable insurance set forth in the Underlying Agreement for any time period during which it maintains PHI of Covered Entity.
- 5.7 Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any SubContractors or members of its Workforce assisting Business Associate in the performance of its obligations under this BAA available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claim of violation by Business Associate of the HIPAA Rules or other applicable laws relating to privacy or security.
- 5.8 <u>Indemnification</u>. Business Associate hereby agrees to indemnify and hold harmless Covered Entity and its respective officers, directors, managers, members, employees and agents (collectively, "Indemnitee") from and against any and all third party claims that could result in the Indemnitee incurring any losses, damages, fines, penalties, and expenses arising out of or related directly to Business Associate's (including its employees, directors, officers, agents, or other members of its Workforce, and its SubContractors) intentionally or negligent breach of its obligations under this BAA or its use and disclosure of PHI in violation of HIPAA. Notwithstanding the foregoing, the liability of Business Associate to Covered Entity for indemnification and/or reimbursement of costs or expenses arising out of this BAA is limited to and by the applicable insurance provided to Business Associate by its insurer at the time a claim for those costs or expenses is made and paid.
- 5.10 <u>Legal Actions</u>. To the extent legally permissible, Business Associate shall 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.
- 5.11 Notice of Request or Subpoena for Data. To the extent legally permissible, 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 at its own expense, Business Associate agrees to reasonably cooperate with Covered Entity in such challenge. The provisions of this Section shall survive the termination of this BAA.

- 5.12 Requests from Secretary. To the extent legally permissible, Business Associate shall promptly, but no later than five (5) business 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.
- Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

Business Associate's Notice Address:

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

VigiLanz Corporation 5775 Wayzata Blvd. #970 Minneapolis, MN 55416

Attn:

- 5.14 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.
- 5.15 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.
- 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.

- 5.18 <u>Waiver of Provisions.</u> 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.
- 5.19 <u>Assignment and Delegation.</u> Neither this BAA nor any of the rights or duties under this BAA may be assigned or delegated by either Party hereto, however this BAA may be assigned in connection with any authorized assignment in the Underlying Agreement by either Party.
- 5.20 <u>Disclaimer</u>. 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.
- 5.21 <u>Counterparts.</u> This BAA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, binding on both Parties hereto.

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

COVERED ENTITY: The Kern County Hospital Authority on behalf of Kern Medical Center	BUSINESS ASSOCIATE: VENDOR
	DocuSigned by: Eron belly D35AC2CA9B6E400
Printed Name: Phil McLaughlin	Printed Name: Eron Kelly
Title: Chairman, Board of Governors	Title:
Date: November 20, 2024	Date:



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed acceptance of donation of travel and related expenses from Safety National and PRISM for the HCCA "Healthcare Basic Compliance Academy"

Recommended Action: Approve; Adopt Resolution

Summary:

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

Safety National covers the Authority's workers' compensation program; Public Risk Innovation, Solution, and Management ("PRISM") provides insurance coverage for the Authority's liability program. Safety National and PRISM have offered to donate to the Authority all travel and related expenses for one Kern Medical employee to attend the HCCA "Healthcare Basic Compliance Academy" conference in San Diego, California, from December 9-12, 2024. This training session is necessary in connection with official Authority business.

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

BEFORE THE BOARD OF GOVERNORS OF THE KERN COUNTY HOSPITAL AUTHORITY

In the matter of:	Resolution No. 2024
ACCEPTANCE OF DONATION TRAVEL AND RELATED EXPE FROM SAFETY NATIONAL AN FOR THE HCCA "HEALTHCAF COMPLIANCE ACADEMY"	NSES D PRISM
Authority, hereby certify that the folseconded by Director Governors of the Kern County Hosp	ority Board Coordinator for the Kern County Hospital lowing Resolution, on motion of Director, was duly and regularly adopted by the Board of ital Authority at an official meeting thereof on the 20th owing vote, and that a copy of the Resolution has been ard of Governors.
AYES:	
NOES:	
ABSENT:	
	MONA A. ALLEN Authority Board Coordinator Kern County Hospital Authority
	Mona A. Allen
	DECOLUZION

RESOLUTION

Section 1. WHEREAS:

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

- (b) Safety National provides coverage for the Authority's self-insured workers' compensation program; and
- (c) Public Risk Innovation, Solution, and Management ("PRISM") provides insurance coverage for the Authority's liability program; and
- (d) Safety National and PRISM have offered to donate to the Authority all travel and related expenses for up to one Authority employee to attend the HCCA "Healthcare Basic Compliance Academy" in San Diego, California, from December 9-12, 2024; and
- (e) The training session is necessary in connection with official Authority business; and
- (f) The Authority desires to obtain the donation of travel and related expenses from Safety National and PRISM to the Authority and will retain full control over the use of the donation; and
- (g) Neither Safety National nor PRISM has imposed any restrictions as to how the donation may be used.
- Section 2. NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Governors of the Kern County Hospital Authority, as follows:
- 1. This Board finds the facts recited herein are true, and further finds that this Board has jurisdiction to consider, approve, and adopt the subject of this Resolution.
- 2. This Board hereby accepts from Safety National and PRISM the donation of travel and related expenses to cover all costs for up to one Authority employee to travel to San Diego, California, to attend the HCCA "Healthcare Basic Compliance Academy" from December 9-12, 2024, in San Diego, California.
- 3. This Board authorizes the Chief Executive Officer to designate up to one Authority employee to attend the HCCA "Healthcare Basic Compliance Academy" in San Diego, California, from December 9-12, 2024.
- 4. The Authority Board Coordinator shall provide copies of this Resolution to the following:

Chief Financial Officer Legal Services Department Human Resources Department



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed Amendment No. 3 to Agreement 099-2023 with Alton Scott Thygerson, a contract employee

Requested Action: Approved; Authorize Chairman to sign

Summary:

On July 19, 2023, your Board approved Agreement 099-2023 with Alton Scott Thygerson for professional services as chief executive officer of Kern County Authority for the period July 19, 2023 through July 19, 2026. The Agreement contains a provision for annual incentive compensation with maximum earnings payable at the end of each employment year not to exceed 3% of the annual base compensation, currently set at \$619,744, and requires that your Board and Mr. Thygerson develop mutually agreed upon specific reasonable and achievable performance-based metrics annually.

Attached to the proposed Amendment as Exhibit "B-1" is an evaluation scorecard that reflects 20 measures, each with an assigned dollar value of \$929.62, with total potential incentive compensation of \$18,592.40, which is 3% of Mr. Thygerson's current annual base compensation. There are no other changes to the Agreement.

Therefore, it is recommended that your Board approve Amendment No. 3 to Agreement 099-2023 with Alton Scott Thygerson for professional services as chief executive officer of Kern County Hospital Authority, adding performance-based metrics for fiscal year 2024-2025, and authorize the Chairman to sign.

AMENDMENT NO. 3

TO

AGREEMENT FOR PROFESSIONAL SERVICES CONTRACT EMPLOYEE

(Kern County Hospital Authority – Alton Scott Thygerson)

This An	nendment No. 3 to t	the Agreement for Professional Services is made and entered	
into this	day of	, 2024, between Kern County Hospital Authority, a local unit	
of government	("Authority"), whic	ch owns and operates Kern Medical Center ("KMC"), and	
Alton Scott Thygerson ("Executive").			

RECITALS

- (a) Authority and Executive have heretofore entered into an Agreement for Professional Services (Agt. #099-2023, dated July 19, 2023) (the "Agreement"), for the period July 19, 2023 through July 19, 2026, whereby Executive serves as chief executive officer of Authority; and
- (b) It is the intent of the parties to have the terms of the Agreement provide for the payment of all reasonably projected costs and expenses related to the services provided by Executive; and
- (c) The parties agree to amend certain terms and conditions of the Agreement as hereinafter set forth;
 - (d) The Agreement is amended effective November 20, 2024;

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. Exhibit "B-1," Performance-Based Metrics, Fiscal Year 2024-2025, attached hereto and incorporated herein by this reference, shall be made part of the Agreement.
- 2. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the Agreement.
- 3. This Amendment shall be governed by and construed in accordance with the laws of the state of California.
- 4. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which take together shall constitute one and the same instrument.
- 5. Except as provided herein, all other terms, conditions and covenants of the Agreement shall remain in full force and effect.

[SIGNATURES FOLLOW ON NEXT PAGE]

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

EXECUTIVE
ByAlton Scott Thygerson
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 "B-1" PERFORMANCE-BASED METRICS FISCAL YEAR 2024-2025

[TO BE ATTACHED]

CEO Annual Performance Evaluation Scorecard For Fiscal Year Ended Jun 30, 2025

Item Measure Description		Description	Possible Points	Earned Points	\$ Value	
		Patient Experience and Safety			-	4.1
1	Patient Experience	Exceed Top Box 62% Recommend Inpatient Hospital to Family/Friends, 50% for	5		\$	929.62
		Emergency Dept (Top Box means scored a 9 or 10 on 10-point scale)			_	
2	Safety Measures	85% of measures meet or exceed target or not statistically different than CMS	5		\$	929.62
3	Staff Safety Survey	+/- 3% of staff rated unit/work area on safety compared to national	5		\$	929.62
		2. Employer of Choice				
4	Staff Turnover	+/- 2.5% of national turnover rate	5		\$	929,62
5	Leadership and Staff Engagement	Implement new annual management performance program Review CEO Succession Plan with Board of Governors Annually	5		\$	929.62
	1	Conduct Employee Engagement Survey and Develop Engagement Plan				
		3. Partnerships				
6	Adventist Health	Maintain cross-campus services with 6 Urologists, 3 Endocrinologists, 1 Plastic/Reconstructive Surgeon, and 1 Gastroenterologist	5		\$	929.62
-	D	Participate in 2 Health and Wellness Promotions with Adventist Health			+	202.00
7	Bakersfield Area Hospitals - SB43 & Psychiatric Services	Evaluate Providing Psychiatric Consult & Liaison Service to area hospitals for SB 43. If appropriate, plan implementation.	5		\$	929.62
_	Services	11 1 1			_	
	I to decree don't have the direct to decree to	4. Academic Training Initiate Medical School Student Pathway program with Western Hith Sci Univ	[[Le	929.62
8	Undergraduate Medical Education	First class of general surgery residents to start July 1, 2025	5		\$	
9	Graduate Medical Education Graduate Medical Education	Add one additional GME Medical School Affiliation	5		\$	929.62 929.62
10	Graduate Medical Education	5. Community Understanding] 3]		1.9	929.02
11	Outreach and Education	Annual Hospital Authority Outreach Plan implemented	5		Ts	929.62
' '	Outleach and Education	Valley Fever Outreach Plan Implemented	1 1		"	323.02
	I	Trauma Outreach Activities Achieved			1	
		Evaluate and Use Media Outlets as appropriate (including television/radio)			1	
		6, Stewardship			-	
12	Net Revenue	Exceed fiscal year budget	5		T s	929.62
13	EBIDA	Exceed fiscal year budget	5		\$	929.62
14	Cash Collections and Cash Management	Exceed fiscal year cash collections goal	5		S	929.62
	San		1		*	
		Develop Cash Reserves Plan				
15	Days Gross A/R	Exceed fiscal year goal	5		\$	929.62
16	Productivity Exceed fiscal year budget Extend physician productivity reporting program across entire Dept of Surgery and Dept of Medicine 5			\$	929.62	
17	Nurse Registry Expense	Exceed fiscal year budget	5		\$	929.62
18	ER and Clinic Volumes	Maintain prior year volumes +/- 2.0%	5		\$	929.62
19	Physician Recruitment	Recruit 10 physicians	5		\$	929.62
	.,,	Evaluate and implement if appropriate use of OB Hospitalists			ľ	020.02
20	New or Expanded Services	Apply for FQHC clinic	5		s	929.62
	The second second	Add 2 Mobile Clinic Locations in Partnership with School Districts			•	020.02
		Develop Hospital Campus Building Replacement Plan Financing Options	1		1	
		Total Points/\$ Value	100		10	18,592.32

Base Salary for Year Ended June 30, 2025	\$ 619,744
Potential Incentive Compensation (3.0% of base)	\$ 18,592
Compensation per Measure	\$ 929.62



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed Engagement Letter and Professional Services Agreement with Moss Adams LLC to audit the Kern County Hospital Authority Deferred Compensation Plan for Physician Employees

Recommended Action: Approve; Authorize Chairman to sign

Summary:

The Authority sponsors the Kern County Hospital Authority Deferred Compensation Plan for Physician Employees (the "Plan"), an Internal Revenue Code Section 401(a) defined contribution, money purchase retirement plan, for eligible physician employees of Kern Medical Center.

The Plan provides that a Pension Committee appointed by your Board shall oversee administration of the Plan. The Pension Committee has the sole and exclusive fiduciary responsibility over the assets of the Plan, and is responsible to administer the Plan in a manner that will assure prompt delivery of benefits and to hold the Plan's assets for the exclusive purposes of providing benefits to the Plan participants and their beneficiaries.

Section 8.3 of the Plan states the Pension Committee has all of the powers and duties necessary to accomplish these purposes including recommending to your Board the appointment of any service provider that the Pension Committee determines is necessary or desirable in connection with administration of the Plan, including auditors.

Historically the Kern County Auditor-Controller audited the Plan every two years. The last audit was in 2022, for the Plans year ending December 31, 2022, 2020, 2019, 2018, 2017 and 2016. The Pension Committee recommends that your Board engage Moss Adams LLC to audit the financial statements of the Plan, which comprise the statements of net assets available for benefits as of December 31, 2023.

Fees for the audit services are estimated at \$25,000. In addition to the audit fees, we will be charged for expenses including a flat expense charge, calculated as 5% of the audit fees, to cover expenses such as copying costs, postage, administrative billable time, report processing fees, filing fees, and technology expenses. Travel and related expenses, estimated not to exceed \$5,000, will be billed separately.

Therefore, it is recommended that your Board approve the Engagement Letter and Professional Services Agreement with Moss Adams LLC to audit the Kern County Hospital Authority Deferred Compensation Plan for Physician Employees for Plan year ended December 31, 2023, effective November 20, 2024, in an amount not to exceed \$35,000, and authorize the Chairman to sign.



21700 Oxnard Street Suite 300 Woodland Hills, CA 91367

November 20, 2024

Philip McLaughlin
Chairman, Board of Governors
Kern County Hospital Authority Deferred Compensation Plan for Physician Employees
1700 Mount Vernon Avenue
Bakersfield, CA 93306

Re: Audit and Nonattest Services

Dear Mr. McLaughlin:

This engagement letter ("Engagement Letter") and the attached Professional Services Agreement, which is incorporated by this reference, confirm our acceptance and understanding of the terms and objectives of our engagement, and limitations of the services that Moss Adams LLP ("Moss Adams," "we," "us," and "our") will provide to Kern County Hospital Authority Deferred Compensation Plan for Physician Employees ("you," "your," and "Plan").

Scope of Services – Audit

You have requested that we audit the financial statements of the Plan, which comprise the statement of net assets available for benefits as of December 31, 2023, and the related statement of changes in net assets available for benefits for the year then ended, and the related notes to the financial statements.

Scope of Services and Limitations – Nonattest

We will assist you in drafting the financial statements and related footnotes, including proposing adjustments to year-end accruals, if applicable, as of December 31, 2023, and for the year then ended.

Our professional standards require that we remain independent with respect to our attest clients, including those situations where we also provide nonattest services such as those identified in the preceding paragraph. As a result, Plan management must accept the responsibilities set forth below related to this engagement:

- Assume all management responsibilities.
- Oversee the service by designating an individual, preferably within senior management, who
 possesses skill, knowledge, or experience to oversee our nonattest services. The individual is not
 required to possess the expertise to perform or reperform the services.
- Evaluate the adequacy and results of the nonattest services performed.
- Accept responsibility for the results of the nonattest services performed.



It is our understanding that Andrew Cantu, CFO and Pension Plan Committee Secretary, has been designated by the Plan to oversee the nonattest services and that in the opinion of the Plan is qualified to oversee our nonattest services as outlined above. If any issues or concerns in this area arise during the course of our engagement, we will discuss them with you prior to continuing with the engagement.

Timing

Stephen Redmond is responsible for supervising the engagement and authorizing the signing of the report. We expect to begin our audit on December 2, 2024. As we reach the conclusion of the audit, we will coordinate with you the date the audited financial statements will be available for issuance. You understand that (1) you will be required to consider subsequent events through the date the financial statements are available for issuance, (2) you will disclose in the notes to the financial statements the date through which subsequent events have been considered, and (3) the subsequent event date disclosed in the footnotes will not be earlier than the date of the management representation letter and the date of the report of independent auditors.

Our scheduling depends on your completion of the year-end closing and adjusting process prior to our arrival to begin the fieldwork. We may experience delays in completing our services due to your staff's unavailability or delays in your closing and adjusting process. You understand our fees are subject to adjustment if we experience these delays in completing our services.

Fees

We estimate that our fees for the services will not exceed \$25,000 for the audit described above. You will also be billed for expenses.

In addition to fees, we will charge you for expenses. Our invoices include a flat expense charge, calculated as five percent (5%) of fees, to cover expenses such as copying costs, postage, administrative billable time, report processing fees, filing fees, and technology expenses. Travel expenses and client meals/entertainment expenses will be billed separately and are not included in the 5% charge.

Reporting

We will issue a written report upon completion of our audit of the Plan's financial statements as of and for the year ended December 31, 2023. Our report will be addressed to the Board of Governors of the Plan. We will report on whether the financial statements are presented fairly, in all material respects, in accordance with the applicable financial reporting framework.

We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which our report may differ from its expected form and content based on the audit. Depending on the nature of these circumstances it may be necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement. Our services will



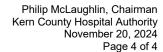
be concluded upon delivery to you of our report on your financial statements for the year ending December 31, 2023.

We appreciate the opportunity to be of service to you. If you agree with the terms of our engagement as set forth in the Agreement, please sign the enclosed copy of this letter and return it to us with the Professional Services Agreement.

Very truly yours,

Stephen Redmond, Partner, for Moss Adams LLP

Enclosures





Accepted and Agreed:

This Engagement Letter and the attached Professional Services Agreement set forth the entire understanding of Kern County Hospital Authority Deferred Compensation Plan for Physician Employees with respect to this engagement and the services to be provided by Moss Adams LLP:

Signature:
Print Name: Philip McLaughlin
Title: Chairman, Board of Governors
Date:

Client: #793184 v. 6/13/2024

PROFESSIONAL SERVICES AGREEMENT Non Section 103(a)(3)(C) Benefit Plan Audit and Nonattest Services

This Professional Services Agreement (the "PSA") together with the Engagement Letter, which is hereby incorporated by reference, represents the entire agreement (the "Agreement") relating to services that Moss Adams will provide to the Plan. Any undefined terms in this PSA shall have the same meaning as set forth in the Engagement Letter.

Objectives of the Audit

The objectives of our audit are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with U.S. GAAS will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

The Auditor's Responsibility

We will conduct our audit in accordance with U.S. GAAS. Those standards require that we are independent of the Plan and that we meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. As part of an audit conducted in accordance with U.S. GAAS, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are
 appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Plan's
 internal control or to identify deficiencies in the design or operation of internal control. However, we will communicate
 to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the
 audit of the financial statements that we have identified during the audit.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates
 made by management, as well as evaluate the overall presentation of the financial statements, including the
 disclosure, and whether the financial statements represent the underlying transactions and events in a manner that
 achieves fair presentation.
- Conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the
 aggregate, that raise substantial doubt about the Plan's ability to continue as a going concern for a reasonable period
 of time.

As part of our audit, we will perform certain procedures, as required by U.S. GAAS, directed at considering the Plan's compliance with applicable Internal Revenue Code ("IRC") requirements for tax-exempt status, including whether management has performed relevant IRC compliance tests, and has corrected or intends to correct failures. As we conduct our audit, we will be aware of the possibility that events affecting the Plan's tax status may have occurred.

If our opinion is other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or to issue a report as a result of this engagement.

Procedures and Limitations

Our procedures may include tests of documentary evidence supporting the transactions recorded in the accounts, direct confirmation of certain investments, plan obligations, and certain other assets and liabilities by correspondence with financial institutions, actuaries, and other third parties. We may also request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from management about the financial. Management's failure to provide representations to our satisfaction will preclude us from issuing our report.

An audit includes examining evidence, on a test basis, supporting the amounts and disclosures in the financial statements. Therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. Material misstatements may include errors, fraudulent financial reporting, misappropriation of assets, or noncompliance with the provisions of laws or regulations that are attributable to the Plan or to acts by management or employees acting on behalf of the Plan that may have a direct financial statement impact. Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk exists that some material misstatements and noncompliance may not be detected, even though the audit is properly planned and performed in accordance with U.S. GAAS. An audit is not designed to detect immaterial misstatements or noncompliance with the provisions of laws or

regulations that do not have a direct and material effect on the financial statements. However, we will inform you of any material errors, fraudulent financial reporting, misappropriation of assets, noncompliance with the provisions of laws or regulations, or instances of tax noncompliance that come to our attention during the course of our audit, unless clearly inconsequential. You should understand, however, that our audit is not designed to, nor is it intended to determine the Plan's overall compliance with the applicable provisions of the IRC. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any time period for which we are not engaged as auditors.

In conjunction with obtaining an understanding of the Plan's internal control, we will request reports on internal control ("System and Organization Control for Service Organizations reports") from the Plan's third party service providers. The Plan's use of service providers who do not have System and Organization Control for Service Organizations reports for the period under audit, have inadequate reports, or have control exceptions documented in their reports may impact the estimated fees of the engagement. Service providers are not required to furnish System and Organization Control for Service Organizations reports. However, our inability to obtain information regarding the Plan's processes and controls from third party providers would be considered a scope limitation and may affect our ability to provide an opinion on the financial statements. If we are unable to issue an opinion on the financial statements, we will notify you immediately.

We may assist management in the preparation of the Plan's financial statements. Regardless of any assistance we may render, all information included in the financial statements remains the representation of the Plan's management. We may issue a preliminary draft of the financial to you for your review. Any preliminary draft financial statements should not be relied upon, reproduced or otherwise distributed without the written permission of Moss Adams.

Management's Responsibility for Financial Statements

As a condition of our engagement, management acknowledges and understands that management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America which includes the determination of the appropriate value of investments. We may advise management about appropriate accounting principles and their application and may assist in the preparation of your financial statements, but management remains responsible for the financial statements.

Management also acknowledges and understands that management is responsible for:

- the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error or fraud. This responsibility includes the maintenance of adequate records, the selection and application of accounting principles, the safeguarding of assets, and if applicable, the acceptance of the actuarial methods and assumptions used by the actuary. Informing us about all known or suspected fraud affecting the Plan involving: (a) Plan management, (b) employees who have significant roles in internal control, and (c) others where the fraud could have a material effect on the financial statements. You are responsible for informing us of your knowledge of any allegations of fraud or suspected fraud affecting the Plan received in communications from employees, former employees, regulators or others.
- adjusting the financial statements to correct material misstatements and for confirming to us in the management
 representation letter that the effects of any uncorrected misstatements aggregated by us during the current
 engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to
 the financial statements as a whole.
- maintaining a current plan instrument, including all plan amendments.
- administering the Plan and determining that the Plan's transactions that are presented and disclosed in the Plan's
 financial statements are in conformity with the Plan's provisions, including maintaining sufficient records with respect
 to each of the participants to determine the benefits due or which may become due to such participants.
- identifying and determining that the Plan complies with the laws and regulations applicable to its activities.
- informing us about related party transactions, including transactions with parties in interest.
- evaluating whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Plan's ability to continue as a going concern for the time period set by the applicable financial reporting framework.
- making all financial records and related information available to us, and for the accuracy and completeness of that information. Management agrees that as a condition of our engagement, management will provide us with:
 - access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements, whether obtained from within or outside of the general and

subsidiary ledgers (including all information relevant to the preparation and fair presentation of disclosures), such as records, documentation, and other matters;

- additional information that we may request from management for the purpose of the audit; and
- unrestricted access to persons within the Plan from whom we determine it necessary to obtain audit evidence.

Management's Responsibility to Notify Us of Affiliates (EBP)

Our professional standards require that we remain independent of the Plan as well as any "affiliate" of the Plan. Professional standards define an affiliate as follows:

- the sponsor of a single employer employee benefit plan;
- an entity with a direct financial interest in the Plan Sponsor when that entity has significant influence over the Plan Sponsor, and the Plan is material to such entity;
- any employer participating in a multiple employer employee benefit plan;
- an entity, such as a union or a group association of employers, that has significant influence over a multiemployer employee benefit plan, if the plan is material to the entity;
- A participating employer who is the plan administrator of a multiple employer employee benefit plan

In order to fulfill our mutual responsibility to maintain appropriate auditor independence, you agree to notify Moss Adams of any known affiliate relationships, to the best of your knowledge and belief. Additionally, you agree to inform Moss Adams of any known services provided or relationships between affiliates of the Plan and Moss Adams or any of its employees or personnel.

Other Information Included in an Annual Report

When financial or nonfinancial information, other than financial statements and the auditor's report thereon, is included in a Plan's annual report, management is responsible for that other information. Management is also responsible for providing the document(s) that comprise the annual report to us as soon as it is available.

Our opinion on the financial statements does not cover the other information, and we do not express an opinion or any form of assurance thereon. Our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the audited financial statements. If we identify that a material inconsistency or misstatement of the other information exists, we will discuss it with you; if it is not resolved U.S. GAAS requires us to take appropriate action.

Key Audit Matters

U.S. GAAS does not require the communication of key audit matters in the audit report unless engaged to do so. You have not engaged us to report on key audit matters, and the Agreement does not contemplate Moss Adams providing any such services. You agree we are under no obligation to communicate key audit matters in the auditor's report.

If you request to engage Moss Adams to communicate key audit matters in the auditor's report, before accepting the engagement we would discuss with you the additional fees to provide any such services, and the impact to the timeline for completing the audit.

Dissemination of Financial Statements

Our report on the financial statements must be associated only with the financial statements that were the subject of our engagement. You may make copies of our report, but only if the entire financial statements (including related footnotes, as appropriate) are reproduced and distributed with our report. You agree not to reproduce or associate our report with any other financial statements, or portions thereof, that are not the subject of this engagement.

Changes in Professional or Accounting Standards

To the extent that future federal, state, or professional rule-making activities require modification of our audit approach, procedures, scope of work, etc., we will advise you of such changes and the impact on our fee estimate. If we are unable to agree on the additional fees, if any, that may be required to implement any new accounting and auditing standards that are required to be adopted and applied as part of our engagement, we may terminate this Agreement as provided herein, regardless of the stage of completion.

Representations of Management

During the course of our engagement, we may request information and explanations from management regarding, among other matters, the Plan's operations, internal control, future plans, specific transactions, and accounting systems and

procedures. At the conclusion of our engagement, we will require, as a precondition to the issuance of our report, that management provide us with a written representation letter confirming some or all of the representations made during the engagement. The procedures that we will perform in our engagement will be heavily influenced by the representations that we receive from management. Accordingly, false representations could cause us to expend unnecessary efforts or could cause a material error or fraud to go undetected by our procedures. In view of the foregoing, you agree that we will not be responsible for any misstatements in the Plan's financial statements that we fail to detect as a result of false or misleading representations, whether oral or written, that are made to us by the Plan's management. While we may assist management in the preparation of the representation letter, it is management's responsibility to carefully review and understand the representations made therein.

In addition, because our failure to detect material misstatements could cause others relying upon our audit report to incur damages, the Plan further agrees to indemnify and hold us harmless from any liability and all costs (including legal fees) that we may incur in connection with claims based upon our failure to detect material misstatements in the Plan's financial statements resulting in whole or in part from knowingly false or misleading representations made to us by any member of the Plan's management.

Fees and Expenses

The Plan acknowledges that the following circumstances will result in an increase of our fees:

- Failure to prepare for the audit as evidenced by accounts and records that have not been subject to normal year-end closing and reconciliation procedures;
- Failure to complete the audit preparation work by the applicable due dates;
- Significant unanticipated transactions, audit issues, or other such circumstances;
- Delays causing scheduling changes or disruption of fieldwork;
- After audit or post fieldwork circumstances requiring revisions to work previously completed or delays in resolution of issues that extend the period of time necessary to complete the audit;
- Issues with the prior audit firm, prior year account balances or report disclosures that impact the current year engagement; and
- An excessive number of audit adjustments.

We will endeavor to advise you in the event these circumstances occur, however we may be unable to determine the impact on the estimated fee until the conclusion of the engagement. We will bill any additional amounts based on the experience of the individuals involved and the amount of work performed.

Billings are due upon presentation and become delinquent if not paid within 30 days of the invoice date. Any past due fee under this Agreement shall bear interest at the highest rate allowed by law on any unpaid balance. In addition to fees, you may be billed for expenses and any applicable sales and gross receipts tax. Direct expenses may be charged based on out-of-pocket expenditures, per diem allotments, and mileage reimbursements, depending on the nature of the expense. Indirect expenses, such as processing time and technology expenses, may be passed through at our estimated cost and may be billed as a flat charge or a percentage of fees. If we elect to suspend our engagement for nonpayment, we may not resume our work until the account is paid in full. If we elect to terminate our services for nonpayment, or as otherwise provided in this Agreement, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our work. You will be obligated to compensate us for fees earned for services rendered and to reimburse us for expenses. You acknowledge and agree that in the event we stop work or terminate this Agreement as a result of your failure to pay on a timely basis for services rendered by Moss Adams as provided in this Agreement, or if we terminate this Agreement for any other reason, we shall not be liable to you for any damages that occur as a result of our ceasing to render services.

Limitation on Liability

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR OTHERWISE ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

Subpoena or Other Release of Documents

As a result of our services to you, we may be required or requested to provide information or documents to you or a third-party in connection with governmental regulations or activities, or a legal, arbitration or administrative proceeding (including

a grand jury investigation), in which we are not a party. You may, within the time permitted for our firm to respond to any request, initiate such legal action as you deem appropriate to protect information from discovery. If you take no action within the time permitted for us to respond or if your action does not result in a judicial order protecting us from supplying requested information, we will construe your inaction or failure as consent to comply with the request. Our efforts in complying with such requests or demands will be deemed a part of this engagement and we shall be entitled to additional compensation for our time and reimbursement for our out-of-pocket expenditures (including legal fees) in complying with such request or demand.

Regulatory Access to Documentation

The documents created or incorporated into our documentation for this engagement are the property of Moss Adams and constitute confidential information. However, we may also be requested to make certain engagement related documents available to the DOL pursuant to authority given to it by law or regulation. If requested and in our opinion a response is required by law, access to such engagement related documents will be provided under the supervision of Moss Adams personnel. Furthermore, upon request, we may provide photocopies of selected engagement related documents to the DOL. The DOL may intend, or decide, to distribute the photocopies of information contained therein to others, including other government agencies.

