



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, March 15, 2023

11:30 A.M.

BOARD TO RECONVENE

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

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing Erica Easton, President, Kern Medical Center Foundation, for her dedication and service to the community and Kern Medical Center –
MAKE PRESENTATION

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on February 15, 2023 and special meeting on February 22, 2023 –
APPROVE

CA

- 5) Proposed retroactive appointment of Amber L. Jones, D.O., as Program Director, Department of Surgery, Residency Training Program, effective May 1, 2022, for an initial appointment of six years –
MAKE APPOINTMENT

CA

- 6) Proposed Master Software and Services Agreement with 3M Health Information Systems, Inc., an independent contractor, containing nonstandard term and conditions, for coding and reimbursement software from August 28, 2023 through August 27, 2028, in an amount not to exceed \$3,546,763 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Request to increase maximum payable to Agreement 010-2019 with Dell Financial Services, LLC, an independent contractor, by \$30,456, from \$850,187 to \$880,643, plus tax and fees –
APPROVE

CA

- 8) Proposed RMA Quote 2003223301983-02 with Presidio Networked Solutions Group, LLC, an independent contractor, for exchange of network infrastructure equipment under the terms and conditions of Master Services Agreement 053-2018, at no additional cost –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN FOR RECEIPT OF DELIVERY

CA

- 9) Proposed Amendment No. 3 to the Master Service Agreement 30718 with JDM Solutions, Inc., an independent contractor, for professional consulting services related to the Cerner Millennium project, for the period November 21, 2018 through April 30, 2023, extending the term for one year through April 30, 2024, and increasing the maximum payable by \$334,880, from \$2,900,300 to \$3,235,180, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed renewal and binding of all-risk property insurance through PRISM and earthquake coverage through Specialty Risk Underwriters and Evanston Insurance Company from March 31, 2023 through March 31, 2024, with an option to finance the earthquake premium through Bank Direct Capital Finance, in an amount not to exceed \$727,862 –
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN THE PREMIUM FINANCE AGREEMENT-PROMISSORY NOTE

CA

- 11) Proposed Resolution in the matter of revising the extension of excess medical professional liability coverage for Kern Medical Center employed and independent contractor physicians, effective March 15, 2023 –
APPROVE; ADOPT RESOLUTION

CA

- 12) Proposed acceptance of donation of travel and related expenses from Safety National and MedPro for one Kern Medical Center employee to attend “The 30th Annual California DWC Workers’ Compensation Education Conference” in Los Angeles, California, from March 23-24, 2023 –
APPROVE; ADOPT RESOLUTION

CA

- 13) Proposed acceptance of donation of travel and related expenses from Safety National and MedPro for one Kern Medical Center employee to attend the “ASHRM Academy 2023” in Fort Lauderdale, Florida, from April 24-29, 2023 –
APPROVE; ADOPT RESOLUTION

CA

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

CA

- 15) Proposed Quote 6900694186 with Getinge USA Sales, LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of vascular grafts from March 15, 2023 through March 14, 2026, in an amount not to exceed \$60,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 16) Proposed Master Agreement with Protenus, Inc., an independent contractor, containing nonstandard terms and conditions, for access to Healthcare Analytics Platform from March 15, 2023 through March 14, 2026, in an amount not to exceed \$105,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 17) Proposed Agreement with James E. Thompson, Inc., doing business as JTS Construction, an independent contractor, for construction services related to relocation of the Nurse Staffing Office, effective March 15, 2023, in an amount not to exceed \$96,800 –
MAKE FINDING PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301 AND 15061(b)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE CHIEF EXECUTIVE OFFICER TO APPROVE ANY FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$88,000

CA

- 18) Proposed Amendment No. 1 to Agreement 10021 with Brian Sessions, doing business as Skycon Electric, an independent contractor, for electrical and maintenance repair services, for the period February 12, 2021 through February 11, 2024, extending the term, three years, from February 12, 2024 through February 11, 2027, increasing the maximum payable by \$645,000, from \$105,000 to \$750,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 19) Proposed Amendment No. 4 to Agreement 07816 with Paul Dhanens Architect, Inc., an independent contractor, for architectural design services, for the period July 1, 2016 through June 30, 2023, extending the term for two years from July 1, 2023 through June 30, 2025 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 20) Proposed retroactive Transfer Agreement with Fresno Community Hospital and Medical Center, doing business as Community Medical Centers, an independent contractor, containing nonstandard terms and conditions, to effectuate patient transfers from February 27, 2023 through February 26, 2026 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 21) Proposed Amendment No. 4 to Agreement 873-2015 with Jeffrey G. Nalesnik, M.D., a contract employee, for professional medical and administrative services in the Department of Surgery, for the period January 1, 2016 through December 31, 2025, increasing the maximum vacation accrual from 280 hours to 320 hours, effective March 15, 2023 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 22) Proposed Agreement with Omni Family Health, an independent contractor, for professional medical services of Kern Medical Center physicians from March 15, 2023 through March 14, 2028 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 23) Proposed Agreement with Matthew M. Malerich, M.D., Incorporated, an independent contractor, for professional medical services in the Department of Surgery from April 9, 2023 through April 8, 2025, in an amount not to exceed \$1,200,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 24) Proposed Agreement with Desert Hand and Plastic Surgery PC, an independent contractor, for professional medical services in the Department of Surgery from April 9, 2023 through April 8, 2025, in an amount not to exceed \$1,200,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 25) Proposed Agreement with Tarun Rustagi, M.D., a contract employee, for professional medical and administrative services in the Department of Medicine from March 16, 2023 through March 15, 2024, in an amount not to exceed \$1,340,000, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 26) Proposed Second Amendment to Agreement 074-2021 with Adventist Health Physicians Network, an independent contractor, for professional medical services of Kern Medical Center physicians, for the period January 1, 2022 through December 31, 2031, adding the specialties of endocrinology and gastroenterology and compensation for the professional services provided by Kern Medical Center physicians, effective March 16, 2023 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- 27) Proposed Agreement with Pinnacle Women's Health Group, Inc., an independent contractor, for purchase of the medical practice and business assets, in an amount not to exceed \$1,339,000, effective March 15, 2023 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- 28) Proposed Agreement with Juan M. Lopez, M.D., a contract employee, for professional medical and administrative services in the Department of Obstetrics and Gynecology from March 15, 2023 through March 14, 2028, in an amount not to exceed \$3,250,000, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- 29) Report on Kern Medical Center Accreditation Council Graduate Medical Education Institutional Self Study –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