Document Retention Policy

At the conclusion of this engagement, we will return to you all original records you supplied to us. Your Plan records are the primary records for your operations and comprise the backup and support for the Plan's financial reports and tax returns. Our records and files, including our engagement documentation whether kept on paper or electronic media, are our property and are not a substitute for your own records. Our firm policy calls for us to destroy our engagement files and all pertinent engagement documentation after a retention period of seven years (or longer, if required by law or regulation), after which time these items will no longer be available. We are under no obligation to notify you regarding the destruction of our records. We reserve the right to modify the retention period without notifying you. Catastrophic events or physical deterioration may result in our firm's records being unavailable before the expiration of the above retention period.

Except as set forth above, you agree that Moss Adams may destroy paper originals and copies of any documents, including, without limitation, correspondence, agreements, and representation letters, and retain only digital images thereof.

Use of Electronic Communication

In the interest of facilitating our services to you, we may communicate by facsimile transmission or send electronic mail over the Internet. Such communications may include information that is confidential. We employ measures in the use of electronic communications designed to provide reasonable assurance that data security is maintained. While we will use our best efforts to keep such communications secure in accordance with our obligations under applicable laws and professional standards, you recognize and accept we have no control over the unauthorized interception of these communications once they have been sent. Unless you issue specific instructions to do otherwise, we will assume you consent to our use of electronic communications to your representatives and other use of these electronic devices during the term of this Agreement as we deem appropriate.

Enforceability

In the event that any portion of this Agreement is deemed invalid or unenforceable, said finding shall not operate to invalidate the remainder of this Agreement.

Entire Agreement

This Professional Services Agreement and Engagement Letter constitute the entire agreement and understanding between Moss Adams and the Plan. The Plan agrees that in entering into this Agreement it is not relying and has not relied upon any oral or other representations, promise or statement made by anyone which is not set forth herein.

In the event the parties fail to enter into a new Agreement for each subsequent calendar year in which Moss Adams provides services to the Plan, the terms and conditions of this PSA shall continue in force until such time as the parties execute a new written Agreement or terminate their relationship, whichever occurs first.

Use of Moss Adams' Name

The Plan may not use any of Moss Adams' name, trademarks, service marks or logo in connection with the services contemplated by this Agreement or otherwise without the prior written permission of Moss Adams, which permission may be withheld for any or no reason and may be subject to certain conditions.

Use of Nonlicensed Personnel

Certain engagement personnel, who are not licensed as certified public accountants, may provide services during this engagement.

Use of Subcontractor and Affiliate

We may retain subcontractors and/or our affiliate, Moss Adams (India) LLP, to assist us in providing our services to you. These entities may collect, use, transfer, store, or otherwise process information provided by you or on your behalf ("Client information") in the domestic and foreign jurisdictions in which they operate. All of these entities are required to protect the confidentiality of any Client information to which they have access in the course of their work. We will be responsible for their performance in accordance with the terms of this Agreement.

Dispute Resolution Procedure, Venue and Limitation Period

This Agreement shall be governed by the laws of the state of California, without giving effect to any conflicts of laws principles. If a dispute arises out of or relates to the engagement described herein, and if the dispute cannot be settled through negotiations, the parties agree first to try in good faith to settle the dispute by mediation using an agreed upon mediator. If the parties are unable to agree on a mediator, the parties shall petition the state court that would have jurisdiction over this matter if litigation were to ensue and request the appointment of a mediator, and such appointment shall be binding on the parties. Each party shall be responsible for its own mediation expenses, and shall share equally in the mediator's fees and expenses.

Each party hereby irrevocably consents to the exclusive jurisdiction and venue of the appropriate state or federal court located in Kern County, state of California, in connection with any dispute hereunder or the enforcement of any right or obligation hereunder. EACH PARTY FURTHER AGREES THAT ANY SUIT ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST BE FILED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ARISES.

Termination

This Agreement may be terminated by either party, with or without cause, upon ten (10) days' written notice. In such event, we will stop providing services hereunder except on work, mutually agreed upon in writing, necessary to carry out such termination. In the event of termination, (a) you shall pay us for services provided and expenses incurred through the effective date of termination, (b) we will provide you with all finished reports that we have prepared pursuant to this Agreement, (c) neither party shall be liable to the other for any damages that occur as a result of our ceasing to render services, and (d) we will require any new accounting firm that you may retain to execute access letters satisfactory to Moss Adams prior to reviewing our files.

Hiring of Employees

Any offer of employment to members of the audit team prior to issuance of our report may impair our independence, and as a result, may result in our inability to complete the engagement and issue a report.

Liability of Kern County Hospital Authority

The liabilities or obligations of Kern County Hospital Authority with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Kern County Hospital 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. (Health & Saf. Code, § 101853,subd. (g).)



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed Order Form Q-130142 with Inovalon Provider, Inc. ("Inovalon") for the purchase of Claims Management Pro Business Services software

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Order Form Q-130142, with Inovalon Provider, Inc. ("Inovalon") for the purchase of claims management software. The initial implementation cost is \$200,346, which includes a recurring monthly fee of \$16,696 for the first year and then a recurring monthly fee of \$30,863 for years 2-4.

Inovalon will furnish the services listed in the proposed Inovalon Order Form (Q-130142) under the terms of the previously approved Service and Business Associate Agreement (060-2024). The proposed Order Form lists professional service resources to assist Kern Medical with the implementation of Claims Management Pro Business, which will provide Kern Medical the ability to automate the billing management, eligibility transaction, and claims transaction process activity claims.

Counsel is unable to approve due to non-standard terms which include notification of records requests, i.e., confidentiality, auto-renewal of one (1) year terms, and interest on late payments.

Therefore, it is recommended that your Board approve the proposed Order Form Q-130142 with Inovalon Provider, Inc. ("Inovalon") for the purchase of Claims Management Pro Business Services software, containing non-standard terms, effective December 1, 2024, through November 30, 2028, with a maximum not to exceed of \$1,311,384, and authorize the Chairman to sign.



Order Information

Order Number Q-130142
Offer valid through 11/30/2024
Prepared By William Devane
Manager Gary Tuschy

Customer Information

Account Name Kern Medical Center

Account Number 79175

Physical Address 1700 Mount Vernon Ave

Bakersfield, CA 93306

US

Billing Address 1700 Mount Vernon Ave

Bakersfield, CA 93306

US

Business Contact Technical Contact Billing Contact

Margaret HardmanMargaret HardmanMargaret Hardman661326200066132620006613262000

margaret.hardman@kernmedical.com margaret.hardman@kernmedical.com margaret.hardman@kernmedical.com

Order Details

Billing Frequency Monthly

Fee Type	Quantity	Service	Service Description	Sales Price	Total Price
One Time	1	EASE-AP-RULES	Claims Management Pro Business Rules - Setup Fee	\$956.00	\$956.00
One Time	1	EASE-AP-INS-CL	Claims Management Pro Implementation - Claims	\$6,420.00	\$6,420.00
One Time	1	EASE-AP-INS-EL	Claims Management Pro Implementation - Eligibility	\$420.00	\$420.00
One Time	1	EASE-AP-INS-SFTP	Claims Management Pro SFTP Service Integration	\$897.00	\$897.00
Recurring	1	EASE-AP-A-ADDON	RCM Intelligence Add-on	\$6,000.00	\$6,000.00
Recurring	1	EASE-AP-HOSP-2	Claims Management Pro for Hospital	\$2,631.00	\$2,631.00
Recurring	1	EASE-AP-CL12	Claims Management Pro - Claims Transactions	\$14,410.00	\$14,410.00
Recurring	1	EASE-AP-E10	Eligibility Verification - Eligibility Transactions in Claims Management Pro	\$4,680.00	\$4,680.00
Recurring	1	EASE-AP-CS12	Claims Management Pro Claim Status	\$2,166.67	\$2,166.67
Recurring	1	EASE-AP-ATTACH-7	Electronic Claim Attachments for Claims Management Pro	\$250.00	\$250.00
Per Page	1	EASE-AP- PAPERATTACH-P1	Claims Management Pro Electronic to Paper Claims with Attachments First Page	\$0.72	\$0.72
Per Page	1	EASE-AP- PAPERATTACH_ADDLPG	Claims Management Pro Electronic to Paper Claims with Attachments Additional Pages	\$0.05	\$0.05
One Time	1	CMP-EMR-INT	Claims Management Pro + Provider Integration Engine	\$7,500.00	\$7,500.00
One Time	1	EV-EMR-INT	Eligibility Verification + Provider Integration Engine	\$7,500.00	\$7,500.00

One Time Fee Amount: \$8,693.00 Monthly Recurring Amount: \$30,137.67 If taxable, invoice will include applicable Sales Tax

Order Notes

This order form ("Order Form") is entered into by Inovalon Provider, Inc. ("Inovalon") and Kern Medical Center ("Customer") as of the date of Customer's signature below ("Effective Date").

<u>Credit</u>. As an incentive to sign this Order Form by the valid through date set forth above, Inovalon will issue a one-time non-refundable credit to Customer of \$170,000.00, which will be applied solely to future invoices issued by Inovalon pursuant to this Order Form. If this Order Form is not signed and returned by the valid through date, no credit will be issued. Additionally, should Customer improperly seek to terminate this Order Form, or this Order Form is terminated by Inovalon due to Customer's breach of the terms herein, any such remaining credit balance shall be rescinded.

Service Period Start Date: 12/01/2024

TERMS AND CONDITIONS

Definitions.

- 1. "Authorized End Users" Authorized users shall include Customer's personnel and contracted third parties (e.g. agency, temporary, subcontracted, or consulting staff) acting on behalf of Customer.
- 2. "Claim Attachment Transaction" a single document electronically submitted in support of a Claim Transaction.
- 3. "Claim Status Transaction" a HIPAA-compliant health care claim ASC X12 Version: 005010 | Transaction Set: 276/277 | TR3 ID: 005010X212 format or equivalent format.
- 4. "Claim Transaction" a HIPAA-compliant health care claim ASC X12 Version: 005010 | Transaction Set: 837 | TR3 ID: 005010X222 or 005010X223 format or equivalent format.
- 5. "Eligibility Transaction" a HIPAA-compliant ASC X12 Version: 005010 | Transaction Set: 270/271 | TR3 ID: 005010X279 healthcare benefit inquiry and response.
- 6. "Payer" an entity such as Medicare, Medicaid, third party administrator, health insurer, commercial health plan, etc. that manages utilization and/or pays healthcare claims submitted by Providers, on behalf of individuals, employer groups or other purchasers of healthcare.
- 7. "Per Page Fee" the fee applicable for a page of each electronic document that is printed to paper to be physically mailed to the recipient.
- 8. "Per Transaction Fee" the fee applicable for an individual Transaction Customer or Authorized End Users sends to a Payer.
- 9. "Transaction" any type of electronic transaction contracted herein, whether submitted individually or in batches (i.e. each transaction in a batch file is considered a separate Transaction).

Services. Customer will utilize the services defined below (each a "Service" and collectively the "Services"):

- Claims Management Pro Business Rules Setup Fee: A one-time fee for the initial creation and setup of business rules for Claim Transactions submitted via the Claims Management Pro Service within 90 days post-implementation of Claims Management Pro Service. Up to 50 business rules are included for each rules setup package.
- Claims Management Pro Implementation Claims: Implementation and set-up of the Claims Management Pro Claims Transactions Service.
- Claims Management Pro Implementation Eligibility: Implementation and set-up of the Claims Management Pro Eligibility Transactions Service.
- Claims Management Pro SFTP Service Integration: A one-time fee for the integration and set-up of the Secure File Transfer Protocol for the Claims Management Pro Service.
- **RCM** Intelligence Add-on: A cloud-based RCM analytics tool which delivers analytical dashboards to identify financial and operational trends allowing decision makers to discover, predict, visualize, model, and manage RCM data and performance.
- Claims Management Pro for Hospital: Revenue cycle management Service that includes real-time rule-based editing, denial management capability, and Medicare ABN management for use with Claims Management Pro transaction Services. (Claims Management Pro transaction Services are not included in with Claims Management Pro Service and must be purchased separately.) Claims Management Pro is offered for a hospital bed count under 249 beds, with up to 99 users per NPI.
- Claims Management Pro Claims Transactions: Provisioning of Claim Transactions for use with Claims Management Pro. Customer may submit up to 624,000 Claim Transactions per twelve (12) month period of this Order Form. Additional Claim Transactions will incur a Per Transaction Fee of \$1.00.
- Eligibility Verification Eligibility Transactions in Claims Management Pro: Provisioning of Eligibility Transactions for use with Claims Management Pro. Customer may submit up to 624,000 Eligibility Transactions per twelve (12) month period of this Order Form. Additional Eligibility Transactions will incur a Per Transaction Fee of \$1.00.
- Claims Management Pro Claim Status: Service that provides Customer the ability to submit Claim Status Transactions to those Payers accessible through the Service. Customer may submit up to 200,000 Claim Status Transactions per twelve (12) month period of this Order Form. Additional Claim Status Transactions will incur a Per Transaction fee of \$0.50.
- Electronic Claim Attachments for Claims Management Pro: Service that provides Customer the ability to submit Claim Attachment Transactions.

Customer can utilize up to 60,000 Claim Attachment Transactions per twelve (12) month period of this Order Form. Additional Claim Attachment Transactions shall incur a Per Transaction Fee of \$1.00.

- Claims Management Pro Electronic to Paper Claims with Attachments First Page: Service allowing for Claim Transactions and associated Claim Attachment Transactions to be printed to paper and mailed to the respective Payer. The Per Page Fee for the First Page is inclusive of the costs of standard USPS postage. The Per Page Fee is applicable to the first page of each Claim Transaction and associated attachment(s) that is printed and mailed to a Payer, including returned mail and any duplicate submissions.
- Claims Management Pro Electronic to Paper Claims with Attachments Additional Pages: Service allowing for Claim Transactions and associated Claim Attachment Transactions to be printed to paper and mailed to the respective Payer. The Per Page Fee is applicable to each additional page after the first page of each Claim Transaction and associated attachment(s) that is printed and mailed to a Payer, including returned mail and any duplicate submissions.
- Claims Management Pro + Provider Integration Engine: A one-time fee for the set-up and EMR integration of the Claims Management Pro Service.
- Eligibility Verification + Provider Integration Engine: A one-time fee for the set-up and EMR integration of the Eligibility Verification Service.

<u>Term.</u> This Order Form shall have an initial forty-eight (48) month term, which shall begin on the Service Period Start Date as stated herein ("Initial Term") and shall thereafter automatically renew for successive twelve (12) month terms (each a "Renewal Term") unless Customer provides written notice to Inovalon of their intent to terminate the Services at the end of the then current term at least sixty (60) days prior to the end of the Initial Term or Renewal Term, as applicable. If the Services are terminated prior to the end of the Initial Term or any Renewal Term either improperly by Customer or by Inovalon, due to Customer's breach of the Agreements or this Order Form, Customer agrees to pay Inovalon, upon receipt of an invoice, the total of the then applicable Monthly Recurring Amount multiplied by the number of months remaining in the then current term as of the effectiveness of such termination.

<u>Authorization to Use Services</u>. Customer is authorized to make the Services listed on this Order Form available only to Authorized End Users. Customer is not authorized to use the Services for purposes outside of the rights granted herein.

<u>Invoicing</u>. The One Time Fee shall be invoiced as of the Service Period Start Date. The Monthly Recurring Amount will be invoiced at the commencement of each month this Order Form is in effect. Any applicable Per Page Fees and Per Transaction Fees will be invoiced monthly in arrears.

Electronic Submitter Credentials from Payers. Certain Payers require enrollment to process Transactions, which must be completed and approved by such Payer before Transactions can be sent electronically. To the extent required by Payers, Customer must secure electronic submitter login credentials, which may include user ID, password and submitter ID, directly from the Payers. Customer understands and agrees that Inovalon has no control over the issuance of such Payer credentials and bears no liability with respect to issues regarding the same or the impact it may have on Customer's use of the Services. Failure of Customer or an Authorized End User to obtain electronic submitter login credentials from Payers may delay the Customer's ability to utilize the Services for the specific Payer Transactions but will not relieve Customer of its payment obligations hereunder.

Failed Transactions. Inovalon shall not be responsible for any Transactions that fail due to incorrect or invalid data. Correction and resubmission of Transactions are the sole responsibility of the Customer and/or Authorized End Users. Such failed Transactions shall be included in any count of Transactions and Per Transaction Fees are payable on all Transactions even if such Transactions fail due to incorrect or invalid data (including a failure to enroll with a Payer).

Changes to Payer List. Inovalon may, at its sole option, add Payers to the Services at any time. Inovalon may, at its sole option, remove Payers from the Services at any time and will use commercially reasonable efforts to provide Customer with written notice of such removal.

Confidentiality. Customer agrees to keep in confidence the terms of this Order Form, including any information concerning price, except where applicable to Authorized End Users so long as such Authorized End Users in turn agree to the confidentiality of such information. Inovalon is aware that Customer is a government entity and is subject to the California Public Records Act, Cal.Govt.Code §6250 et seq., the Brown Act, Cal.Govt.Code §54950 et seq., and other laws pertaining to government entities. Information required by law to be disclosed will not be considered Proprietary and Confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation, provided that Customer has given Inovalon prior written notice of such required disclosure and, has given Inovalon a commercially reasonable period of time to avail itself of protections pursuant to the law, including any applicable exceptions to disclosure.

NOTE: ALL PAGES OF THIS DOCUMENT MUST BE SUBMITTED TOGETHER TO CONSTITUTE A COMPLETE ORDER.

THIS IS A BINDING AGREEMENT SUBJECT TO THE TERMS AND CONDITIONS OF THE SERVICE AGREEMENT AND BUSINESS ASSOCIATE AGREEMENT EXECUTED BY AND BETWEEN THE PARTIES ("AGREEMENTS"). THE AGREEMENTS ARE INCORPORATED HEREIN AND MADE A PART OF THIS ORDER FORM. IN THE EVENT OF A CONFLICT IN TERMS BETWEEN THIS ORDER FORM AND THE AGREEMENTS, THE TERMS OF THIS ORDER FORM SHALL CONTROL; OTHERWISE, THE TERMS OF THIS ORDER FORM ARE IN ADDITION TO AND SUPPLEMENT THE TERMS OF THE AGREEMENTS.

Payment is due within Net 30 days of the invoice date regardless of whether usage has begun for any or all Services listed on this Order Form.

Tax Status: Taxable

If exempt (Non-Taxable), a state tax exemption certificate is required with this signed Order Form.

Customer hereby authorizes Inovalon to provide the Services as described above and warrants and represents that the authorized representative signing below has the requisite authority to legally bind and approve payment of forthcoming invoices.

AGREED AND ACCEPTED

Kern Medical Center	Inovalon Provider, Inc.	
	Sharon Cook	
Authorized Signature	Authorized Signature	
Phil McLaughlin	Sharon Cook	
Printed Name	Printed Name	
Chairman, Board of Governors	SVP	
Title	Title	
November 20, 2024	11/6/2024	
Date	Date	

REVIEWED ONLY
NOT APPROVED AS TO FORM

By Shannon Hochstein
Kern County Hospital Authority



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed Ordering Document CPQ-3618871 with Oracle America, Inc. to the Cerner Business Agreement (2016-36) for the purchase of software integration services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Ordering Document CPQ-3618871 with Oracle, America for purchase of software integration services with Inovalon. Inovalon is a new claim scrubbing software which processes insurance claims. Integration is needed between the Oracle/Cerner Electronic Health Record and the Inovalon software so that the two systems can communicate patient billing data and receive adjudicating information back into the core system provided by Oracle.

Kern Medical currently has integration services between the current vendor, FinThrive and Oracle for this purpose. FinThrive is not performing as needed and found Inovalon to be a better fit for the insurance claim process. In the proposed ordering document, Kern Medical will switch vendors to Inovalon and subsequently require integration between the two systems for smooth claims processing to continue.

Counsel is unable to approve due to non-standard terms which include third party products and services with pass-through provisions, which are accepted without Counsel approval, and changes to costs with little to no negotiation.

Therefore, it is recommended that your Board approve the proposed Ordering Document CPQ-3618871 with Oracle, America for the purchase of software integration services, in an amount not to exceed \$129,514, effective November 20, 2024 until project completion, and authorize the Chairman to sign.



Ordering Document

CPQ-3618871

Kern County Hospital Authority

1830 Flower St Bakersfield CA, 93305 US

Contact

Sandra Bakich +1 (661) 862-8110 sandy.bakich@kernmedical.com Oracle America, Inc.

500 Oracle Parkway Redwood Shores, CA 94065

Fee Summary

Fee Description	Net Fees	Monthly Fees	Annual Fees
Professional Services Time and Materials	112,513.90		
Professional Services Estimated Expenses	17,000.00		
Total Fees	129.513.90	0.00	0.00

Billing Frequency

Description	% of Total Due	Payment Due
Professional Services Estimated Expenses	100%	Monthly in arrears
Professional Services Time and Materials	100%	Monthly in arrears

Ordered Items

Professional Services

Professional Services - Time and Materials

Part Number	Description / Role	Service Descriptions	Hourly Rate	Estimated Fees
B103757	Millennium Foreign System Interface Services	Attached		72,125.90
B102837	Senior Consultant - System Engineer - EHI - per Hour		149.10	
B102842	Consulting Technical Manager - Interface Architect - EHI - per Hour		196.00	
B104434	Consulting Project Snr Principal Consultant - EHI - per Hour		196.00	
B103757	Millennium Foreign System Interface Services	Attached		27,608.00
B102837	Senior Consultant - System Engineer - EHI - per Hour		149.10	
B102842	Consulting Technical Manager - Interface Architect - EHI - per Hour		196.00	
B104434	Consulting Project Snr Principal Consultant - EHI - per Hour		196.00	
B102359	Oracle Health Custom Professional Services	Attached		12,780.00
B104444	Principal Consultant - per Hour		159.75	

Subtotal 112,513.90

Professional Services - Estimated Expenses

Part Number	Description	Estimated Fees
B102173	Oracle Health Travel and Expenses for Commercial Estimate - Each	17,000.00

Subtotal 17,000.00

Permitted Facilities

Name	Street Address	City
Kern County Hospital Authority	1830 Flower St	Bakersfield, CA, 93305 US

Footnotes

A - This is an Interoperability Element subject to the 21st Century Cures Act. All available discounts have been applied.

17-OCT-2024

A. Terms of Your Order

1. Applicable Agreement

a. This order incorporates by reference the terms of the Cerner Business Agreement No. 1-3H7XXBV (Client Reference HA # 2016-36) LA-0000010943 and all amendments and addenda thereto (the "Agreement"). The defined terms in the Agreement shall have the same meaning in this order unless otherwise specified herein.

Oracle America, Inc. is acting as ordering and invoicing agent for Cerner Corporation. Your order remains between You and Cerner Corporation. All references to "Oracle", "we", "us", or "our" shall refer to Cerner Corporation. We may refer to Client or Customer as "You".

2. Fees and Payments

- a. Listed above is a summary of net fees due under this order. All fees on this order are in US Dollars.
- b. Fees will be invoiced in accordance with the Billing Frequency table above.
- c. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the items You ordered, except for taxes based on Oracle's income. If You will be claiming an exemption from these taxes, You will provide to Oracle a valid certificate of tax exemption in advance of, or at the time of, the execution of this order. You are responsible to ensure that You provide Oracle with timely notification of any tax exemption status changes and to timely provide updated exemption certificates in the event any previously provided exemption certificate expires during the term of this order.
- d. Once placed, Your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement and this order.

3. Terms Applicable to Ordered Items

a. Scope of Use.

You will use the Ordered Items in this order in accordance with the Documentation and subject to the quantity of the item specified in the Ordered Items table(s) above. This order incorporates by reference the scope of use metric, definition, and any rules applicable to the Ordered Item as described in the Oracle Health Definitions and Rules Booklet v100123 which may be viewed at http://www.oracle.com/contracts on the Oracle Health tab.

If the quantity of an Ordered Item is exceeded, You agree to execute a new order setting forth the additional quantity of the item.

Where applicable, scope of use will be measured periodically by Oracle'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), You will provide the relevant information (including records to verify the information) to Oracle at least once per year. You agree that if an event occurs that will affect Your scope of use (such as the acquisition of a new hospital or other new facility), You will notify Oracle in writing of such event no later than 30 days following the effective date of such event so that Your scope of use can be reviewed. Any additional fees due under this section will be payable within 30 days following Your 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).

b. Permitted Facilities.

The Ordered Items in this order are for use by the facilities listed in the Permitted Facilities table(s) above. You may add or substitute Permitted Facilities by amending this order.

4. Professional Services

a. Oracle Health Professional Services Delivery Policies.

The Oracle Health Professional Services Delivery Policies ("Health PSDP") available at http://oracle.com/contracts on the Oracle Health tab apply to and are incorporated into this order.

b. Service Descriptions.

Service Descriptions applicable to each Ordered Item identified as Professional Services in the table(s) above may be found (i) at http://www.oracle.com/contracts on the Oracle Health Tab (where identified as "Online" in the Professional Services table(s)), or (ii) as an attachment to this order (where identified as "Attached" in the Professional Services table(s)). These Service Descriptions are incorporated into this order by reference.

c. Estimated Expenses.

Fees for Professional Services identified in this order as "Professional Services -- Estimated Expenses" are estimates intended only to be for Your budgeting purposes and may exceed the estimated totals; these estimates do not include taxes. Actual expenses shall be invoiced as incurred, in accordance with the Billing Frequency table.

d. As required by U.S. Department of Labor regulations (20 CRF 655.734), You will allow Oracle to post a notice regarding Oracle H-1B employee(s) at the work site prior to the employee's arrival on site.

e. Estimated Fees.

Fees for Professional Services identified in this order as "Professional Services -- Time and Materials" are estimates intended only to be for Your budgeting and Oracle's resource scheduling purposes and may exceed the estimated totals: these estimates do not include taxes. For Professional Services performed on a time and materials (T&M) basis, You shall pay Oracle for all of the time spent performing such services at the rate specified in the Ordered Items table(s) above, plus materials and taxes. Once fees for Professional Services reach the estimate and upon amendment to this order, Oracle will cooperate with You to provide continuing Professional Services on a T&M basis.

5. Order of Precedence

a. In the event of inconsistencies between the terms contained in this order and the Agreement, this order shall take precedence. This order will control over the terms contained in any purchase order.

6. Effective Date

a. If accepting this order online, the effective date of this order is the date You submit the order. Otherwise, the effective date is the last signed date stated below.

7. Offer Validity

a. This offer is valid through 28-Feb-2025 and shall become binding upon execution by You and acceptance by Oracle.

Kern County Hospital Authority

Signature

Name Phil McLaughlin

Title Chairman, Board of Governors

Signature Date November 20, 2024

Oracle America, Inc.

Signature Jessica King

Name Jessica King

Title Senior Director, Deal

Management

Signature Date 14-Oct-2024 12:07 AM PDT

REVIEWED ONLY NOT APPROVED AS TO FORM

By <u>Shannon Hochstein</u> Kern County Hospital Authority

17-OCT-2024

Millennium Foreign System Interface Services (B103757)

Oracle Health Legacy Part #: CTS-MILLFSI-SVCS

Overview	Oracle Health will provide the following Services:
Overview	An ASC X12 Institutional Claims (837) outbound interface that sends institutional claim data from Oracle Millennium to a non-Oracle system, Inovalon. These transactions will follow the X12N 005010X223 Health Care Claim Institutional guide.
	An ASC X12 Professional Claims (837) outbound interface that sends professional claim data from Oracle Millennium to a non-Oracle system, Inovalon. These transactions will follow the X12N 005010X222 Health Care Claim Professional guide.
	 An ASC X12 Remittances (835) Inbound interface that receives remittance data from a non- Oracle system, <i>Inovalon</i>, to <i>Oracle Millennium</i>. This interface will follow the X12N 835 005010X221 Health Care Claim Payment/Advice guide.
	An External Claims Editor Inbound interface that receives data from a non-Oracle system, Inovalon, to Oracle Millennium. This interface will follow the Oracle standard External Claims Editor Inbound interface specifications
	Estimated duration: 3 months
Description of	Oracle will provide the following Services:
Services	Execute tasks related to project startup
	Prepare a mutually agreed upon project plan outlining integration events and activities
	Schedule and facilitate mutually agreed upon project status meetings
	Develop interface design
	Create site-specific interface specification document(s)
	Build, code, and configure interface to the Oracle Health interface specifications
	Conduct functional testing of the interface
	Collaborate with client on validation testing of the interface as needed
	Migrate interface to one (1) production domain and provide support of interface activation
	Provide remote conversion support during normal business hours beginning after interface is activated in production domain for a duration of up to two (2) weeks
	Execute tasks related to project closure
Your Cooperation /	You are responsible for the following obligations:
Obligations	Synchronize data values between Oracle and the foreign supplier; including building of code value aliasing within Oracle that will be required for interface processing
	Modify Oracle Health Millennium Platform application, if necessary
	Create and execute interface test plans
	Validate interface testing
Assumptions	Oracle standard interface specifications are available upon request.
-	o Real-time interfaces will conform to the Oracle universal interface (UI) specifications requirements, which are based upon the Health Level Seven International (HL7) standards as they relate to the Oracle Health Millennium Platform architecture.
	o Batch interfaces will conform to the Oracle standard specification requirements, which are based upon the Accredited Standards Committee (ASC) X12 standards or flat file protocol as they relate to the Oracle Health Millennium Platform architecture.
	Oracle transmission protocols:
	o Real-time interfaces will utilize Transmission Control Protocol/Internet Protocol (TCP/IP) for data transfer and will be Oracle Health Millennium Platform <i>HL7</i> UI compliant.
	Batch interfaces will utilize Secure File Transfer Protocol (SFTP) for data transfer and will be either Oracle Health Millennium Platform standard or ASC X12 compliant unless otherwise noted in the 'Description of Services' section of this scope.
	Custom scripting required outside the standard Oracle User Interface (UI) is expected to be performed within Your interface engine. If this is not possible or desirable, custom scripting can be performed within the Oracle Health Millennium Platform interface but may require additional hours at Oracle's then-current fees for an Oracle resource to complete the work.

 $Oracle\ Health\ Consulting/Professional\ Services-Service\ Descriptions$

- This scope covers the initial configuration and testing of the interface in a designated non-production environment and one (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.
- You and Oracle will work on this project concurrently on an agreed upon project timeline.
- You shall incur additional fees if services are requested outside of the standard scope specified in this Order.
- Adjustments supported as part of the standard scope of services:
 - o Moving an existing data element from one field to another in the same message
 - o Concatenation of two existing data elements
 - o Addition or subtraction of leading zeroes to a numeric value
 - o Hard coding a default value
 - o Nulling fields
 - o Basic conditional statements
 - o Repeating field filtering, such as PID-3, PID-4, and personnel fields
 - o Suppressing transaction types
 - o 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 specified in this Ordering Document, and if identified as needed during interface design, additional professional services are required:
 - Querying data from standard Oracle Health Millennium Platform tables and inserting into a field
 - Full message character-string replacements
 - Adding segments to a trigger not defined in Oracle specifications
 - Creating custom tables in Oracle Health Millennium Platform, and inserting/updating/querying those tables
 - Creating custom Z segments
- Adjustments not supported under this scope:
 - 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 Oracle Health Millennium Platform database tables
 - Calculations of fields within interface message
- All work set forth herein will be performed remotely unless otherwise agreed upon by Oracle and You
- Any travel costs related to providing these Services are Your responsibility.
- Normal business hours are 8:00 am to 5:00 pm, Monday through Friday CST.

Trademarks

• *HL7* is the registered trademark of *Health Level Seven International*, and their use of this trademark does not constitute an endorsement by *HL7*.

Millennium Foreign System Interface Services (B103757)

Oracle Health Legacy Part #: CTS-MILLFSI-SVCS

Overview

Oracle Health will provide the following Services:

- Reconfigure ASC X12 837 Institutional Claims outbound interface from Oracle Millennium to SSI
- Reconfigure ASC X12 837 Professional Claims outbound interface from Oracle Millennium to SSI
- Reconfigure ASC X12 835 remittance inbound interface from SSI to Oracle Millennium
- Reconfigure External Claim Editor Status inbound interface from SSI to Oracle Millennium
- These interfaces will follow the American National Standards Institute X12 5010 standard guides for ASC X12 837 Institutional claims outbound, ASC X12 837 Professional claims outbound and

Oracle Health Consulting/Professional Services - Service Descriptions

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	ASC X12 835 remittance inbound interfaces. The External Claims Editor Status interface will follow the Oracle standard External Claims Editor Status inbound interface specifications.
	Estimated duration: 3 months
Description of	Oracle will provide the following Services:
Services	Execute tasks related to project startup
	Prepare a mutually agreed upon project plan outlining integration events and activities
	Schedule and facilitate mutually agreed upon project status meetings
	Develop interface design
	Create site-specific interface specification document(s)
	Build, code, and configure interface to the Oracle Health interface specifications
	Conduct functional testing of the interface
	Collaborate with client on validation testing of the interface as needed
	Migrate interface to one (1) production domain and provide support of interface activation
	Provide remote conversion support during normal business hours beginning after interface is activated in production domain for a duration of up to two (2) weeks
	Execute tasks related to project closure
Your Cooperation /	You are responsible for the following obligations:
Obligations	Synchronize data values between Oracle and the foreign supplier; including building of code value aliasing within Oracle that will be required for interface processing
	Modify Oracle Health Millennium Platform application, if necessary
	Create and execute interface test plans
	Validate interface testing
Assumptions	Oracle standard interface specifications are available upon request.
·	o Real-time interfaces will conform to the Oracle universal interface (UI) specifications requirements, which are based upon the Health Level Seven International (HL7) standards as they relate to the Oracle Health Millennium Platform architecture.
	o Batch interfaces will conform to the Oracle standard specification requirements, which are based upon the Accredited Standards Committee (ASC) X12 standards or flat file protocol as they relate to the Oracle Health Millennium Platform architecture.
	Oracle transmission protocols:
	o Real-time interfaces will utilize Transmission Control Protocol/Internet Protocol (TCP/IP) for data transfer and will be Oracle Health Millennium Platform <i>HL7</i> UI compliant.
	Batch interfaces will utilize Secure File Transfer Protocol (SFTP) for data transfer and will be either Oracle Health Millennium Platform standard or ASC X12 compliant unless otherwise noted in the 'Description of Services' section of this scope.
	Custom scripting required outside the standard Oracle User Interface (UI) is expected to be performed within Your interface engine. If this is not possible or desirable, custom scripting can be performed within the Oracle Health Millennium Platform interface but may require additional hours at Oracle's then-current fees for an Oracle resource to complete the work.
	This scope covers the initial configuration and testing of the interface in a designated non-production environment and one (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.
	You and Oracle will work on this project concurrently on an agreed upon project timeline.
	You shall incur additional fees if services are requested outside of the standard scope specified in this Order.
	Adjustments supported as part of the standard scope of services:
	o Moving an existing data element from one field to another in the same message
	o Concatenation of two existing data elements
	o Addition or subtraction of leading zeroes to a numeric value
	o Hard coding a default value
	o Nulling fields
	o Basic conditional statements
	o Repeating field filtering, such as PID-3, PID-4, and personnel fields
	o Suppressing transaction types

 $Oracle\ Health\ Consulting/Professional\ Services-Service\ Descriptions$

	o 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 specified in this Ordering Document, and if identified as needed during interface design, additional professional services are required:	
	o Querying data from standard Oracle Health Millennium Platform tables and inserting into a field	
	o Full message character-string replacements	
	o Adding segments to a trigger not defined in Oracle specifications	
	o Creating custom tables in Oracle Health Millennium Platform, and inserting/updating/querying those tables	
	o Creating custom Z segments	
	Adjustments not supported under this scope:	
	o Modification of the clinical content of a result from any source, including OBX;3,4,5,6,7,8,11 and 14	
	o Creating custom insert statements to insert rows into standard Oracle Health Millennium Platform database tables	
	o Calculations of fields within interface message	
	All work set forth herein will be performed remotely unless otherwise agreed upon by Oracle and You.	
	Any travel costs related to providing these Services are Your responsibility.	
	Normal business hours are 8:00 am to 5:00 pm, Monday through Friday CST.	
Trademarks	HL7 is the registered trademark of Health Level Seven International, and their use of this trademark does not constitute an endorsement by HL7.	

Oracle Health Patient Accounting Support

Part #: B102359

Description of	Oracle Health will provide the following Services:
Services	Oracle Health will update the necessary claim population rules as needed based on claim scrubber requirements and Data Collection Workbook information.
	Oracle Health will update the necessary claim submission Financial Calendar events.
	Oracle Health will update the PFT_HP_MEDIA_RELTN build as needed.
	Oracle Health will configure in one non-production and one production domain.
	Client is responsible for final validation before moving to production.
	Oracle Health will provide support during normal business hours.
Your Cooperation / You are responsible for the following obligations:	
Obligations	Provide adequate testing scenarios
	Cerner will provide support during normal business hours.
	Client will be responsible for providing data and populating the Data Collection Workbooks.
	Client will provide access to necessary Subject Matter Experts and IT Analysts., including a scrubber vendor resource.
	Client will be responsible for all testing and final validation of workflows and configuration for the production domain.
	Client responsible for high Volume Claims Testing preparation, staging, and execution
Assumptions	3 months kick off to go live with 30 days of post live support (needs to be confirmed with vendor and hours may need to be adjusted accordingly)

 $Oracle\ Health\ Consulting/Professional\ Services-Service\ Descriptions$

Bill To / Ship To Contact Information

Bill To Contact

Customer Name	Customer Address	Contact Name / Phone / Email
Kern County Hospital Authority	1830 Flower St Bakersfield, CA US 93305	Sandra Bakich +1 (661) 862-8110 sandy.bakich@kernmedical.com

Ship To Contact

Customer Name	Customer Address	Contact Name / Phone / Email
Kern County Hospital Authority	1830 Flower St Bakersfield, CA US 93305	Sandra Bakich +1 (661) 862-8110 sandy.bakich@kernmedical.com



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Report on Kern County Hospital Authority construction projects

Recommended Action: Receive and File

Summary:

As a result of ongoing operations, Kern Medical regularly undertakes numerous construction projects to address end of life of equipment and aging facilities, enhance services and maintain compliance with new regulations. While many projects are brought before your Board for approval due to the scale and cost of the project, others do not require the approval of your Board because they fall within the signature authority delegated by your Board to the Chief Executive Officer. The attached report summarizes current projects and identifies whether the project required and received Board approval, classified in the following project phases:

- Investigation and Estimation
- Design and Review
- Bid Process
- Construction
- Close Out

The report also includes a summary of projects completed in FY 2023, FY 2024, and those projects completed to date in FY 2025.

Therefore, it is recommended that your Board receive and file this report.

Current Construction Projects					
Status	PROJECT NAME	Classification	Scope of Work	Agreement	Funding Source
Construction	D Wing Elevator Replacement	End of Life	Upgrade mechanical systems and cars	Board Agreement	Kern Family Grant
Close Out	Totguard Install - Peds Grant	Code Requirement		Board Agreement	Childrens Hospital Bond Act
Construction	New Above Ground Fuel Tank	Code Requirement	Install new above ground fuel tank for emergency generators at D Wing	Board Agreement	Capital Fund
Bid Process	Under Ground Fuel Tank Removal	Code Requirement	site	Board Agreement	Capital Fund
Close Out	B Wing Central Supply AC Unit Upgrades	End of Life	Install new AC unit at Central supply to include new exterior ducting	Board Agreement	Capital Fund
Construction	Ed Peds - 4 New Exam Rooms - Peds Grant	Service Enhancement	Construct 4 new exam rooms, nurse station, clean/dirty/store rooms, restrooms and med room, new triage, registration office, 2 fast track exam room in the ED Lobby and new Air Handler	Board Agreement	Childrens Hospital Bond Act
Construction	Hot Room To Central Plant Steam Lines	End of Life	Abandon end of life boilers that service the OR's and tie the system into the Central Plant steam.	Board Agreement	Capital Fund
Design & Review	New MRI Building	Service Enhancement	Construct new MRI Wing west of Radiology at E Wing	Board Agreement	Capital Fund
Bid Process	D Wing Lobby, Gift Shop & Registration - Paint/Flooring ONLY	Service Enhancement	New paint and flooring, minor construction to accommodate Registrations new location in the D Wing Lobby.	TBD	Capital Fund
Construction	In House Pharmacy Sup 800 Mods	Code Requirement	Install stand alone AC Unit at the Pharmacy Compounding to meet Board of Pharmacy requirements	Board Agreement	Capital Fund
Design & Review	Fire Panel Upgrades At Main Campus	End of Life	Install new fire panels and upgrade fire alarm devices as required.	Board Agreement	Capital Fund
Construction	NICU Medical Air Skid Replacement	Code Requirement	Install a new medical air compressor system for the NICU.	Board Agreement	Capital Fund
Construction	Nitrogen Manifold Replacement	End of Life	Replace the nitrogen and nitrous oxide panels that provide services to the OR for procedures.	Board Agreement	Capital Fund
Investigation & Estimating	4C South Patient Room Flooring	Code Requirement	Flooring in these patient rooms are at end of life and need to be replace for infection control purposes	TBD	Capital Fund
Investigation & Estimating	Louver Repair	End of Life	Replace louvers at B/C Wing.	Board Agreement	Capital Fund
Bid Process	New CT Machine At 1569 E Wing	End of Life	Modify room to meet current codes and install new CT Machine.	Board Agreement	Capital Fund
Investigation & Estimating	3D New Head Walls	End of Life	Replace existing head walls, patch paint	Board Agreement	Capital Fund
Investigation & Estimating	3D Nurse Call Replacement	Code Requirement	Demo existing temp system, and end of life system, install new nurse call system, path and paint.	Board Agreement	Capital Fund
	D Wing Penthouse HVAC Replacement	End of Life	Replace AC Unit that tempers new Elevator controls at D Wing	Blanket Agreement	Capital Fund
	Air Handler S -1 Modifications	End of Life	Rebuild Air Handler	Board Agreement	Capital Fund
	C Wing S2 HVAC Rebuild	End of Life	Rebuild Air Handler	Board Agreement	Capital Fund
Construction	B Wing S-7 HVAC Replacement - Room 4123 (L&D)	End of Life	Rebuild Air Handler	Board Agreement	Capital Fund
	Emergency C Wing Sewer Line Replacement (Kitchen)	End of Life	Replace sewer lines under Medical Records, Operators Booth, inside the Utility Tunnel and inside the Kitchen	Board Agreement	Capital Fund
Construction	Central Plant Panel Controls	End of Life	Replace the controls at the Central Plant	Engineering Blanket	Capital Fund
Construction	Central Plant Chiller 2 Rebuild	End of Life	Rebuild the Chiller	Engineering Blanket	Capital Fund
Bid Process	D Wing Postpartum Relocation - Phase III	Service Enhancement	Paint, flooring, modify restrooms to meet code, room repurposes for function changes.	Board Agreement	Capital Fund
Investigation & Estimating	HIM Relocation	Service Enhancement/End of Life	Due to sewer line project in C Wing, Medical records will be relocated to accommodate construction. Minor construction, paint and flooring to new space.	TBD	Capital Fund
Construction	OR 2 Dedicated Power For Robot	Code Requirement	Provide dedicated power for the robot at OR 2	Board Agreement	Capital Fund

Design & Review	Kern Medical New IT Hub	Code Requirement	Construct new IT Hub and connections to hospital and Columbus Clinic	Board Agreement	Capital Fund
Design & Review	Medical Mobile Unit Parking	Service Enhancement	Demo abandoned trailers and construct secured, covered parking.	Board Agreement	Capital Fund
Investigation & Estimating	New Phone System	Service Enhancement	IT Project	Future Board Agreement	Capital Fund
Investigation & Estimating	Valley Fever Research	Service Enhancement	Building lease and construction modifications	TBD	HRSA Grant
Construction	Chiller 1 Overhaul	End of Life	Rebuilt Chiller	Engineering Blanket	Capital Fund
Design & Review	New Mobile MRI	End of Life	Site modifications to install new mobile MRI	Board Agreement	Capital Fund
Design & Review	CT Room 1576 Replace AC	End of Life	Replace AC Unit that provides tempered air to the MRI 1576	Board Agreement	Capital Fund
Design & Review	Emergency - Sonic Irrigator Replacement (Robot Sterilizer)	End of Life	Minor electrical and plumbing, anchor new equipment	Board Agreement	Capital Fund
Design & Review	4Th Floor Open Egress	Code Requirement	Remove security locks at exist and cross corridor doors.	Blanket Agreement	Capital Fund
Design & Review	C Penthouse Med Air	End of Life	Install a new medical air system for C Wing	Board Agreement	Capital Fund
Bid Process	Chiller 3 Booster Pump	End of Life	Modify the circulation water system and install new pumps to accommodate new Air Handlers in B Wing	Board Agreement	Capital Fund
Investigation & Estimating	D/E Wing Reroof Various Locations	End of Life	Roofing Repairs	Cost/Scope will determine if this is a Board or Blanket Agreement	Capital Fund
_	New Nurse Call Systems - ED; 2D (ICU/DOU); 3C; 3D; 4B(Labor & Delivery); 4D (Post Partum/NICU)	Code Requirement	Demo existing system, install IT as required, install new system, paint and patch	Board Agreement	Capital Fund
Bid Process	G Wing Surgery Residency Rounding Room	Service Enhancement	Paint, flooring, new furniture	Blanket Agreement	Capital Fund

Construction Projects Completed in FY 2023, FY2024 and FY 2025		
PROJECT NAME	Agreement	
SOCIAL SERVICES 3313	Blanket Agreement	
GIRL SCOUT FLOWER PROJECT	Volunteer Donation	
RADIOLOGY CONTROL ROOM - PAINT & FLOORING	Blanket Agreement	
L&D CHANGING ROOM AT 4055	Blanket Agreement	
PEDS DR. OFFICE - 4022	Blanket Agreement	
D WING CONTROLS PHASE I	Board Agreement	
Inpatient Pediatric Unit (4C)	Board Agreement	
COLUMBUS PEDS WAITING ROOM	Board Agreement	
COLUMBUS CLINIC SPACE UPGRADE	Blanket Agreement	
CENTRAL SUPPLY FIRE ALARM	Blanket Agreement	
NURSE STAFFING RELOCATION TO 3455	Blanket Agreement	
CAMPUS FENCING	Board Agreement	
Q Street Imaging Center	Board Agreement	
D WING MEDICAL AIR DRYER REPLACEMENT	Blanket Agreement	
PHILIPS NETWORK CABLING SYSTEM (BIOMED & IT)	Board Agreement	
NICU MEDICAL AIR DRYER REPLACEMENT	Blanket Agreement	
D WING & NICU AIR DRYER ALARM SYSTEM	Blanket Agreement	
LAB MODIFICATION NEW EQUIPMENT	Board Agreement	
BLOOD BANK NEW EQUIPMENT	Blanket Agreement	
IT CLOSET MDF 1218 & PULMONARY HVAC UPGRADE	Board Agreement	
COLUMBUS FIRE ALARM PANEL UPGRADE SUITE 1000	Blanket Agreement	
Neuropsychiatric Facility Study Design	Blanket Agreement	
C WING ROOF COATING - 4 PHASES	Blanket Agreement	
TEMP CT SITE	Board Agreemen	
CENTRAL SUPPLY INTERIOR MODIFICATIONS & ED STORE ROOM	Blanket Agreement	
COLUMBUS NEW NST CLINIC	Blanket Agreement	
ED NEW NURSE CALL REPLACEMENT	Board Agreement	
EMERGENCY PROJECT - TEMPORARY AIR HANDLER (C WING)	Board Agreement	
3C & 4D TEMP NURSE CALL SYSTEM	Board Agreement	
ICU/DOU PATIENT ROOM REMODEL	Blanket Agreement	
ED ISOLATION ROOM - PEDs GRANT	Board Agreement	
3D Temp Nures Call	Blanket Agreement	
D WING LANDING REROOF	Blanket Agreement	
2222 19th Street ENT, Plastics/Reconstructive Clinic	Blanket Agreement	
ED TRANSITION ROOM	Blanket Agreement	



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed Product Purchase Agreement with Nielsen BioSciences, Inc. for the purchase of spherusol (a test agent) to conduct a Valley Fever Institute research study

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Product Purchase Agreement with Nielsen BioSciences, Inc. to purchase spherusol (a test agent) to conduct a research study at the Valley Fever Institute. The Valley Fever Institute at Kern Medical is collaborating with University of Michigan on a study titled "Examination of Prevalence of Prior Immunity to Coccidioidomycosis and Recent Infection Among the Employee Health Population in Bakersfield, CA", aimed at understanding population immunity to coccidioidomycosis in high-endemicity areas. The University of Michigan serves as the study sponsor with Dr. Royce Johnson as the principal investigator, supported by Dr. Rasha Kuran and Dr. Carlos D'Assumpcao as sub-investigators.

The primary goal of this study is to enhance our understanding of population immunity and seropositivity for coccidioidomycosis. Additional study objectives include exploring the associations between demographic factors, high-risk activities, residential history and infection status. The study will compare the effectiveness of skin tests and serological tests. An innovative aspect of this project involves assessing picture-capture technology as a method for reading skin test, which could offer a scalable approach for future studies across various populations and geographic regions.

To conduct this study, the Valley Fever Institute requires 11 vials of Spherusol from Nielsen BioSciences, Inc., the sole manufacturer and distributor of this test agent. The total cost for these vials is \$12,650, and Nielsen BioSciences, Inc. has provided a purchase agreement for this transaction. We are seeking board approval to complete this purchase and move forward with the necessary study preparations.

Counsel is unable to approve due to non-standard terms which include limitation of liability to the cost of the agreement. Efforts were made to negotiate these terms, but to no avail

Therefore, it is recommended that your Board approve the proposed Product Purchase Agreement with Nielsen BioSciences, Inc. for the purchase of spherusol (a test agent) to conduct a Valley Fever Institute research study as Nielsen BioSciences, Inc. is the sole manufacturer and distributor of this agent, in an amount not to exceed \$12,650, effective November 20, 2024 for the one-time purchase, and authorize the Chairman to sign.



Product Purchase Agreement

Nielsen BioSciences, Inc. having a place of business at 11125 Flintkote Ave., Suite G San Diego CA 92121 ("Nielsen"), and Kern County Hospital Authority ("KCHA") having a place of business at 1700 Mt. Vernon Avenue Bakersfield CA 93306 ("Buyer") (referred to individually as a "Party" and collectively as the "Parties") enter into this product purchase agreement (this "Agreement") for a one-time purchase of the product described in the Attachment (the "Product").

Basis of contract

Nielsen will sell, and Buyer will purchase, the Product as described in the Attachment under the terms of this Agreement. The terms for the sale of Product are expressly limited to the terms of this Agreement and the Attachment hereto. Any additional or different terms or variations thereof, whether on any Buyer purchase order, form or any other document, shall not be deemed to be part of this Agreement and shall not be binding on Nielsen.

Invoicing, price and payment

<u>Invoice</u>. Nielsen will invoice Buyer for the Product delivered at the price for the Product listed in the Attachment (the "Price"). The invoice will properly state the quantity, total Price payable, and a reasonable description of the Product delivered.

Payment Terms. Buyer shall pay the Price within thirty (30) days of Nielsen date of invoice.

<u>Taxes</u>. In addition to the Price, Buyer shall pay any tax or similar fee or charge that may be imposed in connection with the purchase of Product. For tax-exempt Buyers, Buyer shall provide Nielsen with documentation evidencing Buyer's tax-exempt status and the taxes from which it is exempt. The Price is exclusive of any applicable value added tax and any other government duty or applicable tax.

Delivery, risk and title

<u>Delivery</u>. All Product will be delivered [Free Carrier (FCA)] (Incoterms 2020) to Kern Medical Pharmacy 1700 Mt Vernon Avenue Bakersfield, CA 93306. Nielsen shall use reasonable efforts to deliver the Product within one business week of receiving purchase order but shall not be liable for any delay in delivery of the Product howsoever caused. Time for delivery shall not be of the essence. Risk and title in the Products shall pass to the Buyer on delivery in accordance with this section.

Representations, warranties, indemnities and limitations

<u>Licenses and Registrations</u>. Buyer represents and warrants to Nielsen that Buyer maintains all licenses and registrations required by all federal, state, and local regulatory authorities for the purchase, receipt, importation, delivery, sale, resale, and supply of Product including, without limitation, the storage, preparing of Product for safe and secure delivery, and the tracking and tracing of Product, as applicable. Buyer shall notify Nielsen immediately of any denial, revocation or suspension of, or any adverse action taken against, any such license or registration, or any material changes in the license or registration that materially impacts its ability to perform its obligations hereunder.

<u>Use of Product</u>. Buyer represents and warrants that Buyer shall not alter, modify, replace or reproduce any Product labeling, packaging without the express written consent of Nielsen, and Buyer shall use, handle and store Product in a clean and orderly location, in accordance with any requirements or standards that are set forth in the Product's package insert/prescribing information, or are otherwise specified by Nielsen to Buyer, and in a manner that maintains the quality of Product.

<u>Product Warranty</u>. Nielsen warrants that at the time of delivery the Product complies in a material manner with the specifications for the manufacture, processing, packaging, labelling, testing, shipping, storage and supply of the Product as set out in the United States marketing authorization for the Product ("**Specifications**"), and has been manufactured in material accordance with applicable Good Manufacturing Practices as specified in the United States Code of Federal Regulations prevailing at the time of the manufacture.

EXCEPT FOR THE PRODUCT WARRANTY SET FORTH ABOVE, NIELSEN MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION WARRANTIES OF



MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

No Special Damages. Nielsen shall not be liable for any loss of use, revenue or anticipated profits, loss of stored, transmitted or recorded data, or for any incidental, indirect, unforeseen, special, punitive or consequential damages arising out of or in connection with this Agreement or the sale or use of the Product. Notwithstanding the foregoing, these limitations of liability shall not affect third party claims for personal injury arising as a result of Nielsen's negligence or Product defect. The foregoing shall be effective upon the failure of any remedy, exclusive or not.

<u>Indemnification of Nielsen</u>. Buyer shall indemnify, hold harmless, and defend Nielsen and its officers, directors, employees, agents, affiliates, successors and assigns from and against any and all liabilities, claims, costs, and expenses, including reasonable attorneys' fees and court costs at both trial and appellate levels ("Losses"), for any loss, damage, injury, or loss of life, brought by any third party, whether or not covered by insurance, to the extent caused or asserted to have been caused, directly or indirectly, by (i) Buyer's acts or omissions under the Agreement, (ii) Buyer's sale or distribution of Product, or (iii) any use of Product in a manner that is inconsistent with the Product labeling and prescribing information.

<u>Indemnification of Buyer</u>. Nielsen shall indemnify, hold harmless, and defend Buyer and its officers, directors, employees, agents, affiliates, successors and assigns from and against any and all Losses, for any loss, damage, injury, or loss of life, brought by any third party, whether or not covered by insurance, to the extent caused or asserted to have been caused, directly or indirectly, by or as a result of Nielsen's failure to provide Product that conforms to the above Product warranty.

<u>Limitation of Liability</u>. Nielsen's aggregate liability in respect of the Products supplied pursuant to this Agreement (whether arising in contract, in tort or otherwise), will in no event exceed the purchase price received by Nielsen in respect of the Products supplied pursuant to this Agreement.

Compliance

<u>Compliance</u>. Buyer shall ensure that all Product provided hereunder is administered exclusively within the United States, and shall comply with all applicable federal, state, and local laws, statutes, regulations, rules, orders and ordinances, as amended, existing on or after the date of this Agreement in connection with its activities under this Agreement, including but not limited to those relating to the confidentiality of patient information.

<u>Pharmacovigilance</u>. Any issues pertaining to quality or safety of the product shall be immediately reported to Nielsen at <u>medinfo@nielsenbio.com</u> or call 855-855-1212.

Defects

Non-Conforming Product. In the event that Buyer receives Product that does not meet the Specifications, Buyer shall immediately notify Nielsen and in no event, no more than twenty-four (24) hours (i) after delivery of the Product or (ii) if later, after Buyer becomes (or should reasonably have become) aware of such defect.

Recalls. In the event of any recall of Products, the Buyer agrees to follow all instructions given by Nielsen and fully cooperate with Nielsen in conducting the recall. In order to facilitate any possible batch recall the Buyer shall have a written procedure and system in place to recall promptly and effectively Products known or suspected to be defective, and shall maintain suitable records such as associated batch numbers and all the quantities in respect of all sales together with appropriate details of its customers in question.

Miscellaneous

Governing Law. This Agreement is governed by the laws of the State of California, without regard to conflict of laws principles.

Entire Agreement. This Agreement, as well as the content of the Attachment(s) hereto, constitutes the entire understanding between the Parties with respect to the subject matter contained herein and supersedes any prior agreements of the Parties regarding the subject matter hereof, whether written or oral.



<u>Modification</u>. This Agreement, including the warranties set forth herein, may not be changed, modified or amended except in writing signed by duly authorized representatives of Buyer and Nielsen.

Non-Waiver. No failure and no delay or omission in exercising, on the part of any Party, any right under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right preclude the further exercise of any other right.

<u>Severability</u>. If any court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, then the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

<u>Force Majeure</u>. Neither Party to this Agreement will be liable for its failure to perform if the performance is made impractical due to any occurrence beyond its reasonable control, including acts of God, fire, floods, war, sabotage, accidents, labor disputes or shortage, governmental laws, rules and regulations, whether valid or invalid, inability to obtain material, equipment or transportation, or any other event that makes the performance commercially impractical.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly appointed representatives as of the date first written above.

Nielsen Biosciences, Inc.

Kern County Hospital Authority

Bv:

Name: Scott Nielsen

The Real Property lies

Name: Phil McLaughlin

Title: Vice President

Title: Chairman, Board of Governors

REVIEWED ONLY NOT APPROVED AS TO FORM

By Shannon Hochstein
Kern County Hospital Authority



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed purchase of telecom services from Space Exploration Technologies Corp.

Recommended Action: Approve; Authorize Chief Executive Officer to purchase

Summary:

Kern Medical requests your Board approve a purchase for telecom services with Space Exploration Technologies Corp. to supply satellite internet communication for two mobile medical units. This two-way satellite-based internet service will allow the mobile medical units housed in recreational vehicles to connect to the Kern Medical network in remote locations with limited cellular connectivity. Each recreational vehicle satellite unit will cost \$250/month with a month-to-month term.

Counsel is unable to approve due to nonstandard terms which include limitation of liability to the cost of the agreement, indemnification only of the vendor, Texas venue and law, and waiver of the right to a jury trial. Efforts were made to negotiate these terms, but to no avail.

Space Exploration Technologies Corp. is the only satellite internet company on the market that offers low latency satellite internet and they are the only company that have low earth orbit satellites that allow high speed internet at <60ms latency, which is required for a VPN connection. A VPN connection would be needed on the mobile medical unit so that the electronic health record could be accessed and updated as required.

Therefore, it is recommended that your Board approve the purchase of telecom services with Space Exploration Technologies Corp. to supply satellite internet communication for two mobile medical units, effective as of installation on a month-to-month term, in an amount not to exceed \$500 per month, and authorize the Chief Executive Officer to purchase.

By Shannon Hochstein
Kern County Hospital Authority

Starlink Terms of Service

Your order for two-way satellite-based internet service ("Services") and a Starlink antenna, Wi-Fi router and mount ("Starlink Kit" or "Kit") is subject to the terms ("Terms") of this Starlink agreement for the United States and its territories. These Terms, those terms incorporated by reference, and the details you agree to in your online order ("Order") form the entire agreement ("Agreement") between you ("customer" or "user") and Space Exploration Technologies Corp. (known as "Starlink" in these Terms).

1. Deposit.

- 1. **Applicability**. If Starlink Services are currently unavailable in your region and you are placing a deposit payment rather than completing the Order for Services, then Section 1 applies to you.
- 2. **Deposit Payment**. Your deposit payment ("Deposit Payment") grants you priority within your region for securing Starlink when available. Your Deposit Payment is exclusive of any sales and use or other taxes. Starlink will apply your Deposit Payment to the amount due on the Starlink Kit if and when the Starlink Kit and Services become available.
- 3. Refundable Deposit. Prior to Starlink shipping your Kit, your Deposit Payment is fully refundable and can be requested at any time via your Starlink account. If you seek and obtain a refund, you will forfeit your priority position.
- 4. Availability; Limitations. Placing a Deposit Payment does not obligate Starlink to provide you with the Starlink Kit and Services and does not guarantee that the Starlink Kit and Services will be available to you. Prices for the Services and Kits presented at the time you place your Deposit Payment are subject to change to the prices in effect at the time of Order, including any applicable taxes, duties, delivery charges, and any other applicable fees. Enrollment limits may apply based on network availability. Starlink Kit designs and Services are subject to change based on technological innovation. Starlink will not hold your Deposit Payment separately, for example in an escrow account or trust fund, or pay any interest on your Deposit Payment. The Service availability dates are estimates only and subject to change. Service delivery is dependent on many factors, including various regulatory approvals.