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

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

CA

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

CA

- 33) Miscellaneous Correspondence as of February 28, 2023 –
RECEIVE AND FILE

CA

- 34) Claims and Lawsuits Filed as of February 28, 2023 –
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 35) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –
- 36) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB –
- 37) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M –
- 38) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) –
- 39) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –
- 40) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, APRIL 19, 2023 AT 11:30 A.M.

SUPPORTING DOCUMENTATION FOR AGENDA ITEMS

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

AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)

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

33) MISCELLANEOUS CORRESPONDENCE AS OF FEBRUARY 28, 2023 –

- A) Correspondence dated February 21, 2023, received from Sydnee Galusha concerning questions and comments related to Agenda item 13 for the February 22, 2023 Board meeting

34) CLAIMS AND LAWSUITS FILED AS OF FEBRUARY 28, 2023 –
RECEIVE AND FILE

- A) Claim in the matter of Charles Wallace Hanson
- B) Claim in the matter of Mary Jean Ybarra
- C) Claim in the matter of Zhibek Mia Zhaksylyk
- D) Claim in the matter of Billie Ray Cook, Jr.
- E) Claim in the matter of Stacy Anderson
- F) Claim in the matter of Trenzell Jamal Veasey
- G) Claim in the matter of Sylvester Ray Allen
- H) Claim in the matter of Sheri Haffermann
- I) Claim in the matter of Brian Tilmon



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, February 15, 2023

11:30 A.M.

BOARD TO RECONVENE

Board Members: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz
Roll Call: **NO ACTION TAKEN**

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

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

BOARD ACTION SHOWN IN CAPS

PUBLIC PRESENTATIONS

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

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 ACTION TAKEN

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing Emily Duran, Chief Executive Officer, Kern Health Systems, for her dedication and service to the community and Kern Medical Center –

NO ACTION TAKEN

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on January 18, 2023 –

NO ACTION TAKEN

CA

- 5) Proposed Amendment No. 5 to Agreement 078-2018 with Ray A Morgan Company, an independent contractor, for the period April 1, 2019 through March 31, 2024, for replacement equipment, at no additional cost –

NO ACTION TAKEN

CA

- 6) Proposed Contract Supplement OPTY-708442 to Agreement 276-99 with Change Healthcare Technologies, LLC, an independent contractor, for data migration services from February 15, 2023 through February 14, 2025, in an amount not to exceed \$41,140 –

NO ACTION TAKEN

CA

- 7) Proposed Quote 2023-1781675 with Schneider Electric IT Corp., an independent contractor, containing nonstandard terms and conditions, for on-site maintenance of data center chillers, effective February 15, 2023, in an amount not to exceed \$3,500, plus applicable taxes –

NO ACTION TAKEN

CA

- 8) Proposed Order Number 369983.1 with Nuance Communications, Inc., an independent contractor, for the purchase of dictation software for the Picture Archiving and Communication System (PACS), for a term of two years, in an amount not to exceed \$2,500 –

NO ACTION TAKEN

CA

- 9) Proposed Amended and Restated Credit Agreement with PNC Bank, National Association (PNC Bank) for a revolving line of credit, extending the maturity date of the Line of Credit to a date not later than March 1, 2024, amending and restating the previously approved Credit

Agreement and certain administrative amendments necessary to comply with PNC Bank current policies, provided that the Line of Credit shall otherwise be substantially on the same terms set out in the previously approved Credit Agreement, and providing further that the maximum available principal amount of credit provided under the Credit Agreement may not exceed \$20,000,000 and that any indebtedness incurred thereunder at any time shall be secured only by personal property, substantially the same as the personal property described in the previously executed General Security and Pledge Agreement, in favor of PNC Bank , and delegating authority to certain officers –

NO ACTION TAKEN

CA

- 10) Proposed Amendment No. 7 to Agreement 20119 with Juan M. Lopez, M.D., a contract employee, for professional medical and administrative services in the Department of Obstetrics and Gynecology, for the period July 1, 2019 through February 28, 2023, extending the term