2. Agreement to Purchase or Rent the Starlink Kit and Services.

1. No Resale or Unauthorized Agency. You may not resell access to the Services to others as a stand-alone, integrated or value-added service under this Agreement (whether acting as an agent, introducer or in any other capacity), unless authorized by Starlink. In addition, you may not purchase an excessive number of any item available for purchase in the Starlink shop ("Accessories"), as determined by Starlink in its sole discretion. See

- additional limitations in Section 10 of this Agreement. A violation of this Section may result in Service termination.
- 2. Payments for Purchasing a Starlink Kit and Title Transfer. For customers purchasing a Starlink Kit, you authorize Starlink to charge your approved payment method for a one-time purchase price on the balance of your Starlink Kit and any accessories, including applicable shipping, handling and taxes, as is described in the online Order. Starlink will transfer title to the Starlink Kit and any accessories to you at the time of delivery.
- 3. **Payments for Renting a Starlink Kit**. For customers renting a Starlink Kit, you authorize Starlink to charge your approved payment method for the following—
- a) **Activation Fee**. A one-time immediate activation fee due when the Order is placed;
- b) **Monthly Rental Fee**. The first rental fee charge will be on the earlier of (i) the date you activate the Starlink Kit; or (ii) 30 days after Starlink ships your Starlink Kit ("Payment Due Date"). Starlink will automatically charge your approved payment method for the second and all subsequent monthly rental fees on the anniversary of the Payment Due Date; and
- c) **Retail Penalty**, *if applicable*. A retail fee penalty for the Starlink Kit if you fail to return the Kit to Starlink undamaged, untampered and unmodified, within 30 days of cancelling your Service, as described in Section 6.4.

Rental Kit provided to you may be new or refurbished at Starlink's sole discretion. Rented Starlink Kit will remain the property of Starlink and title will not transfer to you. Starlink Kits may only be rented with the Residential Service Plans for residential use; however, at Starlink's sole discretion, rental Kits may be made available for Priority, Mobile Priority, Roam Service Plans. The option to rent a Starlink Kit is not available in all locations.

- 4. **Payments for Monthly Service Subscription**. You authorize Starlink to charge your approved payment method for –
- a) **Monthly Service Fee**. The first charge for the Services selected in your Order will be on the earlier of (i) the date you activate the Starlink Kit; or (ii) 30 days after Starlink ships your Starlink Kit ("Payment Due Date"). Starlink will automatically charge your approved payment method for the second and all subsequent monthly service fees on the anniversary of the Payment Due Date; and
- b) Additional Priority or Mobile Priority Data. If applicable, additional automatic charges per GB of data use, if you opt-in to purchasing additional Priority or Mobile Priority data after hitting your data limit under certain Service Plans. You can track your excess monthly data usage and purchase additional Priority or Mobile Priority data at any time via the Starlink App or via your Starlink account. Your excess data usage per month will also be displayed on your next monthly invoice. Once you opt-in, you will be automatically billed for additional Priority or Mobile Priority data used until you opt-out, including in

following billing cycles. You may opt-out of purchasing additional Priority or Mobile Priority at any time via your account in the Starlink Customer Portal. Additional details can be found in the <u>Starlink</u> <u>FAQs</u> and <u>Starlink Fair Use Policy</u>.

- 5. Regional Savings. Your order may be eligible for regional savings depending on the location of your Service address and the Service Plan you choose. If you change your Service address or Service Plan, or fail to activate your Kit within 30 days of shipment, you may be charged the original savings amount. Additional details can be found in the Starlink FAQs.
- 6. Additional Subscription Discounts. You may be offered the opportunity to add a limited number of additional "family plan" subscriptions to your account, which may include a discounted Starlink Kit and/or monthly subscription price. The service plans and Starlink Kit versions eligible for these discounts, and transferrability to other users and service plans, may be limited. You must maintain eligibility for these discounts by continuing to subscribe to at least one full price service offering on the same account. If you cancel the full-price subscription, the discount will be immediately removed from another subscription on your account, which will then be billed at full-price. You remain responsible for compliance with these Terms and all Starlink policies, including payment of all amounts, for any additional subscription added to your account. Learn more about family plans in the Starlink FAQs.
- 7. **Payment Method**. You authorize Starlink to charge an approved payment method, including bank-to-bank payments, credit or debit cards (where available) for all charges made under the Agreement, including applicable taxes. Use of a credit or debit card is subject to the terms and conditions in your card member agreement, including fees that may be charged by the issuer. If there is a change to your bank or card account information, including expiration date, you must update your payment information in the Starlink Customer Portal to avoid suspension or termination of Services and to enable Starlink to process refunds. Starlink may also update your payment method data with information provided by the payment service providers. You authorize us to continue to charge your payment method following any update to your information.
- 8. **Shipping & Handling**. Shipping and handling charges will apply and are non-refundable. Please consult your Starlink account for an estimate of delivery times. Deliveries may require signature. Starlink will use the carrier of its choice.
- 9. **Taxes, Fees, Surcharges**. In addition to charges for the Services, the Starlink Kit, and any accessories you buy, we may collect or request reimbursement for taxes and other fees and surcharges required by law, including, without limitation, value added, goods and

- services, consumption, sales, use, gross receipts, excise, and access. You are also responsible for any additional government fees, rights of way charges, license or permit fees, and any other duties, charges or surcharges imposed on the sale or use of the Services or Starlink Kit.
- 10. **Bills, Payment Disputes & Suspended Services**. Bills are provided to customers on a monthly basis only through the Starlink Customer Portal. Disputes on your Starlink bill should be handled via your account in the Starlink Customer Portal. In the event of a billing dispute, you must timely pay all undisputed amounts. If the payment dispute is resolved against you, or if you simply fail to pay for Services on time, you must pay the amounts due or your Services will be suspended until the overdue amounts are paid.
- 11. **Software Updates and License Terms**. Software copies and updates installed on the Starlink Kit are not sold, only licensed to you personally (on a non-exclusive, non-transferable, limited and revocable basis), for use as installed on the Starlink Kit and subject to <u>Software License and Usage Terms</u>, and restrictions that Starlink posts on the Starlink Customer Portal. Starlink reserves all intellectual property rights and other rights and interests in the Starlink Kit, the Services, and the software, and grants no license, except as expressly granted in this Agreement.
- 12. **Outside Region Fee**. A Starlink Kit activated outside of the region it was originally purchased may be subject to an "Outside Region Fee." Due to foreign exchange volatility and local taxes, the amount of the Outside Region Fee may be subject to slight variation. Additional details can be found in the Starlink FAQs.
- 13. **Congestion Charge**. Your order may be subject to a one-time additional charge depending on the location of your Service address and the Serivce Plan you choose. If you change your Service address or Service Plan at a later date, you may be required to pay the congestion charge. Additional details can be found in the Starlink FAQs.

3. Starlink Kit Installation.

1. Kit Install Guidelines. You are responsible for the installation of the Starlink Kit in a location that has a clear field of view of the sky, per the Starlink App and the Install Guide available in the Starlink Customer Portal. You shall not modify the Starlink Kit in a manner (including cosmetic/paint changes) that contradicts the Install Guide or would otherwise alter the transmission characteristics of the equipment, including placing the antenna under a cover/radome, unless approved by Starlink. At Starlink's sole discretion, if we determine that your installation or modification of a Starlink Kit has resulted in a material degradation of the Service or equipment, the equipment Limited Warranty may be voided. Should use of the Services require any construction or alteration to your

property, Starlink is not obliged to reimburse any expenses or restore your property to the same physical state as prior to delivery of Services. If you require a permanent roof or vehicle mount installation, you acknowledge the potential risks associated with this type of installation, including, without limitation, with respect to any warranty that applies to your roof, vehicle, vessel for penetration of the membrane. Follow the Install Guide. If you cannot safely install the Starlink Kit, do not install it and seek professional assistance.

- 2. **Kit Install Authorizations**. It is your responsibility to ensure compliance with all applicable building codes, zoning, ordinances, business district or association rules, covenants, conditions, restrictions, lease obligations and landlord/owner approvals and requirements for the installation of the Starlink Kit, to pay any associated fees or other charges, and to obtain any permits and other authorizations necessary for the Services and the installation of the Starlink Kit.
- 3. IN-MOTION USE PROHIBITED FOR UNDESIGNATED KITS, COUNTRIES AND USES. YOU ARE PROHIBITED FROM INSTALLING OR USING A KIT ON A MOVING VEHICLE OR VESSEL UNLESS STARLINK HAS DESIGNATED YOUR SPECIFIC KIT MODEL AND/OR MOUNT FOR INMOTION USE AND HAS OBTAINED ALL REQUIRED IN-MOTION APPROVALS IN THE COUNTRY OF USE. NOTWITHSTANDING THE FOREGOING, USE OR INSTALLATION OF A KIT ON AN AIRCRAFT OF ANY KIND IS PROHIBITED IN ALL CASES. SERVICES IN-MOTION ON AN AIRCRAFT, VEHICLE OR VESSEL (e.g., CARS, VANS, RVs, BOATS) VIA AN UNAUTHORIZED KIT OR COUNTRY IS PROHIBITED, WILL VOID THE LIMITED WARRANTY OF YOUR KIT, AND MAY BE GROUNDS FOR TERMINATION OF YOUR AGREEMENT WITH STARLINK PER SECTION 6.6 OF THESE TERMS.

Visit <u>https://www.starlink.com/specifications</u> for a description of the Starlink Kit models designated for in-motion use.

- 4. **Kit Installation on Moving Vehicles**. For Kits and mounts designated for in-motion use, you agree and are responsible for taking proper precautions for ensuring that the equipment mount is installed on a structurally sound, horizontal surface. You acknowledge that equipment falling into the road or off a vessel due to poor installation practices can cause serious accidents resulting in bodily injury. You shall not mount a Starlink Kit on any vehicle or vessel if it is not stable, or if it cannot be properly secured as described in the Install Guide and used with the proper mount designed for in-motion use. If no in-motion specific mount is available from Starlink, you are responsible for ensuring the Starlink Kit is installed properly and safely.
- 4. Fixed Service Plans

- 1. Residential Lite Service Plan. The Residential Lite Service Plan is designed for personal, family, or household use at a fixed land-based location. See the <u>Starlink Specifications</u> for details on the typical performance. Service activation and associated billing cannot be paused under the Residential Lite Service Plan. The Residential Lite Service Plan includes an unlimited amount of "Deprioritized" data. Deprioritized data that is assigned to users is always deprioritized as compared to other Starlink Fixed Service Plans, resulting in degraded Service and slower speeds in congested areas and during peak hours, as described in the <u>Fair Use Policy</u>. Residential Lite Service users are able to upgrade to any other Service Plan. The Residential Lite Service Plan is not permitted for business or enterprise uses. If bandwidth patterns consistently exceed what is allocated to a typical residential user, Starlink may take network management measures, such as temporarily reducing a customer's speeds, to prevent or mitigate congestion of the Services. Mini Kits may not be used with the Residential Lite Service Plan.
- 2. Residential Service Plan. The Residential Service Plan is designed for personal, family, or household use at a fixed land-based location. See the Starlink Specifications for details on the typical performance. Service activation and associated billing cannot be paused under the Residential Plan. The Residential Service Plan includes an unlimited amount of "Residential" data. In times of network congestion and during peak usage hours, users may experience slower speeds and reduced performance which may result in degradation or unavailability of certain third-party services or applications, as described in the Fair Use Policy. Bandwidth intensive applications, such as streaming videos, gaming, or downloading large files are most likely to be impacted during peak usage hours. Customers with high bandwidth needs that experience Service degradation resulting from Starlink's network management practices are able to upgrade to a Priority Service Plan. Supplemental customer support for business or government specific requests (e.g., modified invoicing or tax-exempt certifications) are only available under Starlink's Priority Service Plans and may not be supported under Residential Service Plan subscriptions. The Residential Service Plan is not permitted for business or enterprise uses. If bandwidth patterns consistently exceed what is allocated to a typical residential user, Starlink may take network management measures, such as temporarily reducing a customer's speeds, to prevent or mitigate congestion of the Services. Depending on your country, Mini Kits may not be used with the Residential Service Plan.
- 3. **Priority Service Plan**. The Priority Service Plans (available on "Business") are designed for high demand users, as well as businesses, governments and institutions at fixed land-based locations. See the <u>Starlink Specifications</u> for details on the typical performance. Service use and associated billing cannot be paused under the Priority Service Plans. The Priority Service Plans assign a set amount of "Priority" data to customers each month, as

described in the <u>Fair Use Policy</u>. Priority data is given network precedence over Standard and Mobile data, meaning users will experience faster and more consistent download and upload speeds. Unused Priority data does not rollover to the next month. If you have exhausted your Priority data in a given month, you are able to purchase additional Priority data or upgrade your Service Plan (see Section 2.4(b)). Customers who exhaust and have not purchased additional Priority data will be allocated an unlimited amount of Standard data for the remainder of the month, which may result in slower speeds and reduced performance compared to customers with Priority data.

5. Mobility Service Plans

1. Roam Service Plans.

- a) Roam Unlimited. Starlink Roam Unlimited Service Plans allow you to access Services at any destination where Starlink provides active coverage and is designed for low demand, land-based use, such as travel, camping or nomadic living. The Roam Unlimited Service Plan allows you to access Roam Unlimited Services at any land-based destination and in any coastal waters (up to 12 nautical miles off the coast; up to 5 consecutive days at a time and for a total of 60 days over the course of a year) where Starlink provides active coverage around the world. See the Starlink FAQs for more information. Roam Unlimited Services cannot be used on the open ocean. Roam Unlimited Services can be used in motion (up to 100 MPH or 160 KPH) and can be paused and un-paused at any time. When un-paused, the monthly Roam Unlimited subscription fee will be charged immediately, on a pro-rated basis. If you use Roam Unlimited Services for more than two months in a country that is different than your account address, Starlink may require you to move your registered address to your new location or return to the country listed as your account address. See the Starlink FAQs. Starlink may immediately suspend your Services if your new location is not in an authorized territory (marked "Available or Waitlist") on the Starlink map: <u>www.starlink.com/map</u>. Starlink Roam Unlimited Service charges will be ongoing until you pause the Service via your Starlink account. The Roam Unlimited Service Plan is not permitted for business or enterprise uses. If bandwidth patterns consistently exceed what is allocated to a typical Roam user, Starlink may take network management measures, such as temporarily reducing a customer's speeds, to prevent or mitigate congestion of the Services. Customers using mobility features to access Services in other countries will be subject to the local laws of that country.
- b) **Roam 50GB.** The Roam 50GB Plan has the same characteristics as the Roam Unlimited Service Plan, but assigns a set amount of Roam data to customers each month, as described in the <u>Fair Use Policy</u>. Unused Roam data does not rollover to the next month. If you have exhausted your Roam data in a given month, you are able to purchase additional GB of Roam data. Customers who exhaust and have not purchased additional Roam data will be unable to connect to the internet except to access their Starlink account on <u>www.starlink.com</u>, where additional Roam data can be purchased, so that you may reconnect to the internet. Roam 50GB Plan Service users are able to switch to other Service Plans.

- c) Roam 50GB + Residential Plan Bundle. If you cancel your active Residential Service Plan ("Primary Plan"), your Roam 50GB Plan will also be cancelled. With the Residential Plan Bundle, you cannot pause you Roam 50GB Services. Roam 50GB Service charges will be ongoing until you terminate your Primary Plan Services or your Roam 50GB Services via your Starlink account.
- d) *Roam Data*. The Roam Unlimited Service Plan includes an unlimited amount of "Roam" data. Roam data that is assigned to users is typically deprioritized as compared to other Starlink Service Plans, resulting in degraded Service and slower speeds in congested areas and during peak hours, as described in the *Fair Use Policy*. See *Starlink Specifications* for details on the expected performance. Stated speeds and uninterrupted use of the Service are not guaranteed and are highly dependent on geographical areas. Roam Unlimited Service users with high bandwidth, ocean or active coverage access needs are able to upgrade their Service Plan.

2. Mobile Priority Service Plans.

- a) Global Land, Ocean, In-Motion Coverage. Starlink Mobile Priority Service Plans (available on "Maritime", "Mobility", and "Roam") allow you to access Services at any destination around the world where Starlink provides active coverage. It is designed for high bandwidth or in-motion users who want global land plus ocean access, such as shippers and sailors. The Service can be paused and un-paused at any time. When un-paused, the monthly Mobile Priority subscription fee will be charged immediately, on a pro-rated basis. If you use Mobile Priority Services for more than two months in a country that is different than your shipping address, Starlink may require you to move your registered address to your new location. Starlink may immediately suspend your Services if your new location is not in an authorized territory (marked "Available or Waitlist") on the Starlink map: www.starlink.com/map. Mobile Priority Service charges will be ongoing until you pause the Service via your Starlink account.
- b) **Mobile Priority Data**. The Mobile Priority Service Plans assign a set amount of "Mobile Priority" data to customers each month. Mobile Priority data is given network precedence over Standard and Mobile data, meaning users will experience faster and more consistent download and upload speeds, as described in the *Fair Use Policy*. See *Starlink Specifications* for details on the expected performance. Stated speeds and uninterrupted use of the Service are not guaranteed and are highly dependent on geographical areas. Unused Mobile Priority data does not rollover to the next month. After a user's Mobile Priority data is exhausted each month, behavior of the Service will depend on where Starlink is being used:
 - 1. For inland coverage (including lakes and rivers), after Mobile Priority data is exhausted, users will receive unlimited Mobile data, which will result in slower speeds and degradation of bandwidth intensive applications during times of network congestion.

Additional Mobile Priority data is available by opting into paying for additional data per GB via your Starlink app or account.

For ocean coverage, after Mobile Priority data is exhausted, users will be unable
to connect to the internet except to access their Starlink account
on <u>www.starlink.com</u>, where additional Mobile Priority data can be purchased, so
that a user may reconnect to the internet.

See Section 2.4(b) and the Fair Use Policy for details on opting in/out of additional Mobile Priority data.

- 3. Limitations on Mobility Services. Supplemental customer support for enterprise, institutional or government specific requests (e.g., modified invoicing or tax-exempt certifications) is only available under Starlink's Mobile Priority Service Plans and not the Roam Service Plans. Starlink does not guarantee when or where Starlink Roam or Mobile Priority Services will be available. Such Services are dependent on many factors, including obtaining or maintaining the necessary regulatory approvals which are subject to change. Find a list of authorized territories (marked "Available or Waitlist") on Starlink map: www.starlink.com/map.
- 6. Changes, Cancellation, Returns, Transfers and Termination.
 - 1. Changes by Starlink. Starlink may change or discontinue Service Plans, prices, these Terms, Kit versions, and the <u>Starlink Specifications</u> from time to time. Starlink will provide you with notice at least one month prior before materially adverse changes come into effect. Starlink will provide you with an email notice summarizing the changes and your right to cancel this Agreement. Subject to your options and conditions under Sections 6.2 (Service Cancellation), 6.3 (Kit Return and Full Refund) and 6.4 (Rented Kit Returns and Fees) by continuing to use the Services you agree to any changes.
 - 2. Service Cancellation. You can stop the recurring monthly payment, cancel Services, and withdraw at any time via your Starlink account. To avoid being billed for the following month of Services you must cancel Services prior to your invoice statement being generated. If you have rented a Starlink Kit, you must return your Starlink Kit in good condition within 30 days of Service cancellation or you will be charged the full retail price of the Kit. You are not entitled to any refunds, except as set forth under Sections 1.3 (Refundable Deposit) and 6.3 (Kit Return and Full Refund).
 - 3. **Kit Return and Full Refund**. You may return an undamaged, untampered and unmodified Starlink Kit and any accessories purchased on starlink.com within 30 days of the Payment Due Date for a full refund for any reason, including the inability to receive Services due to field-of-view issues. If you purchased a Starlink Kit or accessories, you will be refunded the price of the equipment. If you rented Starlink Kit, you will be

- refunded your Activation Price only. Should you timely return your Starlink Kit, you will also be refunded for the first month's service fee or rental fee, as applicable, and the Congestion Charge. To return the Starlink Kit or any accessories, follow instructions in the Return Policy in the Starlink Customer Portal
- 4. Rented Kit Returns and Fees. If you have rented a Starlink Kit, you must return your equipment in an undamaged, untampered and unmodified condition (except normal wear and tear, determined by Starlink) within 30 days of Service cancellation or you will be charged the full retail price of the Kit as described in the online Order. You will be directly responsible for loss, repair, replacement and other costs, damages, fees and charges if you do not return the Starlink Kit to us in good condition. Starlink will issue you a return shipping label to allow you to return the Kit. Follow instructions in Starlink's Return Policy for returning rented Kits in the Starlink Customer Portal. Starlink Kits may only be rented for the Standard Service Plans; however, at Starlink's sole discretion, renting Kits may be made available for Priority, Roam, or Mobile Priority Service Plans.
- 5. Transferring Services and Kits. Customers who have purchased their Starlink Kits may have the option to transfer or assign your Services to another responsible party if the account is paid-in-full, in good standing, and there is network capacity under the requested Service Plan. Transferred Services are not available to customers who have rented a Starlink Kit. Transferring Services is not available until the earlier of (i) 120 days after you purchased your Starlink Kit, or (ii) 90 days after you activated your Starlink Kit. Please visit https://support.starlink.com/ or https://support.starlink.com/ or https://support.starlink.com/ or https://support.starlink.com/ or https://support.starlink.com/activate to learn more about activating Services after a Kit has been transferred or sold to a third-party.
- 6. Termination by Starlink. Starlink may, at any time, without prior notice, immediately terminate or suspend all or a portion of your account and/or access to the Services for: (a) a violation of these Terms, including the Starlink <u>Acceptable Use Policy</u>; (b) a request and/or order from law enforcement, a judicial body, or other government agency; (c) unexpected technical or security issues or problems, including but not limited to a material malfunction of the Starlink network, software or hardware; (d) a failure to obtain or maintain the necessary governmental authorizations required to bring Services; (e) your participation in fraudulent or illegal activities; (f) your withdrawal of consent to allow Starlink to use your personal data to comply with applicable laws as described in the <u>Starlink Privacy Policy</u>; (g) your failure to pay any fees owed for Services if you have not cured such non-payment within 24 days from the date of your invoice; or (h) its convenience after proper notice.
- 7. Limited Warranty, Disclaimers, Remedies, and Liabilities.

- 1. **Limited Warranty**. The Starlink Kit and Services are subject to the following <u>Limited</u> <u>Warranty</u>.
- 2. DISCLAIMERS. EXCEPT AS SET FORTH IN SECTION 7.1 (LIMITED WARRANTY), STARLINK PROVIDES THE STARLINK KIT AND SERVICES "AS IS," WITHOUT ANY EXPRESS WARRANTY, CONDITION OR REPRESENTATION. STARLINK DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND NON-INFRINGEMENT.
- 3. LIMITATIONS OF LIABILITY. STARLINK WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE, INDIRECT DAMAGES, LOSS OF GOODWILL OR BUSINESS PROFITS, LOST REVENUE, WORK STOPPAGE, LOSS OR CORRUPTION OF DATA, COMPUTER FAILURE, DATA SECURITY BREACH, MALFUNCTION OR ANY LOSSES OR DAMAGES RESULTING FROM THE KIT INSTALLATION, REPAIR, REMOVAL, OR OTHER ASSOCIATED SERVICES. STARLINK'S LIABILITY UNDER THESE TERMS FOR ANY INDIVIDUAL CLAIM OR ALL CLAIMS IN THE AGGREGATE WILL NOT EXCEED THE TOTAL AMOUNT PAID BY YOU TO STARLINK UNDER THESE TERMS OVER THE SIX MONTHS PRECEDING THE CLAIM GIVING RISE TO THE LIABILITY. THE LIMITATIONS SET FORTH IN THIS SECTION WILL APPLY TO ANY CLAIMS OR DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT, SERVICES OR STARLINK KIT, INCLUDING ANY EXEMPLARY OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER STARLINK WAS INFORMED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, AND REGARDLESS OF WHETHER CLAIMS ARE ASSERTED BASED ON CONTRACT, STATUTE, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHER LEGAL OR EQUITABLE CLAIM OR THEORY PROVIDED, EXCEPT IF AND TO THE EXTENT THAT ANY LIMITATION VIOLATES APPLICABLE MANDATORY LAW THAT THE PARTIES CANNOT DEROGATE FROM BY WAY OF CONTRACT.
- 4. **ASSUMPTION OF RISK**. YOU AGREE THAT YOUR USE OF THE SERVICES AND THE STARLINK KIT, AND SUCH USE BY ANYONE USING YOUR ACCOUNT, IS AT YOUR SOLE RISK. SERVICES ARE NOT SUITED OR INTENDED AS A MISSION-CRITICAL OR SAFETY-OF-LIFE SERVICE.

8. Compliance.

- 1. **General**. Customer agrees to comply with all laws and regulations applicable or related to the performance of obligations under this Agreement.
- 2. **Privacy**. Starlink processes personal information as described in its <u>Starlink Privacy</u> *Policy*, as amended from time to time.

- 3. Acceptable Use Policy. You agree not to use, or permit others to use, the Services in ways that (a) violate any applicable law or applicable regulation, (b) violate the Starlink Acceptable Use Policy, or other policies available on the Starlink Customer Portal, (c) infringe the rights of others, or (d) interfere with the users, Services, or Starlink Kit of the Starlink network or other networks. You are responsible for complying with the terms for any third-party services (e.g., video streaming or gaming apps) that you subscribe to using Starlink Services.
- 4. International Trade Laws. You must comply with all applicable International Trade Controls in the context of this Agreement, including applicable export control, economic sanctions, customs/import, anti-money laundering, and anti-corruption laws and regulations. You acknowledge that you are only authorized to access Services at the location identified on your Order or otherwise authorized by Starlink, and you will not divert the Starlink Kit or Services to any other locations, or to users or for uses that are prohibited under International Trade Controls.
- 5. Modifications to Starlink Products & Export Controls. Starlink Kits and Services are commercial communication products. Off-the-shelf, Starlink can provide communication capabilities to a variety of end-users, such as consumers, schools, businesses and other commercial entities, hospitals, humanitarian organizations, non-governmental and governmental organizations in support of critical infrastructure and other services, including during times of crisis. However, Starlink is not designed or intended for use with or in offensive or defensive weaponry or other comparable end-uses. Custom modifications of the Starlink Kits or Services for military end-uses or military end-users may transform the items into products controlled under U.S. export control laws, specifically the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130) or the Export Administration Regulations (EAR) (15 C.F.R. §§ 730-774) requiring authorizations from the United States government for the export, support, or use outside the United States. Starlink aftersales support to customers is limited exclusively to standard commercial service support. At its sole discretion, Starlink may refuse to provide technical support to any modified Starlink products and is grounds for termination of this Agreement.
- 6. **Security Measures**. You acknowledge that Starlink administers and enforces cybersecurity policies and procedures to identify and respond to incidents involving Starlink data, mitigate the effects of any such incidents, document their outcomes, and notify appropriate stakeholders (including authorities and affected data subjects, as appropriate).

9. Indemnification.

You agree to compensate and hold harmless Starlink against all claims, liability, damages, costs, and expenses, including but not limited to reasonable attorneys' fees, arising out of or related to these Terms, any and all uses of your account, and your use of the Starlink Kit and Services. This includes, without limitation: (a) responsibility for all such consequences resulting from actions by you or any user of your account in violation of these Terms, the <u>Acceptable Use Policy</u>, or any law or regulation; (b) negligent, reckless or intentionally wrongful act by you or any user of your account; and (c) any breach by you of any of the covenants contained in these Terms.

10. No Unauthorized Transfers; Assignments, or Acts of Agency.

- 1. Transfers and Assignments. You may not assign, sell, or transfer this Agreement, software installed on the Starlink Kit, or access to Services without Starlink's consent as described under Section 6.5. Unauthorized transfers or assignments will be null and void. Starlink may terminate this Agreement for cause if you attempt to transfer Services or this Agreement. If your Starlink Kit is stolen, destroyed or otherwise removed from your premises without your authorization, you must provide notice via the Starlink Customer Portal immediately, or else you may be liable for payment for unauthorized use of the Services. You are liable for any charges or fees incurred by the use of the Services and Starlink Kit by anyone else. Starlink can assign its rights and obligations under these Terms, in whole or in part, to any individual or entity we choose, at any time, without notice to you, in our sole discretion, and Services may be provided by one or more legally authorized Starlink affiliates.
- 2. Acts of Agency. You must create a Starlink account and enter into this Agreement for the Services in your own name. You cannot use an agent or any other representatives to purchase the Services or deal with Starlink, except where an agent or representative is (a) a household or family member, or personal caregiver, of the account holder, (b) an employee, director or officer of the account holder; or (c) any other person expressly approved by Starlink. You warrant that you have not purchased Starlink via a commercial third-party, are not acquiring the Service as part of bundled service offering provided by a commercial third-party, and have not and will not make payment to any commercial third-party in connection with the Services, except where expressly authorized by Starlink. A list of Authorized Starlink Resellers can be found in the FAQs at https://support.starlink.com/. Starlink reserves the right to seek information from you confirming these affirmations. Failure to follow the terms of this Section is a breach of this Agreement that may result in the termination of the Agreement for non-compliance.

11. Governing Law.

For Services provided to, on, or in orbit around the planet Earth or the Moon, this Agreement and any disputes between us arising out of or related to this Agreement, including disputes regarding arbitrability ("Disputes") will be governed by and construed in accordance with the laws of the State of Texas in the United States. For Services provided on Mars, or in transit to Mars via Starship or other spacecraft, the parties recognize Mars as a free planet and that no Earth-based government has authority or sovereignty over Martian activities. Accordingly, Disputes will be settled through self-governing principles, established in good faith, at the time of Martian settlement.

12. Agreement to Arbitrate.

- 1. Please carefully read Section 12 (Agreement to Arbitrate), which applies to any Disputes between you and Starlink.
- 2. Under these Terms, you and Starlink each waive any and all rights to have a court or jury hear or decide any Disputes. Rather, Disputes will be settled by a single arbitrator in a binding arbitration administered by the American Arbitration Association ("AAA") in accordance with the United States Commercial Arbitration Rules of the AAA. To learn more about the rules and how to begin an arbitration, you may call any AAA office or go to www.adr.org.
- 3. **Notice of Dispute**. If you have a Dispute, before initiating arbitration, you must send a written notice to <u>starlinkresolutions@spacex.com</u> describing your issue and your desired resolution. If your Dispute has not been resolved within 60 days of submitting a notice, you may initiate arbitration as described above.
- 4. **Arbitration Costs and Fees**. If you commence an arbitration against Starlink pursuant to this binding arbitration clause, Starlink will pay the arbitration fees and expenses imposed by the AAA directly. However, if the arbitrator finds your claim is frivolous or brought for an improper purpose, then Starlink may seek reimbursement of any or all fees and expenses paid to AAA for the arbitration.
- 5. PROHIBITION ON CLASS ARBITRATION. YOU AND STARLINK AGREE THAT NO DISPUTE OR CLAIM MAY BE BROUGHT OR MAINTAINED AS PART OF A CLASS ACTION OR CLASS ARBITRATION OR OTHER REPRESENTATIVE ACTION OR ARBITRATION, REGARDLESS OF WHETHER THE APPLICABLE ARBITRATION RULES WOULD OTHERWISE PERMIT CLASS OR REPRESENTATIVE PROCEEDINGS. ACCORDINGLY, YOU AND STARLINK MAY ONLY PURSUE A CLAIM AGAINST THE OTHER IN AN INDIVIDUAL CAPACITY, AND MAY NOT PURSUE A CLAIM AGAINST THE OTHER ON BEHALF OF ANY OTHER PERSON, AND NO OTHER PERSON MAY PURSUE A CLAIM ON BEHALF OF YOU OR STARLINK AGAINST THE OTHER. AN ARBITRATOR MAY ENTER AN AWARD ONLY IN FAVOR OF THE INDIVIDUAL PARTY

SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT PARTY'S INDIVIDUAL CLAIM.

13. General Provisions.

- Customer Support. Customer support is available for the Services and the Kit on the Starlink Customer Portal and https://support.starlink.com/ for customers who have signed into the Starlink Customer Portal. You acknowledge and agree that Customer support provided over the phone may be recorded for training and quality purposes.
- 2. **Severability**. If any term of this Agreement is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other terms hereof shall remain in full force and effect.
- 3. **Eligibility**. You must be at least 18 years old (or the legal age of majority in your jurisdiction of residence) to enroll in Services.
- 4. **Records**. You should keep copies of these Terms and any sales receipt or other materials relevant to your purchase of the Starlink Kit and Services for your records. Starlink reserves the right to substitute, change, cancel, or add to any part of these Terms at any time upon notice to you and your continued use of the Services constitutes agreement to the updated Terms. Starlink will notify you prior to materially changing its Terms. Visit the Starlink Customer Portal for the most current Terms.
- 5. Electronic Delivery Policy, Customer Consent, and Notices. You consent to receive all agreements, updates, disclosures, policies, notices, and other information (collectively, "Notices") provided by Starlink or its affiliates via paper and/or electronic delivery at Starlink's sole discretion. Starlink may deliver or display Notices to you by email or popup window, or by posting a message on the Services or the Starlink Customer Portal. You may receive periodic texts, emails, or other communications from Starlink, such as notices regarding expiration of your account and changes to these Terms.
- 6. **No Waiver**. No waiver by Starlink of any breach of these Terms will be a waiver of any preceding or succeeding breach. No waiver by Starlink of any right under these Terms will be construed as a waiver of any other right. Starlink will not be required to give notice to enforce strict adherence of these Terms. A waiver must be provided in writing by an authorized representative of Starlink to be effective.

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BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Proposed retroactive Purchasing Agreement with Baxter Healthcare Corporation for dialysis supplies

Recommended Action: Approve

Summary:

Kern Medical requests your Board retroactively approve an Agreement with Baxter Healthcare Corporation for dialysis supplies. The term of the Agreement is from January 12, 2024 through December 31, 2026.

Baxter is the preferred vendor of choice for dialysis supplies in the critical care setting and has been providing the hospital with dialysis supplies for years without a written agreement.

Counsel is unable to approve the Agreement as to form as the Agreement contains unmodified nonstandard terms of the vendor. Staff recently determined the Agreement was not submitted to Counsel for review and/or negotiation. Some of the nonstandard terms include limited indemnification and the Agreement is governed by the laws of the state of Illinois. In addition, these terms were agreed to and the Agreement was signed by a Kern Medical employee who has not been granted signing authority by your Board. Despite this, it is recommended that your Board approve this Agreement as it has been in place for 10 months, the supplies are vital to patient care, and Baxter had no reason to know that the signatory on behalf of Kern Medical was unauthorized.

Therefore, it is recommended that your Board retroactively approve the Purchasing Agreement with Baxter Healthcare Corporation from January 12, 2024 through December 31, 2026.



Dialysis Products Purchase Agreement

KERN MED CTR 1700 MOUNT VERNON AVE BAKERSFIELD, CA 93306-4018 ACCOUNT #: 34174728 Baxter Healthcare Corporation Renal Division One Baxter Parkway Deerfield, IL 60015

Date: December 7, 2023

1. TERM; OWN USE

KERN MED CTR ("Purchaser") and Baxter Healthcare Corporation ("Baxter") are entering into this Dialysis Products Purchase Agreement (the "Agreement") agreeing to be bound by its terms. The proposed arrangement contemplated under this Agreement will be available for Purchaser's consideration for ninety (90) days. The "Start Date" of this Agreement shall be five (5) business days following the day in which this Agreement is fully executed by both parties for orders placed directly through Baxter. Should Purchaser choose to purchase Products through a Baxter authorized distributor, Purchaser acknowledges that Baxter authorized distributors may require up to forty-five (45) additional calendar days to adjust the pricing in their billing system and to notify Purchaser of adjusted pricing. Purchaser understands that the prices a Baxter authorized distributor bills Purchaser for Products are at the Baxter authorized distributor's discretion. The "End Date" of this Agreement shall be on December 31, 2026.

Purchaser shall buy Products only for shipment to, and use by, Purchaser's Member Units and/or their patients. Purchaser shall not buy Products on behalf of, or sell them to, any other person or entity. Purchaser represents and warrants that Purchaser is not purchasing Products under this Agreement from Baxter pursuant to Purchaser's membership with any GPO or utilizing any GPO as its purchasing agent.

2. DEFINITIONS

"AMIA" shall mean the AMIA 2.0 Automated PD System, including the cycler cassette, modem, and modem antenna, if applicable.

"Anniversary Date" shall be Jan 1 of each calendar year following the Start Date of this Agreement.

"Case Price" means the price of a case of Product.

"CRRT" means Continuous Renal Replacement Therapy, which, for purposes of this Agreement, shall include Therapeutic Plasma Exchange ("TPE").

"Disposables" means any product manufactured, sold, or provided by Baxter other than Equipment, CRRT or Parts.

"Each Price" means the price of an individual unit of a Product.

"Equipment" means durable medical equipment or what is referred to in the Terms and Conditions as devices, hardware, instruments, and instrumentation, sold by Baxter.

"Force Majeure" means supply shortage (including but not limited to shortages caused by disruptions of power, energy, utilities, or transportation or lack of raw materials), manufacturing problems, delivery or labor problems, discontinuation of Product line, acts of regulatory or other governmental or quasi-governmental entities, act or threat of terrorist activity or civil disorder, act or threat of war or other hostilities by foreign or domestic parties, acts of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), or any other unforeseen events or causes beyond Baxter's control.

"HD" means Hemodialysis.

"Home Patients" shall mean individuals for which Purchaser holds an active prescription on file with Baxter and is providing Automated Peritoneal Dialysis ("APD"), Continuous Ambulatory Peritoneal Dialysis ("CAPD"), or HD therapy in the individuals' homes.

"HOMECHOICE" and "HOMECHOICE PRO" shall mean the HOMECHOICE and HOMECHOICE PRO Automated PD Systems, including the cycler cassette.

"HOMECHOICE CLARIA" shall mean the HOMECHOICE CLARIA Automated PD System, including the cycler cassette, modem, and modem antenna, if applicable.

"Member Units" means those facilities or units in which Purchaser has at least sixty percent (60%) ownership interest or management control and for which Purchaser can provide written documentation to support such ownership. Member Units are set forth on Schedule B attached hereto. Member Units may be added or deleted from Schedule B upon written notification to Baxter by Purchaser.

"Net Purchases" means the gross sales of purchases for Products (other than Equipment) made by Purchaser (net of any added freight charges, taxes, refunds, credits on Product returns (unless returned due to a product recall) within the applicable reporting period, as invoiced by Baxter or through any Baxter Authorized Distributor.

"Non-Committed Products" means the Products listed on Schedule A identified by the pound sign (#) that are not subject to Purchaser Commitments in Section 4(a).

"Parts" means Equipment components sold or manufactured by Baxter.

"PD" means Peritoneal Dialysis.

"Products" means Disposables, Equipment, Parts, or any combination thereof as listed on Schedule A, which Products may be added or deleted via written notification from Baxter during the term of the Agreement.

"Product Category" means any of the following categories of Products covered by this Agreement: (1) PD Products; (2) HD Products; and (3) CRRT Products.

"Quarter" means the period measured from the Start Date and every three-months thereafter.

"Terms and Conditions" means the applicable Baxter Terms and Conditions (or their equivalent) in effect at the time of Purchaser's order placement as to the Product then being ordered as described in Section 10(a).

"Twelve Month Period" means the twelve-month period measured from the Start Date and every twelve months thereafter.

3. PRICES AND OTHER TERMS:

- a. Prices for Products as set forth on Schedule A shall become effective on the Start Date and, subject to the pricing conditions set forth in the balance of this Section 3, are firm through the date immediately prior to the first Anniversary Date. Effective the first Anniversary Date, and on each subsequent Anniversary Date during the term, prices shall increase in an aggregate amount, net of individual Product code increases or decreases, as determined by Baxter in its discretion, equal to 3%. Such aggregate increase will be defined based on Purchaser's purchases during the twelve (12) month period identified in the prior sentence.
- **b.** Notwithstanding the foregoing, the prices that Purchaser shall pay for Non-Committed Products are those set forth on Schedule A denoted by the pound sign (#). The prices for Non-Committed Products are subject to change by Baxter at any time. Baxter shall endeavor to send written notification to Purchaser thirty (30) days prior to any changes, although circumstances might allow less notice.

- **c.** Member Units located in Hawaii will include an additional pricing premium of ten percent (10%) and accounts located in Alaska will include an additional pricing premium of twenty percent (20%). Such premiums shall be added to all prices listed on Schedule A.
- **d.** Member Units located in Idaho, Montana, Utah, North Dakota, South Dakota, or Wyoming will include an additional pricing premium of ten percent (10%) on all PD Products. Such premium shall be added to applicable prices listed on Schedule A.
- **e.** The listing of Products on Schedule A is subject to discontinuation of a Product at Baxter's sole discretion and/or due to Force Majeure events. All Products are subject to availability based upon Baxter's current Product portfolio.
- **f.** Payment terms are net thirty (30) days from the invoice date. Undisputed invoices paid late are subject to interest as provided in the Terms and Conditions.
- **g.** In the event Purchaser is eligible for price rebates for any Products purchased, the terms of such rebate(s) shall be set forth in a Schedule to this Agreement.

4. PURCHASER AND BAXTER COMMITMENT

- a. PURCHASER COMMITMENT: During each Twelve Month Period of this Agreement, Purchaser shall purchase from Baxter a minimum, excluding Non-Committed Products, if applicable, of the following: 80% of Purchaser's total utilization of PD therapy products (the "Minimum Commitment"). Purchaser agrees to meet not less than semi-annually with a Baxter representative to discuss purchasing performance for the last six (6) month period as it relates to actual purchases versus projected purchases. Purchaser's total PD utilization is subject to audit by Baxter for purposes of determining compliance with the Minimum Commitment in each Product Category.
- **b. BAXTER SUPPLY COMMITMENT:** Except during a Force Majeure event and excluding Products denoted on Schedule A with a plus symbol (+), Baxter shall supply, at a minimum, the amount of PD Products required for Purchaser to meet the PD Minimum Commitment in each Twelve Month Period, not to exceed one hundred percent (100%) of Purchaser's PD Net Purchases from the prior Twelve Month Period ("Supply Commitment"). Purchaser acknowledges that Baxter is under no obligation to supply PD Products in excess of one hundred percent (100%) of the PD Minimum Commitment in any Twelve Month Period.

In order to mutually plan for growth and corresponding increases of Purchaser's PD Minimum Commitment, Purchaser shall meet with their Baxter representative to evaluate historical and expected future purchase performance to forecast on a rolling twelve-month basis. Such non-binding forecasts shall be provided by Purchaser to Baxter on the first day of the Quarter throughout each Twelve Month Period of this Agreement for Baxter validation. Upon mutual written agreement, the parties may modify Purchaser's PD Minimum Commitment.

5. SHORTFALL

a. PD Shortfall: In the event Purchaser fails to meet any of its obligations hereunder at the end of each Twelve Month Period ("Noncompliance"), and such Noncompliance is not cured within thirty (30) days after Baxter's written notice, without otherwise limiting any of its remedies under law or equity, Baxter may require Purchaser to pay Baxter a shortfall as calculated below, with such payment to be made within thirty (30) days of Purchaser's receipt of an invoice from Baxter.

The shortfall calculation is made by determining the amount of purchases that should have been made by Purchaser during the applicable Twelve Month Period in order to meet the Minimum Commitment per applicable Product Category (the "Required Purchase"). The shortfall for the applicable Product Category shall be equal to the difference between the Required Purchase and Purchaser's actual purchases for that Product

Category during that Twelve Month Period multiplied by: i) for the PD Product Category: fifty percent (50%); (the "Shortfall").

6. BREACH AND TERMINATION

If either party asserts that the other party committed a material breach of this Agreement, then the non-breaching party must notify the breaching party in writing of the specific breach and request that it be cured. If the breaching party does not cure the breach within sixty (60) calendar days after receiving written notice, then the non-breaching party may terminate this Agreement without penalty by sending written notice to the breaching party.

7. OFFSETS

Baxter reserves the right, and Purchaser hereby expressly grants Baxter the right, to offset any undisputed amounts necessary to satisfy any past due obligation by Purchaser to Baxter under this Agreement, including, without limitation, those amounts arising from any credits, rebates or other amounts. Such offset and application shall be limited to transactions under this Agreement only, at Baxter's sole discretion, and with subsequent written notice provided to Purchaser with sufficient detail to identify the payment obligation to which the offset was applied. Purchaser understands and agrees that its disclosure obligations referred to in Section 8 below shall apply to all discounts, rebates and other reductions in price earned by Purchaser, and that any offset against any such amounts shall not limit Purchaser's reporting requirements to governmental and any third party payors.

8. DISCOUNTS

All discounts, rebates, bonuses or other reductions in price received by Purchaser from Baxter under the attached Schedule A or elsewhere in this Agreement are "discounts or other reductions in price" to Purchaser under 42 U.S.C. 1320a-7b(b). Purchaser shall appropriately reflect such discounts, rebates or other reductions in price as required by that provision or regulations related thereto.

Notwithstanding any other provision of this Agreement, and except as expressly provided in a Schedule, all other pricing (including rebates and discounts) in the Agreement is established independently for each Product covered by this Agreement and is not conditioned upon any other purchase or performance requirement. The inclusion in this Agreement of pricing for multiple Products is for the convenience of the parties only and does not impose additional conditions for the receipt of the pricing for any Product other than the conditions specifically stated to achieve the pricing for such Product.

9. CONFIDENTIALITY

The parties agree that the terms of this Agreement, and any pricing, attachments, and future changes are confidential, and neither party shall disclose this confidential information to anyone else unless required by a court of competent jurisdiction (in which event the party intending to disclose shall provide the other party with seven (7) days advance written notice) provided, however, that Baxter may disclose such information to any of its affiliates or fiduciaries.

10. GENERAL PROVISIONS

a. <u>Terms and Conditions</u>. The applicable Terms and Conditions in effect on the date of Purchaser's order placement that do not expressly conflict with any terms of this Agreement shall apply and are incorporated by reference herein.

ALL BAXTER SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE APPLICABLE TERMS AND CONDITIONS, WHICH ARE ACCEPTED BY, AND SHALL BE DEEMED BINDING ON, THE PURCHASER, UPON PLACING AN ORDER FOR PRODUCT(S). BAXTER'S TERMS AND CONDITIONS, AS AMENDED FROM TIME TO TIME, ARE AVAILABLE ON BAXTER'S WEBSITE AT https://www.baxter.com/terms-conditions-sale AND ARE

ACCESSIBLE BY PURCHASER. BAXTER RESERVES THE RIGHT AT ANY TIME TO CHANGE THE TERMS AND CONDITIONS WITHOUT NOTICE.

- b. Entire Agreement, Modifications. This Agreement represents the entire Agreement between the parties concerning the Schedule A Products and supersedes all prior written and oral negotiations, representations, and agreements concerning such Products. No changes to this Agreement, including, without limitation, any conflicting or additional terms contained in a purchase order or other document (excluding the Terms and Conditions) shall be valid unless approved in writing by Baxter. Purchaser hereby waives any rights it may have to enforce any additional or conflicting purchase order terms. The parties agree that either of them may utilize a copy of this provision as written evidence of the knowing, voluntary, and bargained for agreement between the parties to waive the right of Purchaser to enforce such additional or conflicting purchase order terms. All schedules to this Agreement are incorporated herein by reference. This Agreement shall not be explained, supplemented, or qualified through trade usage or a prior course of dealing.
- c. Assignment. Neither this Agreement, nor any right or interest herein, may be assigned, delegated or otherwise transferred by either party, in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Baxter may assign, delegate or otherwise transfer its rights and obligations in this Agreement, without Purchaser's consent: (i) to any Affiliate; or (ii) if carried out in connection with a merger, sale, restructuring, divestiture, spin-off or transfer of all or substantially all of the assets or business to which this Agreement pertains. Any assignment, delegation or other transfer without required consent shall be null and void. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and permitted assigns. "Affiliate" means, with respect to any specified party, any other entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified party.
- **d.** <u>Licenses.</u> Purchaser shall maintain all licenses, permits and approvals necessary for the purchase of prescription products (*e.g.*, state pharmacy license, physician's license) and shall promptly forward copies thereof to Baxter upon request.
- **e.** <u>Audit.</u> To the extent required by law, the parties will make available to the Secretary of Health and Human Services, the Comptroller General of the General Accounting Office, or their authorized representatives (collectively the "Government") this Agreement and any books, documents, and records in their possession relating to the nature and extent of the costs of any services hereunder for a period of four (4) years after the provision of said services. Nothing in this paragraph is intended to waive any right either party may have under applicable law or regulations to retain in confidence information included in records requested by the Government.
- **f. Notices.** All notices and other written communication related to this Agreement shall be addressed to the respective party's address listed at the top of this Agreement.
- g. <u>HOMECHOICE/HOMECHOICE PRO/HOMECHOICE CLARIA/AMIA system(s) Rental</u>. In the event Purchaser orders a HOMECHOICE/HOMECHOICE PRO/HOMECHOICE CLARIA OR AMIA system, the Master Rental Agreement attached as a Schedule to this Agreement shall apply with respect to such orders.

As of January 1, 2023, Baxter has no obligation to supply incremental HOMECHOICE/HOMECHOICE PRO Systems (as defined in the Master Rental Agreement), although all HOMECHOICE/HOMECHOICE PRO Systems currently in use by Home Patients may continue to be utilized by those existing active Home Patients.

h. Software.

Purchaser acknowledges that, in addition to the Products provided by Baxter to Purchaser, (i) the Equipment includes certain embedded software and (ii) Baxter is or may be providing Purchaser with certain other software related to the use or operation of the Equipment (all such software, together with any updates,

upgrades, enhancements or modifications provided by Baxter to Purchaser from time to time, being collectively, the "Software").

Baxter and Purchaser expressly agree that the Software is being licensed and not sold (and that the words "purchase", sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Purchaser" or similar or derivative words are understood and agreed to mean "licensee"). Notwithstanding anything to the contrary contained herein, Baxter or its licensor, as the case may be, retains all rights and interest in the Software provided hereunder.

The Software, and all documentation related thereto, whether on disk, in read only memory, on any other media or in any other form, is licensed to Purchaser by Baxter for use only under this Agreement, and Baxter reserves all rights not expressly granted to Purchaser. Purchaser shall not copy, decompile, reverse engineer, disassemble, decode, decrypt, attempt to derive the source code, algorithms, processes or trade secrets of, modify, or create derivative works of the Software or the Equipment, or any part thereof or permit or induce the foregoing and any attempt to do so is a violation of the rights of Baxter and its licensors. Purchaser's rights hereunder may terminate after thirty (30) days written notice from Baxter if Purchaser fails to comply with any term(s) of this license if Purchaser does not cure such failure within thirty (30) days from Baxter's written notice and upon any such termination Purchaser shall cease all use of the Software.

Except for authorized license transfers to the first end user who purchases a Product, Purchaser shall hold in confidence and not sell, transfer, license, loan, make available internally outside of a need-to-know basis or otherwise make available in any form to third parties the Software and related documentation provided hereunder. Such first end user purchaser shall assume the Purchaser's license rights and obligations to such Software and related documentation.

Purchaser shall upon termination of this license, immediately return to Baxter all Software and related documentation provided hereunder and all copies and portions thereof.

Certain of the Software provided by Baxter may be owned by one or more third parties and licensed to Baxter. Accordingly, Baxter and Purchaser expressly agree that such third parties retain ownership of and title to such Software. The warranty and indemnification provisions set forth herein shall not apply to Software owned by third parties and provided hereunder.

Baxter retains full rights of ownership to the Products and associated know-how, trademark, copyright, patent rights, technical information and any and all additional intellectual property related to the designs and specifications for the Products. At no time will such ownership be transferred to Purchaser. Notwithstanding anything to the contrary herein, Baxter retains all right at law and in equity should Purchaser violate this Section.

The Equipment and/or Software may incorporate multiple layers of encryption and authentication technologies and/or other security controls (e.g., passwords, security logging, and/or certificates). These technologies and/or controls may be able to be configured (or reconfigured) by Purchaser to provide the level of security Purchaser deems appropriate. For example, Purchaser may be able to configure such security technologies and/or controls by choosing not to use some or all such security technologies and/or controls, to leave such security technologies and/or controls in their default settings, to leave ports open unnecessarily, or to apply or not apply available updates and Upgrades to the Equipment or Software that affect its security. Purchaser acknowledges that how Purchaser configures (including any configuration that fails to use) such security technologies and controls could impact the operation of the Equipment and/or Software, or the security, confidentiality, integrity, or availability of the Equipment, Software, and/or data. Notwithstanding anything herein to the contrary, including any indemnity obligations, Purchaser assumes all risks associated with, and liability resulting from, Purchaser's configuration of such security technologies and/or security controls. Further, to the maximum extent permitted by law, Purchaser bears all

responsibility associated with, and liability resulting from, security incidents arising from Purchaser's use of the Equipment and/or Software, except solely to the extent such security incident arises from the failure of the security technologies and/or security controls implemented by Purchaser to perform in accordance with their specifications.

Further, Purchaser assumes all risks and full responsibility for maintaining the physical security of the Equipment and/or Software, including with respect to preventing physical tampering that would enable the compromise of security technologies and/or controls, ensuring that only authorized personnel of Purchaser have access to the Equipment and/or Software.

- i. <u>Governing Law.</u> This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to any rules governing conflicts of laws.
- **j. Enforceability.** If any provision of this Agreement is declared void, or otherwise unenforceable, such provision shall be interpreted as closely as possible to the manner in which it was written or, if not possible, such provision shall be deemed to have been severed from this Agreement, and the remainder of the provisions of this Agreement shall otherwise remain in full force and effect.

This Agreement is not valid until signed by Baxter. Any waiver of any of the provisions of this Agreement will not constitute a waiver of any other provision, nor will it constitute a continuing waiver. Both parties agree that a signed facsimile or electronic transmission of signature(s), in whole or in counterparts, is as valid as an original document, and is fully enforceable in accordance with its terms.

IN WITNESS WHEREOF, the undersigned duly authorized representatives of the parties have executed this Agreement on the date below.

KERN MED CTR ("Purchaser")

Signature: Digitally signed by:

Peggy A. Lynch

Name: Marina Awdreas

Date: A. Lynch OU = NA;
Date: A. Lynch OU = NA;
Ullinois, Users, Deerfield
Date: 2024.01.12.10

Date: January 11, 2021

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BAXTER HEALTHCARE CORPORATION ("Baxter")

Schedule A - Product List

KERN MED CTR BAKERSFIELD, CA Account #: 34174728

PRODUCT	PRODUCT DESCRIPTION	PACK FACTOR	PRICE EACH	PRICE CASE
PD .				
PD Solutions				
L5B4825	DIANEAL LOW CAL 1.5% DEX 2L/2L PD SOLUTION	6	\$28.62	\$171.72
L5B9901	DIANEAL LOW CA 1.5% 3L/3L(SYS 2) (2.5 MEQ/L)	4	\$42.78	\$171.12
5B9757	DIANEAL LOW CA 1.5% DEX 3L/5LULTRABAG (2.5 MEQ/L)	4	\$57.26	\$229.04
L5B9770	DIANEAL LOW CA 1.5% DEX 6L/6L(SYS 2) (2.5 MEQ/L)	2	\$60,07	\$120.14
5B976SP	DIANEAL LOW CA 1.5% DEX1.5L/2LULTRABAG (2.5 MEQ/L)	8	\$49.89	\$399.12
5B9768P	DIANEAL LOW CA 1.5% DEX2.5L/3LULTRABAG (2.5 MEQ/L)	5	\$49,66	\$248.30
5B9766	DIANEAL LOW CA 1.5% DX 2L/2LULTRABAG (2.5 MEQ/L)	6	\$45.57	\$273.42
5B9775P	DIANEAL LOW CA 2.5% DEX 1.5L/2L ULTRABAG(2.5MEQ/L)	8	\$39.67	\$317.36
5B9778P	DIANEAL LOW CA 2.5% DEX 2.5/3LULTRABAG (2.5 MEQ/L)	5	\$42.60	\$213.00
5B9776	DIANEAL LOW CA 2.5% DEX 2L/2LULTRABAG (2.5 MEQ/L)	6	\$41.07	\$246.42
5B9758	DIANEAL LOW CA 2.5% DEX 3L/5LULTRABAG (2.5 MEQ/L)	4	\$46.64	\$186.56
5B9795P	DIANEAL LOW CA 4.25% DEX 1.SL/2L ULTRABAG(2.SMEQ/L)	8	\$40.30	\$322.40
5B9798P	DIANEAL LOW CA 4.25% DEX 2.5/3L ULTRABAG (2.5 MEQ/L)	5	\$43.09	\$215.45
L5B9903	DIANEAL LOW CA 4.25% DEX 3L/3L(SYS 2) (2.5 MEQ/L)	4	\$40.93	\$163.72
5B9759	DIANEAL LOW CA 4.25% DEX 3L/SLULTRABAG (2.5 MEQ/L)	4	\$48.06	\$192.24
L5B5203	DIANEAL LOW CA 4.25% DEX 5L/6L(SYS 2) (2.5% MEQ/L)	2	\$45.38	\$90.76
L5B9772	DIANEAL LOW CA 4.25% DEX 6L/6L(SYS 2) (2.5 MEQ/L)	2	\$51.69	\$103.38
5B9796	DIANEAL LOW CA 4.25%DEX 2L/2LULTRABAG (2.5 MEQ/L)	6	\$40.58	\$243.48
L5B9727	DIANEAL LOW CAL (2.5 MEQ/L)PD SOLN 2.5% DEX (2L/3L)	6	\$31.63	\$189.78
L5B4826	DIANEAL LOW CAL 1.5% DEX 5L/6L(SYS 2)	2	\$52.04	\$104.08
L5B9902	DIANEAL LOW CAL 2.5% DEX 3L/3L(SYS 2) (2.5 MEQ/L)	4	\$47.61	\$190.44
L5B5202	DIANEAL LOW CAL 2.5% DEX 5L/6L(SYS 2) (2.5 MEQ/L)	2	\$52.99	\$105.98
L5B9771	DIANEAL LOW CAL 2.5% DEX 6L/6L(SYS 2) (2.5 MEQ/L)	2	\$61.10	\$122.20
L5B9747	DIANEAL LOW CAL 4.25% DEX 2L/3L PD SOLUTION	6	\$28.55	\$171.30
L5B5163	DIANEAL PD-2 1.5% DEX 1L/1L(SYS 2)	12	\$38.94	\$467.28
L5B5166	DIANEAL PD-2 1.5% DEX 2L/3L(SYS 2)	6	\$28.17	\$169.02
L5B5169	DIANEAL PD-2 1.5% DEX 3L/3L(SYS 2)	4	\$46.74	\$186.96
L5B9710	DIANEAL PD-21.5% DEX 6L/6L(SYS 2)	2	\$59.72	\$119.44
L5B5193	DIANEAL PD-2 1.5% DEXTROSE(5L/6L)	2	\$41.24	\$82.48
L5B5194	DIANEAL PD-2 2.5% 5L/6L(SYS 2)	2	\$52.99	\$105,98
L5B5173	DIANEAL PD-2 2.5% DEX 1L/1L(SYS 2)	12	\$41.41	\$496.92
L5B5179	DIANEAL PD-2 2.5% DEX 3L/3L(SYS 2)	4	\$48.62	\$194.48
L5B9711	DIANEAL PD-2 2.5% DEX 6L/6L(SYS 2)	2	\$60.96	\$121.92
L5B5177	DIANEAL PD-2 2,5% DEXTROSE(2L/2L)	6	\$33.24	\$199.44
L5B5183	DIANEAL PD-2 4.25% DEX 1L/1L(SYS 2)	12	\$34,88	\$418.56
L5B5187	DIANEAL PD-2 4.25% DEX 2L/3L(SYS 2)	6	\$28.80	\$172.80
L5B5189	DIANEAL PD-2 4.25% DEX 3L/3L(SYS 2)	4	\$39.92	\$159.68
L5BS195	DIANEAL PD-2 4.25% DEX SL/6L(SYS 2)	2	\$46.30	\$92.60
L5B9712	DIANEAL PD-2 4.25% DEX 6L/6L(SYS 3)	2	\$53,64	\$107.28
5B9868P	DIANEAL PD-2 SOLUTION 1.5% DEX2.SL/3L ULTRABAG	5	\$40.03	\$200.15
5B9857	DIANEAL PD2 SOLUTION 1.5% DEX3L/SL ULTRABAG	4	\$45.62	\$182.48
5B9878P	DIANEAL PD2 SOLUTION 2.5% DEX2.SL/3L ULTRABAG	5	\$40.01	\$200.05

PRODUCT	PRODUCT DESCRIPTION	PACK FACTOR	PRICE EACH	PRICE CASE
5B9858	DIANEAL PD2 SOLUTION 2.5% DEX3L/SL ULTRABAG	4	\$46.64	\$186.56
5B9898P	DIANEAL PD2 SOLUTION 4.25% DEX2.5L/3L ULTRABAG.	5	\$40.84	\$204.20
5B9859	DIANEAL PD2 SOLUTION 4.25% DEX3L/5/L ULTRABAG	4	\$48.06	\$192.24
5B9866	DIANEAL PDII SOLUTION 1.5% DEX2L/2L ULTRABAG	6	\$37.17	\$223.02
5B9876	DIANEAL PDII SOLUTION 2.5% DEX2L/2L ULTRABAG	6	\$38.63	\$231.78
5B9896	DIANEAL PDII SOLUTION 4.25% DEX 2L/2L ULTRABAG	6	\$39.13	\$234.78
L5B4976	EXTRANEAL PD-2 (ICODEEXTRIN)PD SOLN (2.5L/3L)	5	\$130.33	\$651.65
LSB4974	EXTRANEAL PD-2 (ICODEXTRIN)PD SOLN (2L/3L)	6	\$104.31	\$625.86
5B4986	EXTRANEAL PD-2 2,SL/3.0L ULTRABAG	5	\$149.40	\$747.00
5B4984	EXTRANEAL PD-2 2L/2L ULTRABAG	6	\$119.50	\$717.00
Hardware			NEW WORLD	
5C9320L	AMIA CYCLER LEASE	1	\$459.00	\$459.00
5C4406	CYCLER CARRY CASE PERSONAL	1	\$270.00	\$270.00
5C9346	CYCLER TRAVEL CASEAMIA 5C9320 OR KAGUYA T5C8500	1	\$630,80	\$630.80
5C4505	EZ AIDE ASSIST DEVICE	1	\$580,96	\$580.96
5C6M40L	HOMECHOICE CLARIA APD	1	\$405.00	\$405.00
5C7346	HOMECHOICE CLARIA CARRYINGCASEHARD	1	\$529.20	\$529.20
5C8346	HOMECHOICE HARDCASE W/WHEELS	1	\$607.23	\$607.23
5C8310U+	HOMECHOICE PRO LEASE UPGRADEFROM HOMECHOICE CYCLER	1	\$540.00	\$540.00
R5C4522	PATIENT DATA CARD HOMECHOICEPRO	6	\$75.36	\$452.16
5C4471L+	PERSONAL CYCLER - LEASED	1	\$540.00	\$540.00
CONNECTIVITY	SHARESOURCE CONNECTIVITY	1	\$32.40	\$32,40
5C8310L+	U1105 HOMECHOICE PRO CYCLERRENTAL SPECIAL PRICING	1	\$540.00	\$540.00
4994000449	USB PROCARD READER	1	\$2.15	\$2.15
Disposables	A TORRE WELL AND A TORREST OF CONTROL OF THE CONTRO			
5C4464P	12 FOOT DRAIN EXTENSION SET	30	\$8.10	\$243.00
5C4480C	12 FOOT PATIENT EXTENSION SETEASY LOCK CONNECTOR	30	\$10.84	\$325,20
LSC4446	5-PRONG MANIFOLD SET	15	\$25.46	\$381.90
5C5479	AMIA APD CASSETTE	30	\$52.65	\$1,579.50
5C4512	APD DRAIN MANIFOLD	30	\$9.67	\$290.10
R5C4479C +	AUTOMATED PD SET W/CASSETTE4 PRONG	30	\$41.85	\$1,255,50
LSC4366	CAPD DISCONNECT Y-SET	30	\$14.92	\$447.60
5C4366P	CAPD DISCONNECT Y-SET, BULKPACK DISPOSABLE	60	\$12.71	\$762.60
5C4527	CLAMP SHORT NOSE FOR OUTLETPORT	12	\$8.64	\$103.68
5C4136	EASY-LOCK CONNECTOR TO SPIKE ADAPTER SET	12	\$13.02	\$156.24
5C4476	EFFLUENT SAMPLE BAG	6	\$13.74	\$82.44
5C4462	EMPTY STERILE CONTAINER - 3 LITER	48	\$18.06	\$866.88
5C4482	EXTENDED LIFE PD TRANSFER SETMIGRATED	6	\$65.00	\$390.00
5C4456	FLEXICAP DISCONNECT CAP	30	\$4.28	\$128.40
5C4319	IMMOBILIE	30	\$7.29	\$218.70
L5C4531 +	INTEGRATED APD SET W/CASSETTE3 PRONG	30	\$41.85	\$1,255.50
L5K4531+	L5C4531 INTEGRATED APD SET W/CASSETTE 3 PRONG	1	\$58.05	\$58.05
5C4169	LOCKING CAP FOR PERITONEAL DIALYSIS CATH ADAPTER	25	\$7.05	\$176.25
SC4129	LOCKING TITANIUM ADAPTER FORPERITONEAL DIAL CATH	5	\$304.63	\$1,523.15
N5C8305C	LOW RECIRCULATION VOLUME APOSET W/CASSETTE	30	\$93.84	\$2,815.20
5C4449	MINI CAP EXTENDED LIFE PD TRANSFER SET(EASY-LOCK)	6	\$82.87	\$497,22
5C4466P	MINI-CAP, DISCONNECT W/PVP-1 SSOLUTION	60	\$4.86	\$291,60
5C4483	MINICAP EXTD LIFE TRANS SET W/TWIST CLAMP-EX SHORT	6	\$68.01	\$408.06
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SPC4466	MINICAP W / PVP - I SOLUTION	60	\$4.86	\$291.60
5C4145NS	NON-STERILE CYCLER DRAIN SET	30	\$14.13	\$423.90

PRODUCT	PRODUCT DESCRIPTION	PACK FACTOR	PRICE EACH	PRICE CASE
5C4150C	PD TRANSFER SET CHANGE KITWITHOUT CLAMP	20	\$17.81	\$356.20
R5K4479C +	R5C4479C AUTOMATED PD SET W/CASSETTE 4 PRONG	1	\$44.43	\$44.43
5C4957	ULTRA CLAMP	12	\$9.35	\$112.20
HD				
Dialyzers				
103403 #	POLYFLUX 6 H	16	\$74.52	\$1,192.32
11474SL#	REVACLEAR 300 MIGRATED	24	\$20.67	\$496.08
114746L#	REVACLEAR 400	24	\$50.50	\$1,212.00
955543A #	REVACLEAR 500	24	\$59.38	\$1,425.12
955691#	THERANOVA 400 MIGRATED	24	\$16.20	\$388.80
955692 #	THERANOVA 500 US	24	\$18,00	\$432.00
Phoenix Disposa	oles			
114014 #	BICART 1250G	6	\$6.23	\$37.38
109733 #	BICART 720G WITH CAPS	10	\$5.44	\$54.40
114434#	CARTRIDGE 75ML VOLUME	15	\$15.22	\$228.30
114435 #	CARTRIDGE LOW WEIGHT LOWVOLUME	15	\$26.61	\$399.15
106887 #	DIACLEAR ULTRAFILTER	12	\$83.16	\$997.92
109536#	GAMBRO CART ACCESS SITE PRIMELINE	15	\$8.62	\$129.30
101025 #	GAMBRO CARTRIDGE DN PRIME LINE	15	\$6.80	\$102.00
101290#	GAMBRO CARTRIDGE SN CONVERSIONKIT	5	\$12.44	\$62,20
106289#	GAMBRO CARTRIDGE SN PRIME LINE	10	\$12,80	\$128.00
Bloodlines		WAY SAMPLE		
A217YV806#	HEMODIALYSIS BLOOD TUBING SETNIPRO A217YV806 (Y PRIME SET)	24	\$3.72	\$89.28
A209YV803 #	HEMODIALYSIS BLOODLINENIPRO A209Y/V803 Y PORT SALINE	24	\$3.72	\$89.28
955554#	NOVALINE BL 11	24	\$4.05	\$97.20
955555#	NOVALINE BL 12	24	\$4.27	\$102.48
955854#	NOVALINE BL 42	24	\$4.27	\$102.48
955855 #	NOVALINE BL 43	24	\$4.05	\$97.20
Ancillaries		(Barolina)		
105551#	ADAPTOR SP 390 DOUBLE FILTERCONNECTOR	50	\$2.67	\$133,50
TPSURE1#	NIPRO TPSURE+1 (SINGLE PACK)TRANSDUCER PROTECTOR	100	\$1.25	\$125.00
106283#	PRIMING ADAPTOR	100	\$1.89	\$189.00
101739#	SINGLE NEEDLE EXPANSION CHAMBER C-705 MIGRATED	32	\$4.10	\$131,20
114555#	TIP STOP US	200	\$1.94	\$388,00
955825#	U9000 PLUS	16	\$46.01	\$736,16
Needles			<u> </u>	Vante unie se se se se
FD152530BCCAP #	DULL BIOHOLE NEEDLE W/ CAPICK1SG X 1" FIXED BKEYE SCABRMVR	50	\$1.35	\$67.50
FS1525BC #	FS+152530BC SFTY NDL 15G SNG1SG X 1IN. FIXED HUB	500	\$0.81	\$405.00
FS162SBC #	FS+162530BC SFTY NDL SNG16G X 1IN. FIXED HUB	500	\$1.35	\$675,00
FS1725BC #	FS+172530BC SFTY NDL 17G SNG17G X 1IN. FIXED HUB	500	\$0.81	\$405,00
FT152530BCR#	NEEDLE, AVF, TULIP, SAFETOUCH, 15GX1, RH/BE, SOEA/BX, 6BX/CA	300	\$0.81	\$243.00
FT162530BCR #	NEEDLE,AVF,TULIP,SAFETOUCH,16GX1,RH/BE,S0EA/BX,6BX/CA	300	\$0.81	\$243.00
FD152530BC#	NIPRO BIOHOLE DULL NDL15G G X 1IN. ,FIXED HUB, W/BE	50	\$1.35	\$67.50
FD162530BC#	NIPRO BIOHOLE DULL NDL16G X 1".FIXED HUB, W/BE	50	\$1.35	\$67.50
FD172530BC#	NIPRO BIOHOLE DULL NDL17G X 1",FIXED HUB, W/BE	50	\$1.35	\$67.50
FT152530BC #	NIPRO TULIP SAFETY AVE NEEDLE1SG X 1".FIXED HUB,W/BE	300	\$0.81	\$243.00
FT153230BC#	NIPRO TULIP SAFETY AVE NEEDLE15G X 1-1/4",FIXED HUB,W/BE	300	\$0.81	\$243.00
FT142530TP #	NIPRO TULIP SAFETY AVE NEEDLE13G X 1-1/4 , FIXED HUB, TWN PK	125	\$1.35	\$168.75
FT152530TP #	NIPRO TULIP SAFETY AVF NEEDLE15G X 1".FIXED HUB, TWN PK	125	\$1.35	\$168.75
FT162530BC#	NIPRO TULIP SAFETY AVF NEEDLE16G X 1 Inch FIXED HUB W/BE	300	\$0.81	\$243.00
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PRODUCT	PRODUCT DESCRIPTION	PACK FACTOR	PRICE EACH	PRICE CASE
FT162530TP#	NIPRO TULIP SAFETY AVF NEEDLE16G X 1",FIXED HUB,TWN PK	125	\$1.35	\$168.75
FT172530TP#	NIPRO TULIP SAFETY AVF NEEDLE17G X 1",FIXED HUB,TWN PK	125	\$1.35	\$168.75
FT172530BC #	NIPRO TULIP SAFETY AVF NEEDLE17G X 1",FIXED HUB,W/BE	300	\$1.35	\$405.00
FT173230BC#	NIPRO TULIP SAFETY AVF NEEDLE17G X 1/1/4", FIXED HUB, W/BE	300	\$0.81	\$243.00
FT172530BCR#	TULIP AVF 17GX1 300MMTUBO BACKEYE/CLAMP/ROTATOR	300	\$1.35	\$405.00
FT152530TPR #	U0409 NIPRO TULIP SAFETY AVENDL 15GX1" ROTATING HUB,TWN PK	125	\$1.35	\$168.75

Schedule B - Member Units

KERN MED CTR BAKERSFIELD, CA Account #: 34174728

The Member Units to be supplied under this Agreement are as follows:

CUSTOMER	CUSTOMER NAME	CITY	STATE
34174728	KERN MED CTR	BAKERSFIELD	CA

Schedule C - Master Rental Agreement

KERN MED CTR BAKERSFIELD, CA Account #: 34174728

This Master Rental Agreement ("Rental Agreement") covers all Equipment rentals for the HOMECHOICE, HOMECHOICE PRO, HOMECHOICE CLARIA, and/or AMIA Systems (each a "System" and collectively the "Systems"), is between Baxter and Purchaser, and is entered into in connection with the Agreement. Purchaser hereby agrees to the terms and conditions of this Rental Agreement by ordering such Systems from Baxter.

- 1. RENTAL: Baxter shall rent to Purchaser the number of Systems that Purchaser requires for Home Patients under the care, directly or indirectly, of Purchaser's Member Units, subject to Baxter's ability to provide them after its exercise of commercially reasonable efforts. Purchaser shall at all times be obligated to Baxter as the exclusive lessee with respect to each of the Systems that Baxter rents pursuant to this Rental Agreement, regardless whether such Systems are operated at Purchaser's facilities, in the homes of Purchaser's Home Patients, or any other location. The rental program shall begin on the date that is five (5) days after the date of shipment and shall continue until the Systems are returned to Baxter.
- 2. ORDERING A NEW RENTAL SYSTEM: Purchaser shall notify Baxter of each new Home Patient who will be using a rental System. Upon such notification, Baxter will charge Purchaser a one-time new Home Patient handling charge of two hundred dollars (\$200.00), which shall cover System handling, shipment to Home Patient's home location, and pick up of the System at Purchaser's request when the System is no longer required. Baxter requires five (5) business days lead time for all System deliveries.
- **3. MONTHLY RENTAL FEE:** On or before the first day of each month during the term of this Rental Agreement, regardless of whether each System Baxter has delivered at Purchaser's request actually is being utilized by one of Purchaser's Home Patients or Member Units, Purchaser shall pay Baxter without set-off or demand the applicable monthly rental fee for Systems according to the applicable rates set forth on Schedule A of the Dialysis Products Purchase Agreement as well as a monthly connectivity fee for the HOMECHOICE CLARIA and/or AMIA System(s) (the "Monthly Fee") set forth in Schedule A of the Dialysis Products Purchase Agreement. If the initial billing period for which the Monthly Fee is due is less than a full calendar month, the Monthly Fee shall be equal to 1/30th of the Monthly Fee for each day for which the Monthly Fee is due. The last billing at the time of termination will be for a full Monthly Fee for the month in which the date of termination occurs.
- **4. TAXES AND OTHER CHARGES:** Purchaser agrees to pay all federal, state, and local taxes (including any property taxes), license and registration fees, freight, insurance and transportation charges and all similar costs based on Purchaser's possession or use of the Systems, unless Purchaser is exempt from paying any or all taxes that apply to the Systems, in which case Purchaser shall provide Baxter with the proper exemption certificates prior to the Start Date. In the event Baxter pays any taxes based on the Systems, Purchaser shall reimburse Baxter for such payments promptly upon request.
- **5. COMPLIANCE:** Purchaser acknowledges that it is familiar with the applicable laws and the related regulations and rules regarding reporting obligations imposed on the users of the Systems. In this regard, Purchaser agrees to notify Baxter, in writing to Baxter Healthcare Corporation U.S. Renal Division, One Baxter Parkway 6-4E, Deerfield, IL 60015, Attn: Contract Dept., within five (5) business days of the occurrence of any event imposing a reporting obligation on the Purchaser (except for events representing an imminent hazard that requires notification to the FDA within seventy-two (72) hours, in which case, such notice will be delivered, in writing, to Baxter immediately upon occurrence).

- **6. OWNERSHIP OF SYSTEMS; TRUE RENT; SECURITY INTEREST:** Baxter is the owner of the Systems and has title to the Systems. Baxter and Purchaser intend this transaction to be a true rent, in the event this rent is construed or asserted to be a transaction intended as security, Baxter shall have a security interest in and to all of the Systems for the purposes of securing performance of Purchaser's obligations under this Rental Agreement. Purchaser authorizes Baxter to make any public filing it reasonably believes necessary to protect its interest in the Systems and ratifies any such filings made prior to the date hereof. Purchaser shall keep the Systems free and clear of all liens and encumbrances other than those which result from the acts of Baxter.
- **7. POST TERMINATION:** If Purchaser retains possession of any Systems beyond the end of the term of this Rental Agreement, the term shall be extended on a month-to-month basis for as long as Purchaser possesses the Systems. The Total Monthly Fee for each month beyond the original term shall be an amount equal to the thencurrent list price as determined by Baxter in its sole discretion. Either party may terminate such month-to-month term upon sixty (60) days written notice. The terms of Section 8 (b) below shall terminate upon expiration of the original term and shall not be in effect during any extension thereof.

8. WARRANTIES; DISCLAIMER; REPLACEMENT POLICY:

a. Baxter warrants to Purchaser that the Systems will conform to its published specifications and be in good working order when delivered. BAXTER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE EXCEPT THOSE EXPRESSLY SET FORTH IN THE DESCRIPTION AND DIRECTIONS ON THE LABELING OF THE SYSTEMS AND IN BAXTER'S TERMS AND CONDITIONS (THE TERMS OF ANY SUCH WRITTEN LIMITED WARRANTY ARE INCORPORATED HEREIN BY REFERENCE). UNLESS THE SYSTEMS ARE USED IN ACCORDANCE WITH THE DIRECTIONS ON THE LABELING AND THE INSTRUCTIONS ACCOMPANYING THE SYSTEMS, THE WARRANTIES IN SUCH DESCRIPTION, DIRECTIONS AND TERMS AND CONDITIONS ARE VOID AND OF NO EFFECT. BAXTER'S LIABILITY IS LIMITED TO REPAIR OR REPLACEMENT OF THE DEFECTIVE SYSTEMS, AND BAXTER SHALL HAVE NO LIABILITY TO PURCHASER FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH PURCHASER'S SELECTION, POSSESSION, OPERATION OR USE OF THE SYSTEMS.

b. Each of Purchaser's Home Patients using a System will be provided with a Baxter 24-hour phone number (currently 1-800-553-6898) to report operational difficulties. In the event one of the Systems being used by one of Purchaser's Home Patients has an operational problem requiring replacement, Baxter will arrange to have the defective System picked up and a replacement System delivered to the Home Patient the day after Baxter receives notification. The replacement System will thereafter be treated as the original System rented herein. Such replacement System may be refurbished or new, but in any event will meet Baxter's original manufacturer's operational specifications for effectiveness and reliability. Baxter will treat such event as a replacement only if the replacement System is sent to the same location from which the original one was picked up or the Home Patient's then-current home location. During the term, Baxter will repair or replace (at Baxter's option) Systems or part of any Systems, that Purchaser notifies Baxter is not working, if the need for such repair or replacement is not caused by (i) any neglect, or abuse in the operation of a System, or the use of it for a purpose other than that for which it was designed; (ii) repair or service made or attempted by any parties other than Baxter's authorized personnel without Baxter's prior written consent; (iii) alterations, including, without limitation, deviation from Baxter's physical, mechanical, or electrical design of the System; or, (iv) accidents or disasters, which shall include, without limitation, fire, flood, water, wind, lightning, and termination of or surge in electrical current. Purchaser shall be responsible for all consequences of use or operation of such Systems during the time period between Purchasers first realizing that the Systems were not working and Baxter's repair or replacement of it. Purchaser's sole remedy and Baxter's maximum liability to Purchaser for such Systems shall be limited to withholding the applicable Monthly Fees due to Baxter for such Systems during the time period such Systems are out of service.

- c. <u>HomeChoice/HomeChoice PRO/HOMECHOICE CLARIA/AMIA System</u>: Purchaser agrees that, upon one of its Home Patients discontinuing use of a rental System, such System shall promptly be returned to Baxter, prior to Baxter reissuing another System to Purchaser's Home Patient. Purchaser shall directly contact Baxter through its 24-hour phone number (currently 1-800-553-6898). Baxter will arrange to pick up such System and reissue a new rental System to such new Home Patient, per the terms outlined in Section 2 above. Purchaser's failure to comply with any provision in this subsection (c) shall be considered a material breach, resulting in immediate termination of the warranty on the System, and may result in Baxter immediately terminating this Rental Agreement.
- d. Baxter makes available to Purchaser the Adequest Tool for download. This Tool and its content, including the figures, information and calculations contained within ("Tool"), are provided to the user for general information only. The content of this Tool is based on various assumptions and on information that is publicly available and/or provided by third parties (which may include the user). The user must obtain professional or specialist advice before taking any action, or entering into any agreement, on the basis of this Tool. In particular, please note that: (a) the outputs generated by the Tool are the result of deterministic calculations and should be considered as computer-generated forecast guidance general information only; (b) outputs generated by the Tool are dependent on the assumptions made in the Tool as well as on data choices or inputs made by the user; (c) please also note that references are associated with default data only; and (d) on occasion, figures appearing as a total may differ from the sum of the constituents due to rounding. Baxter is not providing any form of medical or clinical advice in relation to the Products, services, or therapies referred to in this Tool, nor any other form of medical or clinical advice.
- **9. LOCATION AND USE OF SYSTEMS:** From the date of receipt of the Systems, Purchaser agrees to use the Systems only for the purposes and according to the instructions indicated on the labeling of, or included with, the Systems. Purchaser shall not modify the Systems without Baxter's prior written consent, and the Systems shall remain personal property at all times, regardless of how it is attached or installed. Purchaser shall not lend the Systems to any party for which Purchaser does not have legal responsibility for its acts and obligations.
- 10. LOSS OR DAMAGE OF SYSTEMS: From the date of shipment of the Systems, in the event of loss, theft, damage or destruction of the Systems, Purchaser will be charged four thousand dollars (\$4,000.00) for HOMECHOICE/HOMECHOICE PRO, ten thousand dollars (\$10,000.00) for AMIA System, eight thousand five hundred dollars (\$8,500.00) for HOMECHOICE CLARIA, and/or six hundred dollars (\$600.00) for the loss, damage, or the failure to return the HOMECHOICE CLARIA or AMIA modem, to be paid net thirty (30) days, and Purchaser's obligations under this Rental Agreement shall not be impaired or alleviated in any way by reason of such loss, theft, damage or destruction.
- 11. INSURANCE: Purchaser agrees, at Purchaser's own cost and expense, to keep the Systems fully insured against destruction and loss for the value of the applicable System as detailed above from the date of shipment of the Systems until the amounts owed under this Rental Agreement are paid in full and the Systems are returned as set forth herein and to have Baxter named as lender loss payee on all such policies. Upon request, Purchaser will provide Baxter with proof of such insurance.
- **12. ASSIGNMENT:** Purchaser has no right to sell, transfer, assign, or sublease (a) the Systems or (b) this Rental Agreement without Baxter's prior written consent. Baxter may sell, assign, encumber, or transfer the payments due under this Rental Agreement to another party without consent from Purchaser. Unauthorized assignments shall render this Rental Agreement immediately void and of no further force or effect.
- **13. DEFAULT:** If Purchaser fails to perform its obligations under this Rental Agreement, Purchaser will be in default. If Purchaser defaults, Baxter can require that Purchaser pay, upon notice (such notice to be in the form of an invoice) the remaining unpaid rent (plus any prior rent obligation remaining unpaid as described in additional provisions) and return the Systems to Baxter in accordance with Section 14 below, in addition to other remedies available to Baxter at law.

- **14. RETURN OF SYSTEMS:** At the end of the term of this Rental Agreement (or any extension thereof), or upon request or demand by Baxter pursuant to the terms of this Rental Agreement, Purchaser shall return the Systems to Baxter in the same condition as when it was delivered to Purchaser, allowing for normal wear and tear, to such place and/or on board such carrier, packed for shipping, shipping and insurance prepaid, as detailed in this Rental Agreement.
- 15. RESPONSIBILITY: Purchaser acknowledges that the selection, possession, operation and use of the Systems are solely the Purchaser's responsibility. Therefore, except for claims, damages or other liabilities arising as a result of Baxter's negligence or misconduct (as determined by a final judgment of a court of competent jurisdiction or a written intentional admission by Baxter) in performing Baxter's obligation herein, Purchaser shall be responsible for all claims, damages and/or other liabilities, costs and expenses (including without limitation lawsuits and claims for personal injury and property damage) arising out of Purchaser's selection, possession, operation and/or use of the Systems and Purchaser agrees to hold Baxter harmless against any and all such claims, damages or other liabilities associated with Purchaser's selection, possession, operation or use of the Systems.
- 16. MISCELLANEOUS: This Rental Agreement is the entire agreement between Baxter and Purchaser relating to the Systems and supersedes all prior rental agreements with respect thereto, and shall supersede all purchase orders, acknowledgment forms or other written documents submitted by Purchaser. No amendment, modification or other changes to this Rental Agreement, including any conflicting or additional terms contained in any purchase order, acknowledgment form or other document submitted by Purchaser, shall be valid unless approved in writing by an authorized representative of Baxter at its corporate headquarters in Northern Illinois. Sections 8(a) (Warranties, Disclaimer, Replacement Policy), 10 (Loss or Damage of Systems) and 15 (Responsibility) shall survive the termination of this Rental Agreement. To the extent required by applicable law, rule or regulation, Purchaser shall properly and accurately disclose and report all amounts paid hereunder on cost reports and other submissions to state or federal healthcare programs.

The value of the use of the Systems in the period of time between the date any System is shipped, if earlier than the Start Date of this Rental Agreement, is equal to the Monthly Fee per Unit of such Systems divided by thirty (30), multiplied by the number of days elapsing between the shipment date of such Systems and the Start Date. This value together with any goods provided at no charge (including any deferred rental fees) or trade-in credit may be a "discount or other reductions in price" under 42 U.S.C. 1320a-7b(b)(3)(A). Purchaser shall appropriately reflect such discount or other reduction in price, and any other discount or reduction in price received on the rental of the Systems, on cost reports or claims submitted by Purchaser under any state or federal program that provides cost or charge-based reimbursement.

Purchaser acknowledges and agrees that Baxter has no role or responsibility in connection with the submission of cost reports, claims or other submissions to state or federal healthcare programs or any disclosure in connection therewith.



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Request to pursue Federally Qualified Health Center certification

Recommended Action: Approve; Approve Federally Qualified Health Center Board Member Application; Direct staff to seek out qualified applicants for the Federally Qualified Health Center Board

Summary:

Clinics with Federally Qualified Health Center (FQHC) certification, administered through the Health Resources and Services Administration (HRSA), are federally funded health centers that serve medically underserved areas and populations. FQHCs provide primary care services regardless of a patient's ability to pay for services. Certification as an FQHC requires satisfying several HRSA regulatory requirements and allows for cost-based reimbursement. FQHC certification requires that these clinics adopt a sliding scale fee based on a patient's ability to pay to ensure access for those seeking services.

Certification as an FQHC will allow Kern Medical to qualify for additional grants and will allow for participation in loan repayment programs, which will assist with provider recruitment. Patient encounters are reimbursed at the Prospective Payment System (PPS) rate that incorporates costs that are not currently accounted for in standard fee for service (FFS) reimbursement rates. FQHC clinics are required to provide basic integrated services, including primary care, limited preventive dental services, behavioral health, substance use disorder services, vision services and select specialty medical services. FQHC certification also allows access to additional funds for graduate medical education.

There are multiple clinics with FQHC certification in Kern County and nearly all designated public hospitals in California operate their network of clinics with FQHC certification. Approval of certification first requires adequate need within the targeted service area. In determining Kern Medical's target service area, an analysis was performed to determine the predominant ZIP codes where patients reside. More than 90% of Kern Medical's patients reside within the following zip codes: 93301, 93304, 93305, 93306, 93307, 93308, 93309, 93311, 93312, and 93313. The population residing in these ZIP codes is 565,002 and 245,954 or 43.53% and are considered by HRSA to be low-income, compared to a statewide average of 28.5% with only 117,596 receiving their health care from an FQHC within these ZIP codes. Other factors of the target service area that support certification include the following:

- 19.99% have less than high school education compared to 15.8% statewide
- 16.69% of adults have been told that they have diabetes, compared to 11.6% statewide
- 40.56% of adults have been told that they have high blood pressure, compared to 27.9% statewide
- 51.65% of adults are obese compared to 27.6% statewide
- 64.68% of adults have had no dental visit in the past year, compared to 35.4% statewide
- 18.29% of adults have delayed or not sought care due to cost compared to 11.8% statewide
- 29.61% have no usual source of care, compared to 25.3% statewide

Board of Governors November 20, 2024 Page 2 of 2

To obtain certification, Kern Medical will become compliant with HRSA requirements at its primary care practice locations, including 1111 Columbus Street, Suite 1000, Suite 2000 and Suite 3000; Kern Medical Reach and Grow and Geriatrics at 820 34th Street; Q Street Imaging Center at 3551 Q street; 9300 Stockdale Physician Offices, Suite 100; and 9330 Stockdale Physician Offices, Suite 300, Suite 400 and Suite 500.

To qualify for FQHC certification, HRSA requires that a dedicated health center board oversee certain functions of the clinic operations. Your Board must delegate certain authorities, including the selection and termination of the FQHC Administrator, adopting and updating FQHC policies, including the sliding fee discount schedule and quality of care audits, determining the scope and availability of services, developing the FQHC financial budget in close coordination with your Board, developing the strategic plan of the FQHC, monitoring utilization patterns, productivity and patient satisfaction, and ensuring that there is a process for hearing and resolving patient grievances. As a governmental entity, your Board would retain authority over the FQHC's financial management, accounting systems and personnel with the exception of the Administrator.

HRSA outlines very specific requirements for the FQHC board. The board must be at least nine members, but no more than 25. Fifty-one (51%) of the board members must receive their primary care from the FQHC. The board must be representative of the individuals served by the health center. No more than half of the board members may derive more than 10% of their income from the health care industry and they cannot be an employee or relative of an employee of the health center or the Kern County Hospital Authority.

The roles and responsibilities of each board specific to the FQHC will be outlined in a co-applicant agreement and defines the relationship between the two boards. The co-applicant agreement cannot allow your Board to override or overrule final approvals of the FQHC board within their delegated authorities. This agreement is required to be included in the application for FQHC certification and will be presented to your Board in December.

Kern Medical clinics that are FQHC certified remain part of the Kern County Hospital Authority and there will be no change in employee status, as they keep the same employer, compensation and benefits. As there is no change to the entity, the activities of the FQHC and its board are subject to the Brown Act, the California Public Records Act, and the Meyers-Milias-Brown Act. SEIU Local 521 will continue as the exclusive employee organization for all represented employees.

Therefore, Kern Medical recommends that your Board approve the request to pursue Federally Qualified Health Center certification, approve the FQHC Board Member Application, and direct staff to seek out qualified applicants for appointment to the FQHC Board.



Federally Qualified Health Center

Federally Qualified Health Center

What defines an FQHC?

- Federally funded health centers that serve medically underserved areas and populations
- Administered through the federal Health Resources and Services Administration (HRSA)
- Must meet HRSA regulatory requirements
- Prospective Payment System Rates based on cost
- Eligible for additional grants

Kern Medical Clinic Patients' Service Area Data

- Zip Codes 93301, 93304, 93305, 93306, 93307, 93308, 93309, 93311, 93312, 93313, 93241
- Total Population: 565,002
- Low-income population: 245,954 (43.53% of population)
 - California 28.5%
- Total Health Center Program (HCP) Patients: 117,596
- HCP Penetration of low-income population: 47.81%
- Low-income not served by health centers: 128,358
- Uninsured not served by health centers: 35,806

Source: GeoCareNavigator.hrsa.gov



Planned Service Locations

- Columbus Clinics 1111 Columbus Street
 - Suite 1000 Pediatrics, OBGYN
 - Suite 2000 Lab, X Ray, Internal Medicine
 - Suite 3000 Family Practice
- Kern Medical Reach and Grow 820 34th Street
- Kern Medical Geriatrics 820 34th Street
- Q Street Imaging Services 3551 Q Street
- 9300 Stockdale Physician Offices
 - Suite 100 OBGYN
- 9330 Stockdale Physician Offices
 - Suite 300 Lab Draw Station
 - Suite 400 Family Medicine, Internal Medicine
 - Suite 500 Pediatrics



FQHC Governance

- HRSA requires a governing board that has specific responsibility for the oversight of the FQHC
- Responsibilities must be delegated to FQHC board by KCHA Board of Governors
 - KCHA Board of Governors retains authority over:
 - Financial management
 - Accounting systems
 - Personnel

FQHC Board Authority

- Approves the selection and termination of the FQHC Administrator,
- Adopts and updating policies for the FQHC, including the sliding fee discount schedule and quality of care audit procedures
- Determines scope and availability of services
- Develops FQHC financial budget in close coordination with KCHA Board
- Develops overall plan and strategic direction of the FQHC
- Monitors service utilization patterns, productivity, and patient satisfaction
- Ensures there is a process for hearing and resolving patient grievances



HRSA Requirements for FQHC Board Composition

- At least 9, no more than 25 members (Recommending 9member board)
- 51% of the board must receive primary care from the organization (at least 1 visit every 24 months)
- Must be representative of the individuals served
- No more than half may derive more than 10% of their income from the health care industry
- May not be an employee or relative of employee of the health center or Hospital Authority

Co-Applicant Agreement

- Delegates required authorities and functions to the FQHC Board
- Delineates roles and responsibilities of each board
- Defines FQHC board selection process
- Required to include Co-Applicant Agreement with FQHC application
- Cannot allow KCHA Board to override or overrule final approvals of FQHC board within their delegated authorities

FQHC FAQs

- Remains part of KCHA the FQHC is not a separate entity
- Operates in compliance with the Brown Act, Public Records Act, Meyers-Milias-Brown Act
- No change to employees' status keep same employer, compensation, and benefits
- SEIU Local 521 continues to represent employees

Requested Approval

- Authorize staff to take the steps necessary to obtain Federally Qualified Health Center certification
- Approve FQHC Board Member Application
- Authorize staff to seek out qualified FQHC board members

Next Steps

- Adopt Resolution to create FQHC Board and appoint initial members
- Approve Co-Applicant Agreement
- Internal and External Communication
- Compliance and HRSA Site Visit Preparation
 - Policy and Procedures
 - Ensure required services are in place
- Application Submission
- On-site HRSA Visit



Kern County Hospital Authority Community Health Center Board

APPLICATION

	APPLICATION		
APPLICATION DEADLINE: Open Applications must be received a	t the address listed below on th	ne application.	
Please fill out all information on this f Mail or deliver your completed app Kern County Hospital Authority ATTN: Chief Executive Officer 1700 Mount Vernon Avenue, Room Bakersfield, CA 93306	orm. If you have questions, ple lication to:		
Last Name	First Name		Middle Initia
Home Address	City	State	Zip Code
Home Phone	Cell Phone		
Email Address (Required)			Date of Birth
Employer	Title		Work Phone
Employer Address	City	State	Zip Code
Please select your race/ethnicity: Black / African American White Native American Asian Pacific Islander Hispanic or Latino)	Please select your Male Female Non-binary Prefer not to s	
e you an employee of Kern Medical	or spouse, child, parent, broth	er or sister by blood or marri	age of such an emp
Yes No			
more than 10% of your annual inco	me derived from the health c	are industry?	
Yes No			
Yes No No No No No No No No	dical?		

CONSENT to PHOTOGRAPHShould I be appointed, I authorize Kern County Hospital Authority to videotape, take a digital image or other image of me, and I agree that the negatives, digital images, video, or photographs may be kept, stored, and used in health center promotion and publications.

	No
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C	hat skills and knowledge would you bring to our board? Please list your experience in any of the following areas: ommunity affairs, local government, finance and banking, legal affairs, and other commercial and industrial concerns, social service agencies within the community.
	BOARD QUALIFICATION CATEGORIES
	I meet the following board-specific qualification categories (mark all that apply):
	Knowledge of healthcare delivery systems Knowledge of healthcare policy and regulatory issues as well as current and projected healthcare trends Experience with managing hospital services and understanding of the healthcare needs of the patient population Experience in advocating for safety net populations including, but not limited to, the pursuit of public funding for the delivery of healthcare services I have been a patient at Kern Medical within the last 24 months
	APPLICANT RESPONSIBILITIES
	I understand that by submitting this application:
	 I am a full-time resident of the County of Kern and at least 18 years of age; I agree to participate as a Member of the Community Health Center Board; I am willing to provide authorization to the Kern County Hospital Authority to conduct necessary background checks; I have submitted with this Application a current resume or curriculum vitae; and I agree to comply with the laws of the state of California as they pertain to conflicts of interest.
	Applicant Signature Date

Expectations of Board Members

- 1. I will share the vision, mission, and work of the health center to the community, represent the organization, and act as a spokesperson.
- 2. I will attend no fewer than 75% of board meetings, committee meetings, and special events.
- 3. I will actively participate in fundraising activities to ensure the stability of the health center.
- 4. I will act in the best interests of the organization and excuse myself from discussions and votes where I have a conflict of interest.
- 5. I will stay informed about what is going on in the organization. I will ask questions and request information. I will participate in and take responsibility for making decisions on issues, policies and other board matters.
- 6. I will work in good faith with staff and other board members as partners toward achieving our goals.
- 7. I will contribute time each month to supporting the health center.
- 8. I will receive, and carefully review, all board meeting materials sent to me prior to each board meeting. I will be fully prepared for these meetings, with relevant questions and suggestions.
- 9. If I do not understand anything in these reports, I will schedule an opportunity to learn.
- 10. If selected, I understand and am willing to accept the responsibilities of a board member.
- 11. In addition, by my signature below, I understand a health center board member may not be an employee of Kern Medical, or spouse, child, parent, brother or sister by blood or marriage of such an employee.

Accepted:		Date:
•	Name and Signature	



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Report on referral to staff to address retroactive contracts and develop a process to minimize the placement of such contracts on future agendas

Recommended Action: Receive and File

Summary:

On March 20, 2024, your Board made a referral to staff to address retroactive contracts and develop a process to minimize the placement of such contracts on future agendas. On April 17, 2024, staff responded to the referral and indicated at that time a follow up report to your Board would be given in approximately six months. Since April 17, the following has been accomplished in order to mitigate the need to process contract agreements retroactively:

- Management has implemented an initiative within the PeopleSoft procurement-to-payment software that will insert vendor contract terms, including maximum payable dollar amounts and termination dates. This process has added greater visibility to contracts that are expiring and have reached or are about to reach the maximum payable for that vendor. If the contract has expired or the contract maximum payable is reached, payments will not be made until a new contract or amendment is in place. Approximately 225 contracts have been entered into the system with an estimated project completion date of February 2025.
- On a regular basis, the contract database is reconciled with the contract terms in the procurement-to-payment software to mitigate any additional risk.
- Management has implemented a reconciliation process to include employment contract terms
 within the payroll software system. This initiative within the UKG payroll software will include
 contract terms, including maximum payable dollar amounts and termination dates. On a regular
 basis, the contract database is reconciled with the payroll roster to ensure accuracy and address
 areas of risk. Automation of this process continues with a completion date of February 2025.
- Actionable agreements are reviewed at weekly executive staff meetings.



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Kern County Hospital Authority Chief Financial Officer Report - September 2024

Recommended Action: Receive and File

Summary:

Kern Medical Operations:

Kern Medical key performance indicators:

- Operating gain of \$67,123 for September is \$41,412 more than the September budget of \$25,711 and \$108,482 less than the \$175,605 average over the last three months
- EBIDA of \$1,777,685 for September is \$124,379 more than the September budget of \$1,653,307 and \$35,993 more than the \$1,741,692 average over the last three months
- Average Daily Census of 181 for September is 16 more than the September budget of 165 and 8 more than the 173 average over the last three months
- Admissions of 868 for September is 25 more than the September budget of 843 and 26 more than the 842 average over the last three months
- Total Surgeries of 516 for September are 15 more than the September budget of 501 and 31 more than the 485 average over the last three months
- Clinic Visits of 19,979 for September are 2,846 more than the September budget of 17,133 and 1,268 more than the 18,711 average over the last three months

The following items have budget variances for the month of September 2024:

Patient Revenue:

Gross patient revenue has an 9% favorable budget variance for the month and a 6% favorable budget variance on a year-to-date basis. The variance is mainly due to a 3.5% charge description master (CDM) price increase that became effective on July 1, 2024 and to a lesser extent, patient volumes. Kern Medical expects strong patient census levels and consistently high gross patient revenue for FY 2025.

Indigent Funding Revenue:

Indigent funding has a favorable budget variance for the month and on a year-to-date basis. Additional revenue has been recognized based on favorable changes in estimates for the Enhanced Payment Program (EPP) from increased payments by the California Department of Health Care Services (DHCS) recognizing cost increases and certain structural payment deficits for the state's designated public healthcare systems. The EPP program received an increase for calendar year (CY) 2024 and the DHCS is working with the Centers for Medicare and Medicaid Services (CMS) to propose additional increases for CY 2025.

Other Operating Revenue:

Other operating revenue is under budget on a month-to-date and on a year-to-date basis due to the fact that items such as medical education funding, grant funding, and Proposition 56 funding are received quarterly or otherwise periodically. Therefore, actual month-to-date and year-to-date revenue compared to the budget fluctuates throughout the year.

Other Non-Operating Revenue:

Other non-operating revenue is under budget for the month and year-to-date. Revenue received for miscellaneous items such as providing out-of-network physician services is not received consistently throughout the year. Therefore, the actual dollar amount recorded for this line item may fluctuate vs. budget on a monthly basis but should align with budget on a year-to-date basis by year-end.

Salaries Expense:

Salaries expense is 2% over budget for the month. On a year-to-date basis salaries expense is under budget by 2% because of an over accrual for physician relative value unit (RVU) payments in June 2024.

Benefits Expense:

Benefits expense is 0.2% over budget for the month. Year-to-date benefits expense is at its budgeted dollar amount.

Nurse Registry Expense:

Nurse registry expense is 0.4% under budget for the month and 9% over budget year-to-date. In the aftermath of the COVID-19 pandemic, the market rate charged for nurse registry services stabilized. Therefore, the FY 2025 budget for registry expense has been adjusted down accordingly.

Medical Fees:

Medical fees are 15% under budget for the month because of the reduction in accruals for several physicians that are no longer providing services for Kern Medical. On a year-to-date basis medical fees are 0.8% over budget because of higher-than-average monthly fees paid to the Acute Care Surgery Medical Group, the Locum Tenens physician staffing agency, and various physicians. The Acute Care Surgery Medical Group is engaged to help support trauma services at Kern Medical.

Other Professional Fees:

Other professional fees have an unfavorable budget variance for the month and on a year-to-date basis. The variance is due to higher-than-average legal fees, physician recruiting expenses, and the use of contracted technicians in the surgery department.

Supplies Expense:

Supplies expense is over budget for the month and year-to-date primarily due to higher-than-average patient volumes and increases in medical supplies and pharmaceuticals expenses. In addition, expenses for the annual flu vaccination campaign were paid during the month.

Purchased Services:

Purchased services are over budget for the month and on a year-to-date basis because of under accruals in prior months for software maintenance costs, ambulance fees, and Signature Performance, Inc. Signature Performance consultants are engaged to support patient health record coding.

Other Expenses:

Other expenses are over budget for the month and on a year-to-date basis due to higher-than-average advertising costs and higher-than- average electricity costs, and repairs and maintenance expenses.

Kern County Hospital Authority Chief Financial Officer Report – September 2024 Page 3 of 3

Interest Expense:

Interest expense is over budget month-to-date and year-to-date due to higher than anticipated pension obligation bond (POB) interest. In addition, a change in the treatment of accounting for leases under GASB 87 was implemented in 2022 and requires leases to be set up as assets at fair market value and amortized over time. Corresponding right-of-use liabilities are also set up for leases with applicable interest expense accrued. The net effect of the implementation of GASB 87 is minimal. The decrease in lease expense under the other expenses section of the income statement is offset by increases in amortization expense and in interest expense.

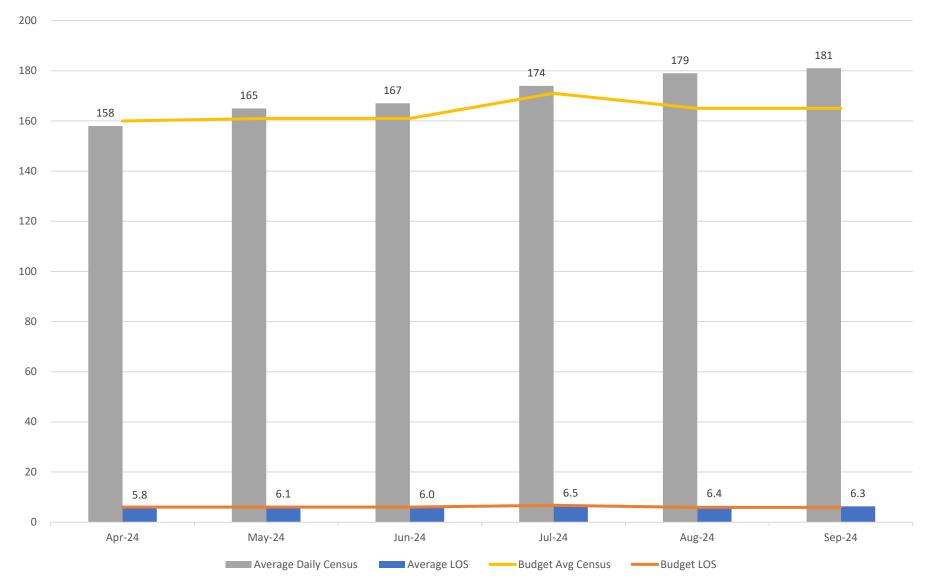
Depreciation and Amortization Expense:

Depreciation and amortization expenses are under budget for the month and on a year-to-date basis. The variance is due to the closure of purchase orders for equipment during previous months and the subsequent reduction in the depreciation accrual.



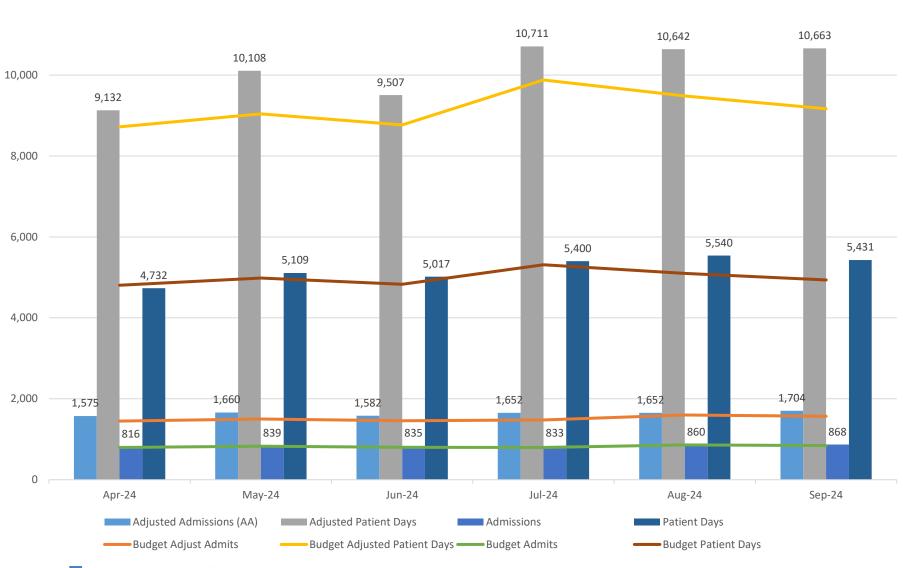
BOARD OF GOVERNORS' REPORT KERN MEDICAL – SEPTEMBER 2024

Census & ALOS



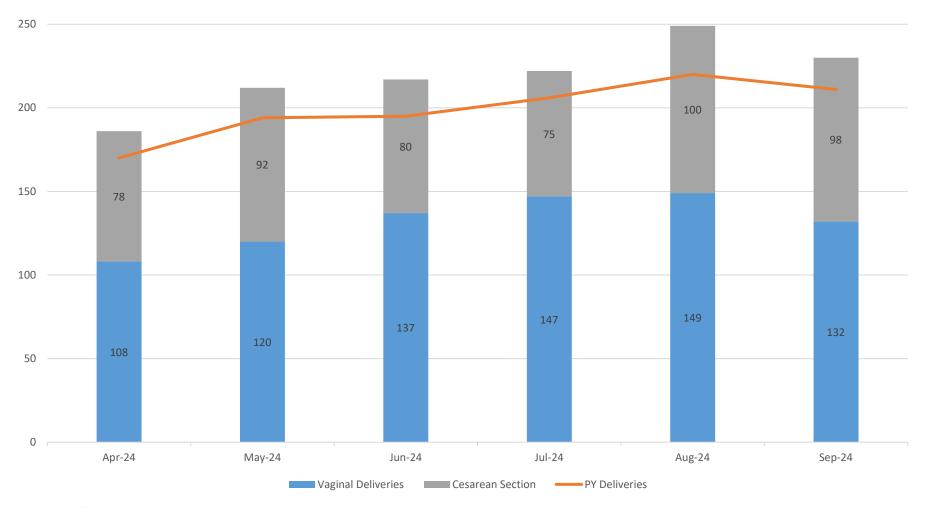


Hospital Volumes



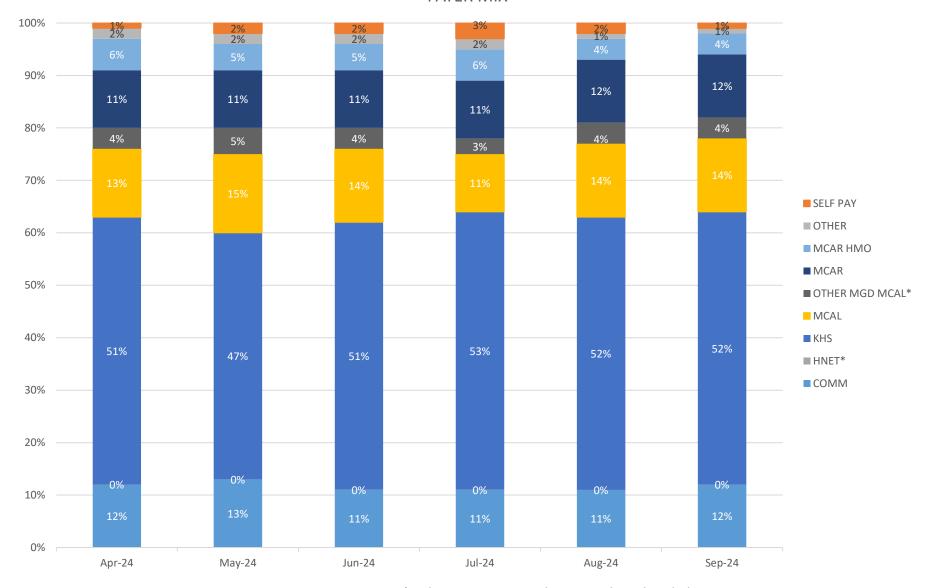


12,000





PAYER MIX

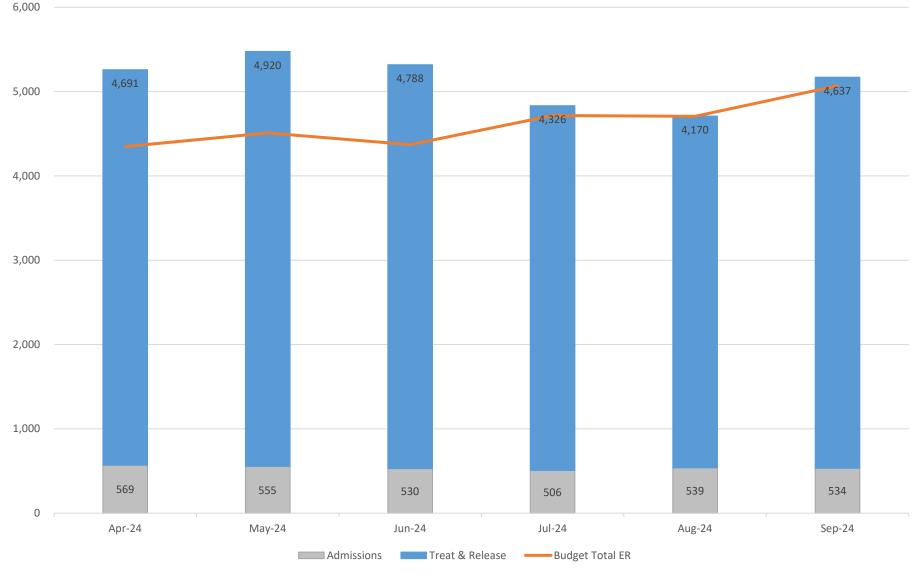




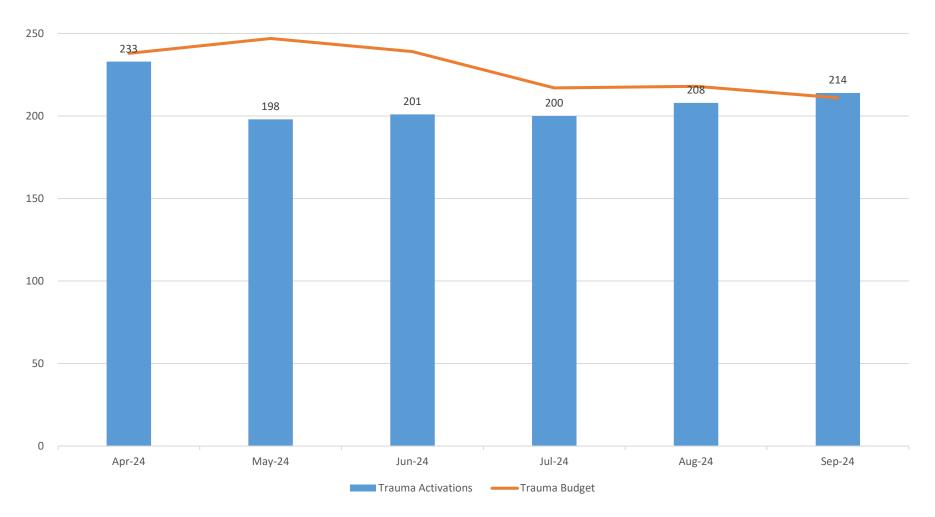
Health for Life.

*Indicates commercial managed Medi-Cal plans transitioning to Other commercial managed Medi-Cal plans starting Jan 1, 2024

Emergency Room Volume

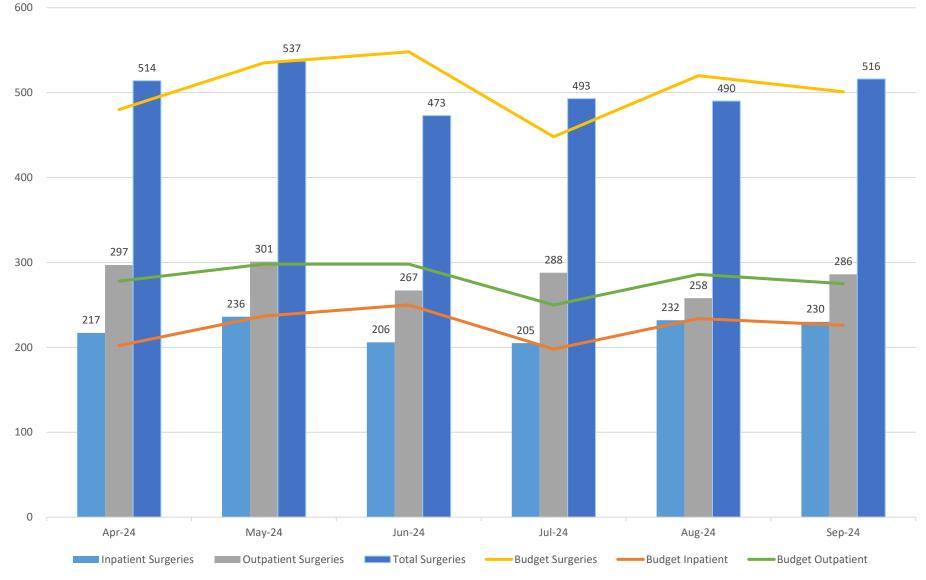






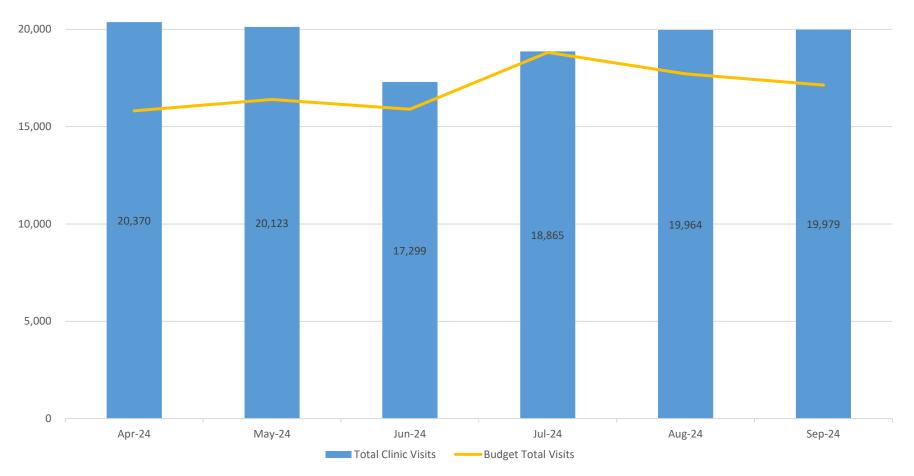


Surgical Volume



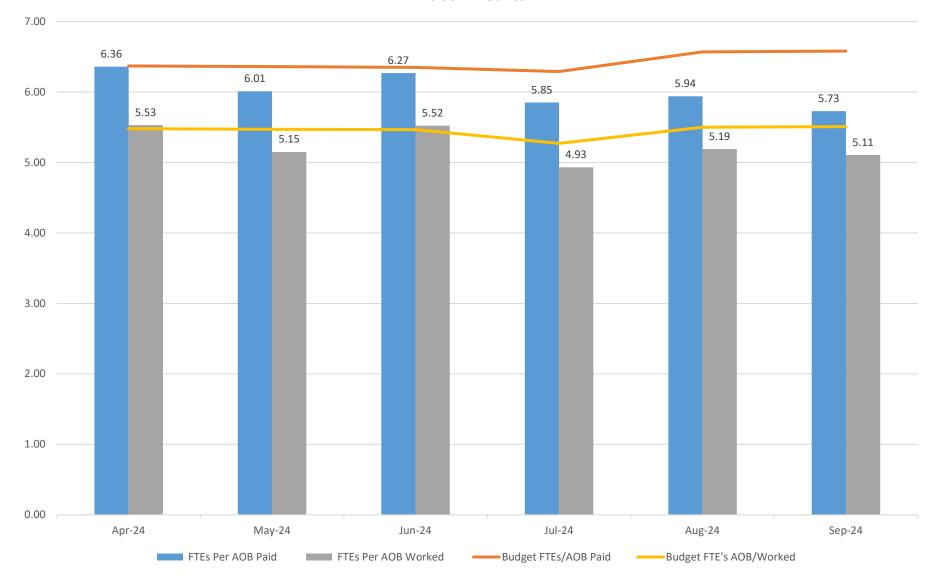


25,000

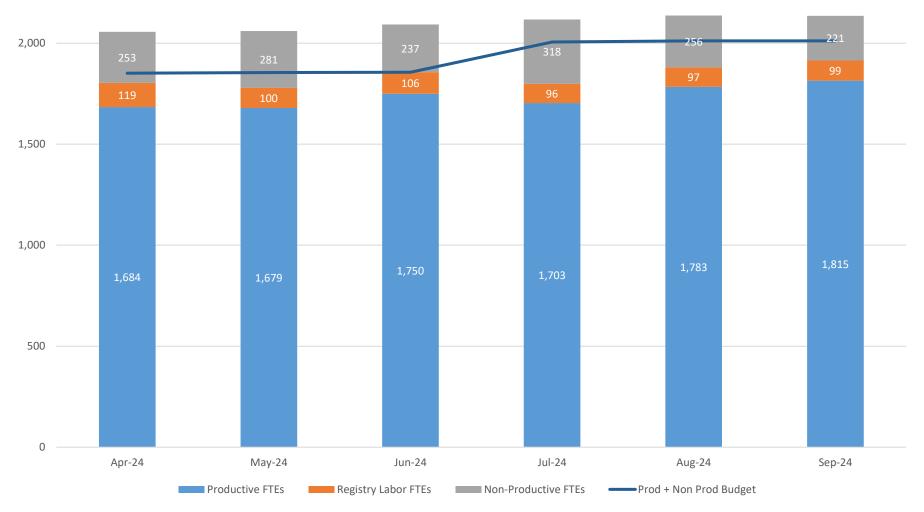




Labor Metrics

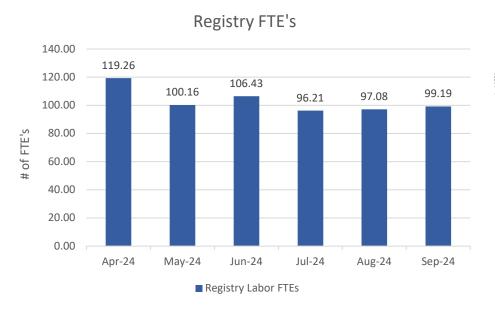








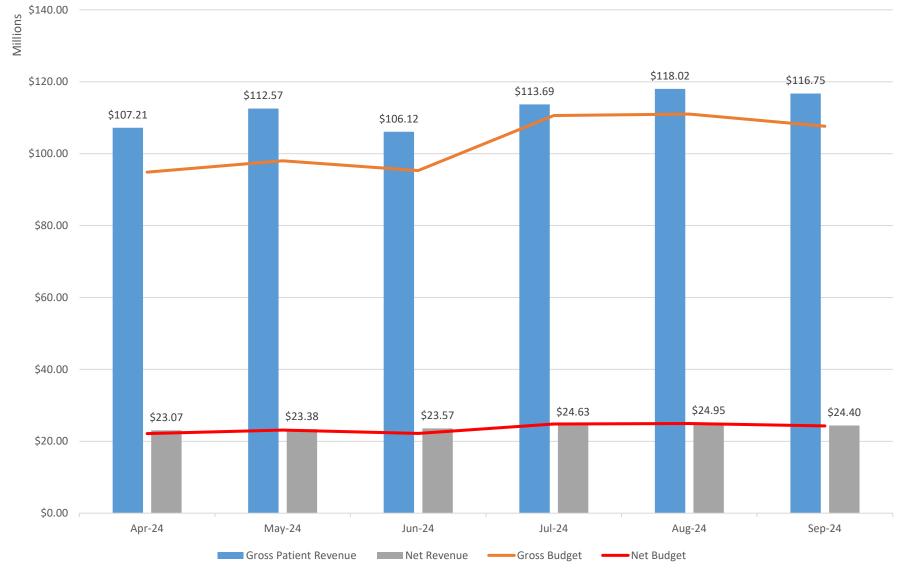
Slide 11



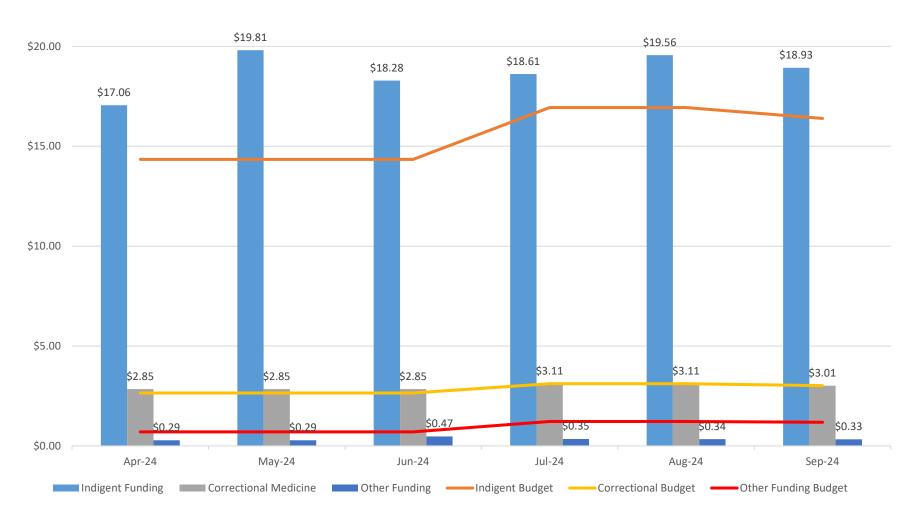




Patient Revenue

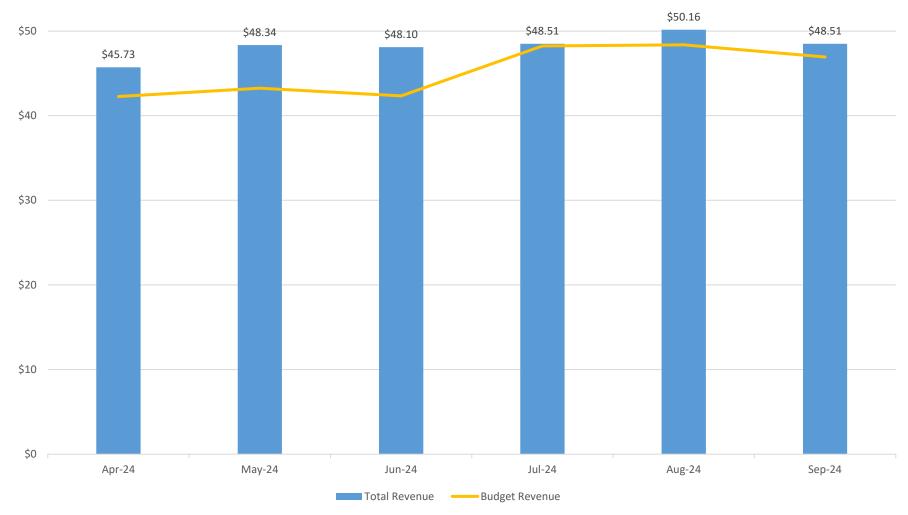






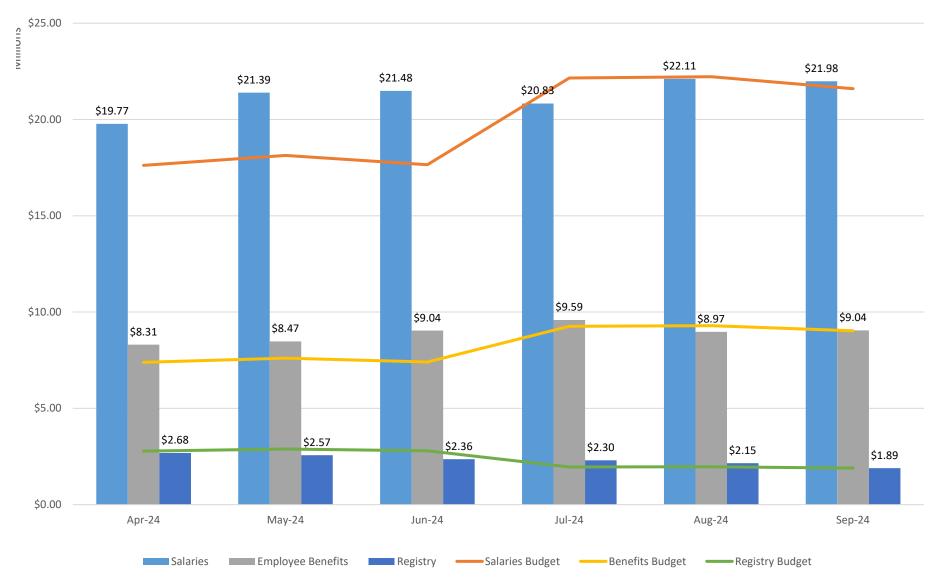


\$60



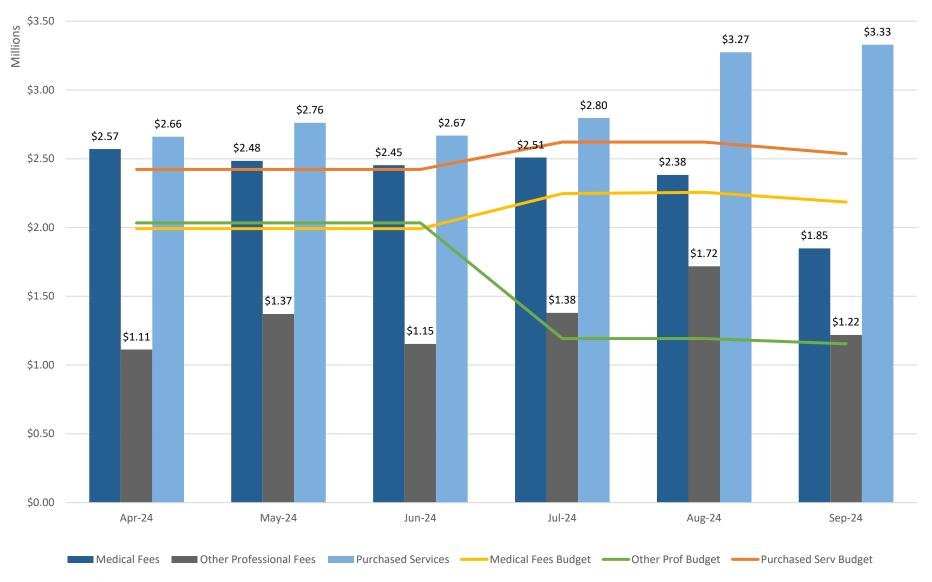


Expenses

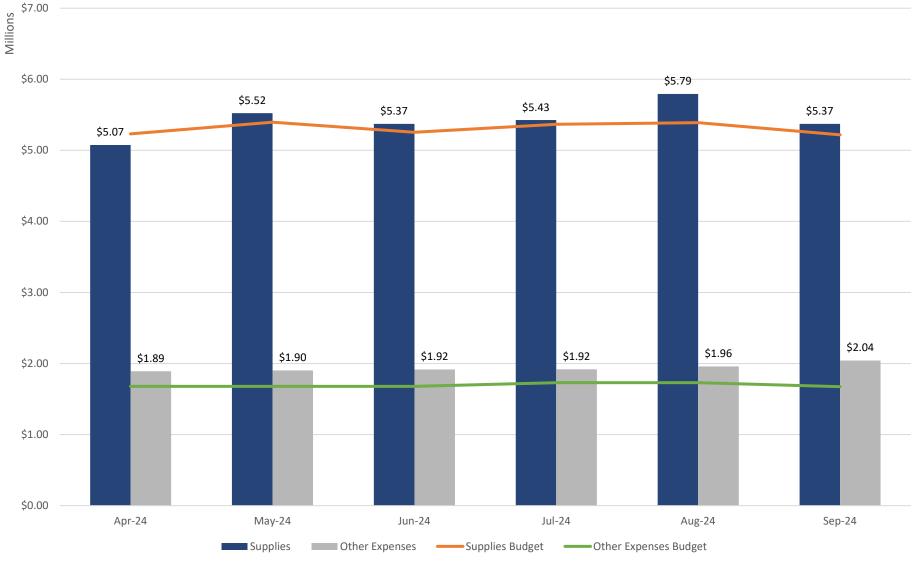




Expenses

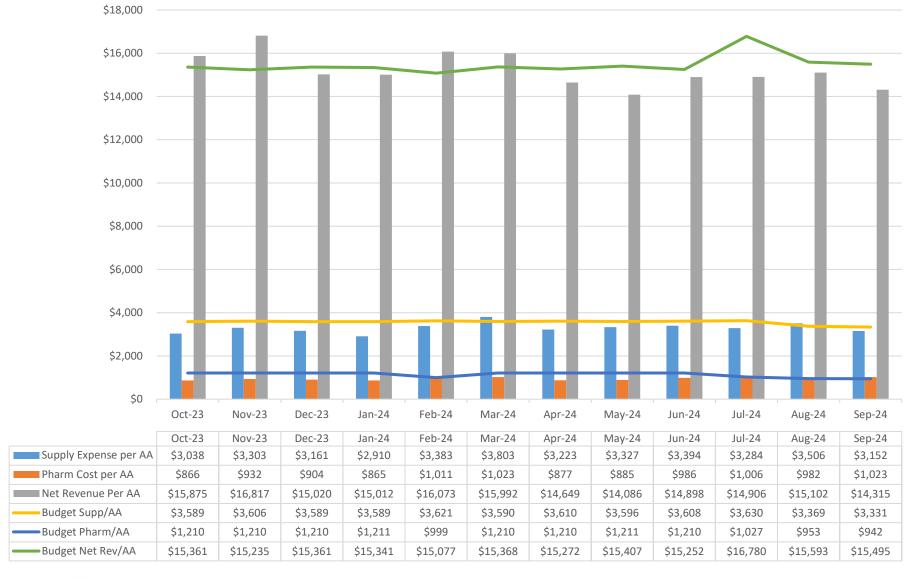






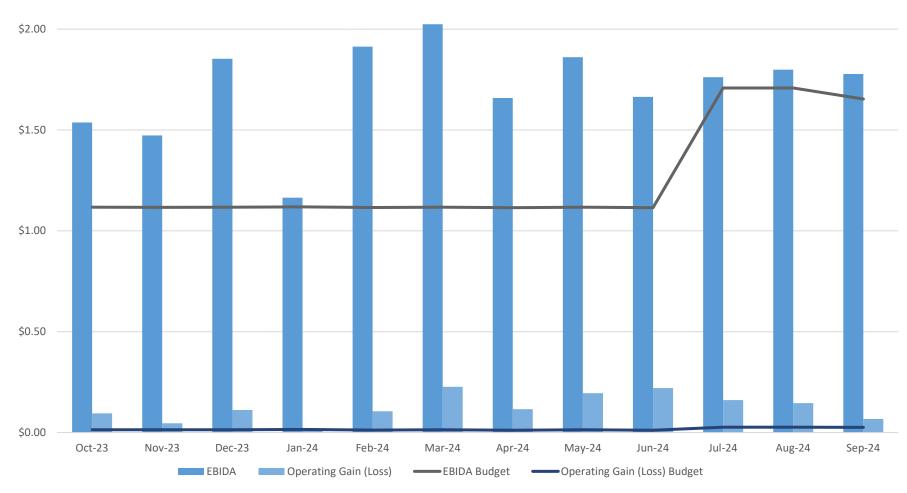


Operating Metrics

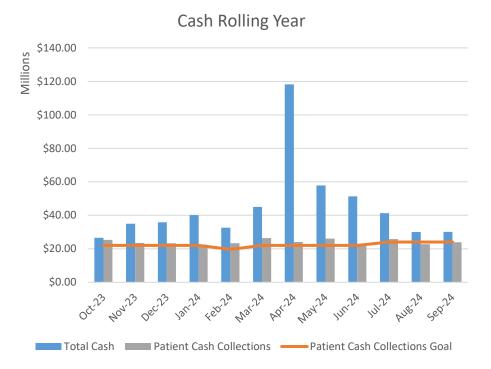


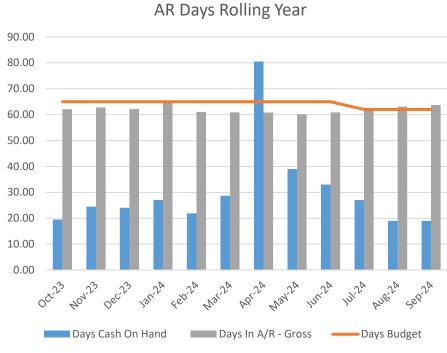














KERN MEDICAL

3-Month Trend Analysis: Revenue & Expenses

September 30, 2024

					BUDGET	VARIANCE		PY
	JULY	AUGUST	9	SEPTEMBER	SEPTEMBER	POS (NEG)	S	EPTEMBER
Gross Patient Revenue	\$ 113,685,608	\$ 118,020,779	\$	116,750,736	\$ 107,621,417	8%	\$	105,308,360
Contractual Deductions	(89,056,269)	(93,073,447)		(92,353,482)	(83,350,533)	11%		(80,920,773)
Net Revenue	24,629,340	24,947,332		24,397,253	24,270,883	1%		24,387,587
Indigent Funding	18,613,956	19,560,940		18,929,942	16,389,194	16%		15,669,352
Correctional Medicine	3,114,656	3,114,656		3,014,183	3,014,183	0%		2,608,481
County Contribution	294,244	276,178		285,211	281,304	1%		285,211
Incentive Funding	53,125	60,706		44,431	904,110	(95%)		0
Net Patient Revenue	46,705,321	47,959,813		46,671,020	44,859,674	4%		42,950,630
Other Operating Revenue	1,789,740	2,187,714		1,824,236	2,064,680	(12%)		1,892,709
Other Non-Operating Revenue	12,276	11,804		11,766	18,384	(36%)		14,895
Total Revenue	48,507,337	50,159,331		48,507,022	46,942,738	3%		44,858,234
Expenses								
Salaries	20,830,249	22,110,133		21,982,828	21,596,299	2%		19,254,350
Employee Benefits	9,590,201	8,971,277		9,044,281	9,028,706	0%		8,679,863
Registry	2,298,433	2,152,923		1,890,280	1,897,121	(0%)		2,760,925
Medical Fees	2,508,531	2,381,665		1,848,647	2,184,915	(15%)		2,148,823
Other Professional Fees	1,379,805	1,717,388		1,219,003	1,154,228	6%		1,162,032
Supplies	5,425,778	5,792,345		5,372,273	5,217,099	3%		5,087,961
Purchased Services	2,795,745	3,274,927		3,329,294	2,536,504	31%		2,373,485
Other Expenses	1,917,166	1,959,211		2,042,731	1,674,561	22%		1,643,846
Operating Expenses	46,745,908	48,359,869		46,729,337	45,289,431	3%		43,111,285
Earnings Before Interest, Depreciation,								
and Amortization (EBIDA)	\$ 1,761,429	\$ 1,799,462	\$	1,777,685	\$ 1,653,307	8%	\$	1,746,950
EBIDA Margin	4%	4%		4%	4%	4%		4%
Interest	282,332	337,180		393,353	251,271	57%		230,973
Depreciation	681,729	679,421		682,547	714,280	(4%)		855,178
Amortization	636,786	636,786		634,662	662,045	(4%)		564,424
Total Expenses	48,346,755	50,013,256		48,439,900	46,917,027	3%		44,761,859
Operating Gain (Loss)	\$ 160,582	\$ 146,075	\$	67,123	\$ 25,711	161%	\$	96,375
Operating Margin	0.33%	0.29%		0.14%	0.05%	152.6%		0.2%



KERN MEDICAL

Year to Date Analysis: Revenue & Expenses

September 30, 2024

	ACTUA	ACTUAL		VARIANCE	PY		PY VARIANCE
	FYTD		FYTD	POS (NEG)		FYTD	POS (NEG)
Gross Patient Revenue	\$ 348,457	7,123 \$	329,267,864	6%	\$	319,032,210	9%
Contractual Deductions	(274,483	3,198)	(255,247,264)	8%		(246,034,133)	12%
Net Revenue	73,973	3,925	74,020,600	0%		72,998,077	
Indigent Funding	57,104	1,838	50,260,194	13.6%		47,842,249	19%
Correctional Medicine	9,243	3,496	9,243,496	0%		7,825,442	18%
County Contribution	855	,633	862,665	(1%)		855,633	0.00%
Incentive Funding	158	3,262	2,772,603	(94%)		0	0.0%
Net Patient Revenue	141,336	5,154	137,159,557	3%		129,521,401	9%
Other Operating Revenue	5,801	1,691	6,331,684	(8%)		5,366,017	8%
Other Non-Operating Revenue	35	,846	56,378	(36%)		101,144	(65%)
Total Revenue	147,173	3,690	143,547,620	3%		134,988,563	9%
Expenses							
Salaries	64,923	3,209	65,972,785	(1.6%)		57,824,441	12%
Employee Benefits	27,605	,759	27,580,390	0.1%		24,782,165	11%
Registry	6,341	L , 636	5,809,984	9%		7,510,203	(16%)
Medical Fees	6,738	3,843	6,687,622	1%		6,445,027	5%
Other Professional Fees	4,316	5,195	3,539,631	22%		6,186,877	(30%)
Supplies	16,590),396	15,973,338	4%		15,207,552	9.1%
Purchased Services	9,399	9,967	7,778,612	21%		7,546,166	25%
Other Expenses	5,919	,108	5,135,320	15%		4,987,991	19%
Operating Expenses	141,835	5,114	138,477,681	2%		130,490,422	9%
Earnings Before Interest, Depreciation,							
and Amortization (EBIDA)	\$ 5,338	3,576 \$	5,069,939	5%	\$	4,498,141	19%
EBIDA Margin	4%		4%	3%		3%	9%
Interest	1,012	2,865	770,563	31%		680,977	49%
Depreciation	2,043	3,697	2,190,459	(7%)		2,084,697	(2%)
Amortization	1,908	3,234	2,030,272	(6%)		1,583,818	20%
Total Expenses	146,799	9,911	143,468,974	2%		134,839,915	9%
Operating Gain (Loss)	\$ 373	3,780 \$	78,645	375%	\$	148,648	151%
Operating Margin	0.3%		0.1%	363.6%		0.1%	131%



KERN MEDICAL BALANCE SHEET

	SEF	PTEMBER 2024	SEP	ΓEMBER 2023		
ASSETS:						
Total Cash	\$	30,133,835	\$	49,067,212		
Patient Receivables Subtotal		252,863,198		252,080,496		
Contractual Subtotal		(204,114,626)		(188,654,910)		
Net Patient Receivable		48,748,573		63,425,585		
Total Indigent Receivable		248,501,907		221,512,514		
Total Other Receivable		29,522,878		16,385,817		
Total Prepaid Expenses		7,321,683		6,197,653		
Total Inventory		4,727,529	5,574,431			
Total Current Assets		368,956,406		362,163,212		
Deferred Outflows of Resources		112,536,013		105,241,458		
Total Land, Equipment, Buildings and Intangibles		270,188,249		254,250,638		
Total Construction in Progress		10,709,459		13,234,078		
Total Property, Plant & Equipment		280,897,708		267,484,715		
Total Accumulated Depr & Amortization		(173,637,123)		(159,076,621)		
Net Property, Plant, and Equipment		107,260,585		108,408,094		
Total Long Term Assets		112,536,013		105,241,458		
Total Assets	\$	588,753,004	\$	575,812,764		



KERN MEDICAL BALANCE SHEET

	SEP1	EMBER 2024	SEPT	EMBER 2023
LIABILITIES & EQUITY:				
Total Accounts Payable	\$	5,698,081	\$	11,541,961
Total Accrued Compensation		31,618,840		33,576,155
Total Due Government Agencies		4,527,312		15,380,580
Total Other Accrued Liabilities		52,018,814		28,276,695
Total Current Liabilities		93,863,047		88,775,391
Unfunded Pension Liability		345,399,109		284,243,193
Other Long-Term Liabilities		81,166,815		134,837,243
Total Long-Term Liabilities		426,565,924		419,080,436
Total Liabilities		520,428,971		507,855,827
Total Net Position		68,324,033		67,956,937
Total Liabilities and Net Position	\$	588,753,004	\$	575,812,764



KERN MEDICAL STATEMENT OF CASH FLOWS

	Fiscal Year-to-Date	Fiscal Year-End
	September 2024	June 2024
CASH FLOWS FROM OPERATING ACTIVITIES		
Cash received for patient/current services	\$ 73,099,244	\$ 293,523,533
Cash received for other operations	28,203,445	233,602,712
Cash paid for salaries and benefits	(83,110,271)	(339,411,493)
Cash paid for services and supplies	(55,376,011)	(186,981,598)
Net cash (used in) provided by operating activities	(37,183,595)	733,154
CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES		
Cash (provided to) received from various County funds	-	- .
Interest paid - pension obligation bond	-	420,331
Principal paid - pension obligation bond	-	(1,062,281)
Interest paid - line of credit	-	- ,
Line of credit payment	20,000,000	
Net cash provided by (used in) noncapital financing activities	20,000,000	(641,950)
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVIT	IES	
Acquisition or construction of capital assets	(3,038,843)	(18,896,864)
Payments on right-of-usage lease liability	(745,764)	3,896,089
Interest paid - right-of-usage lease liability	(2,311)	31,211
Payments on SBITA liability	(188,302)	(752,150)
Interest paid - SBITA	(156)	2,013
Net cash used by capital and related financing activities	(3,975,377)	(15,719,700)
CASH FLOWS FROM INVESTING ACTIVITIES Interest on bank deposits and investments	<u> </u>	
NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS	(21,158,972)	(15,628,497)
CASH AND CASH EQUIVALENTS, beginning of year	51,292,807	66,921,303
CASH AND CASH EQUIVALENTS, year-to-date	\$ 30,133,835	\$ 51,292,807





BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

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.



BOARD OF GOVERNORS KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING

November 20, 2024

Subject: Monthly report on What's Happening at Kern Medical Center

Recommended Action: Receive and File

Summary:

Each month Kern Medical will be sharing a report with your Board on "What's Happening" in and around Kern Medical.

Therefore, it is recommended that your Board receive and file the attached report on What's Happening at Kern Medical.



What's Happening?

Breast Cancer Awareness with Public Health



In partnership with Links for Life and Kern County Public Health, we held a brief press conference to raise breast cancer awareness and celebrate local survivors. Following the press conference, we hosted a community walk to further support the cause.

Resource Fair for Addiction Recovery Services



Kern Medical was part of the Kern Behavioral Health & Recovery Services (BHRS) Recovery Resource Fair at Millcreek Park, where we distributed valuable education, resources and prizes to our community.

NAMI Walk





Kern Medical is grateful to have been part of the National Alliance on Mental Illness (NAMI) Walk again this year, standing alongside our community to raise awareness for mental health initiatives that make a real difference in the lives of so many. Kern Medical was even awarded for the Most Creative Booth!

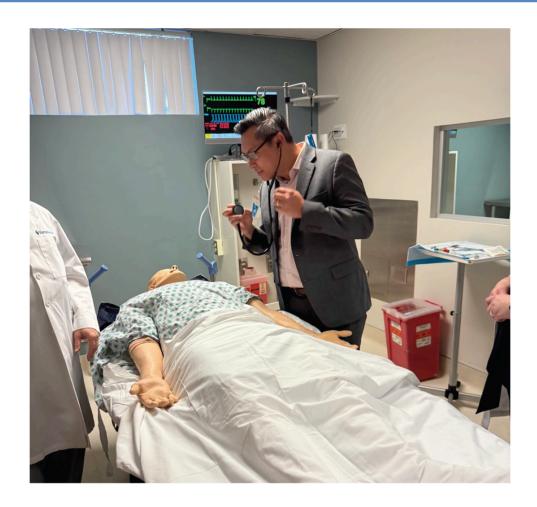
Lace'n It Up - Breast Cancer Awareness Walk





Kern Medical was proud to attend the Lace'n It Up Breast Cancer Awareness Run/Walk at Riverwalk, joining our community to show support, raise awareness, and honor those affected by breast cancer.

Congressman Vince Fong Visit



Congressman Vince Fong toured various departments and clinics, including our Simulation Center (pictured here) and our Medication Assistance and Recovery Clinic (MARC), where he had the opportunity to see our dedication to delivering compassionate, accessible care for individuals on their path to recovery.

PROUD TRICK OR TREAT SPONSOR



We are so thankful to Dr. Espalin-Pardo and Dr. Panithi from our outpatient pediatrics team for representing Kern Medical at the Safe Halloween event at the Kern County Museum! Their upbeat personalities helped make the event a memorable and fun experience for local families.



Open Enrollment Benefits Fair









Kern Medical Human Resources hosted an Open Enrollment Benefits Fair for all employees. The fair consisted of numerous local vendors, raffles, giveaways, flu shots on site, and snacks. Open Enrollment information with benefits vendors were also on site to answer any questions from staff. Attendees were even entered into a raffle to win some great prizes.

Kern Medical Halloween Festivities



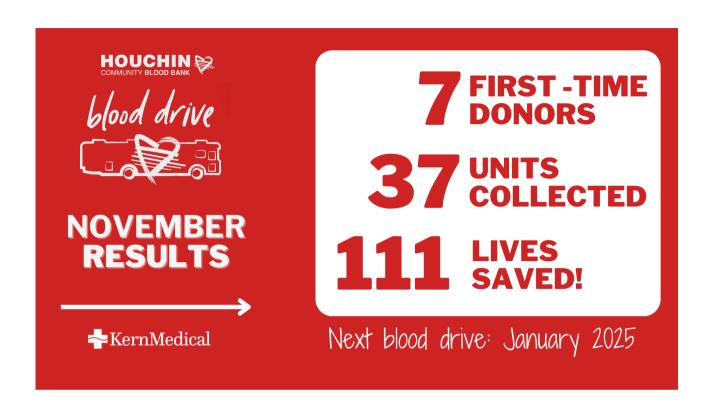






Our employees always go above and beyond - and Halloween is no exception. Kern Medical hosted costume and pumpkin decorating contests on October 31st and held a celebration in the courtyard at lunch. Winners received some Kern Medical swag and donuts!

Houchin Blood Drive



Kern Medical hosted a blood drive with our partners Houchin Blood Bank for the final time this year. Houchin collected 37 units for a total of 111 lives saved in our community!

Columbus Clinic Health Fair



HEALTH FAIR

A fun-filled community health event with a variety of vendors, food and health information and much more!



Saturday November 9th





1111 Columbus St. Bakersfield, CA 93305

Love Your Park



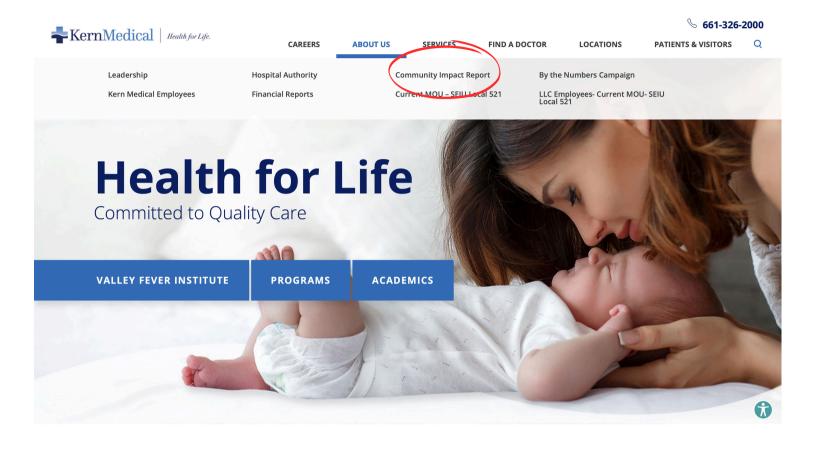
Riverview Park (401 Willow Drive) Bakersfield, CA 93308

Saturday, November 9th, 2024 10am - 12pm

Join us for our Love Your Park event at Riverview Park in Oildale! Discover this hidden gem and enjoy FREE activities. In partnership with City of Bakersfield Recreation & Parks, Kern County Parks, and Blue Zones Project - Bakersfield, we're celebrating community, health, and happiness. Don't miss out!



Community Impact Report



Our Community Impact Report for FY2024 is now available on our website.

Visit www.KernMedical.com and find it under "About Us" to learn more about our recent updates, physician training, and the incredible people who work hard to uphold the Kern Medical mission. We are proud of the strides we're taking to improve community health and patient care.

Kern Medical in the News



Kern Medical's Evangeline Gallegos, RN, joined Bakersfield Now to discuss breast cancer awareness, including her own personal journey with the disease. She spoke about how her experience fighting breast cancer has impacted her role as a nurse and important preventative measures for the community to remember.

National Recognitions - October

- Breast Cancer Awareness Month
- Health Literacy Month
- American Pharmacists Month
- Physical Therapy Month
- Audiology Awareness Month
- National Case Management Week (October 8 14)
- World Mental Health Day (October 10)
- World Hospice and Palliative Care Day (October 12)

National Recognitions - November

- American Diabetes Month
- Lung Cancer Awareness Month
- Bladder Health Month
- COPD Awareness Month
- Epilepsy Awareness Month
- Hospice and Palliative Care Month
- Pancreatic Cancer Awareness Month
- Nurse Practitioner Week (November 12 18)
- Antibiotic Awareness Week (November 18 24)

Did You Know - East High School Volunteers

Kern Medical is proud to partner with East High School's Health Careers program, which offers students a unique opportunity to shadow hospital staff and explore careers in the medical field. The program, which began with a few students, has grown through a partnership academy supported by state grants. As part of the program, students are assigned to various departments, where they gain hands-on experience by learning tasks, shadowing staff, and observing procedures like trauma care, surgeries, and stitches. This exposure helps students identify their career interests and builds on their desire to help others in a medical setting. Junior students participate by shadowing hospital employees every Tuesday or Wednesday, with transportation provided to outpatient clinics or off-campus offices. Kern Medical is proud to serve as a resource for these aspiring health-care professionals and hopes to inspire future generations who may one day return as mentors themselves.



Scan here to learn more about the program:



(Government Code Section 54957.7)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on November 20, 2024, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

 \underline{X} Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on November 20, 2024, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

X CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Jeffry Huffman, an individual, Plaintiff, v. Kern County Hospital Authority, a California Public Entity; and DOES 1-25, inclusive, Defendants, Kern County Superior Court Case No. BCV-23-103540 –

(Government Code Section 54957.7)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on November 20, 2024, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

 \underline{X} Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) –

Health and Safety Code Section 101855(e)(1)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on November 20, 2024, the premature disclosure of which would create a substantial probability of depriving the authority of a substantial economic benefit or opportunity. The closed session involves:

 \underline{X} Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on November 20, 2024, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

X CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9(e)(3)) Number of cases: Three (3) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection –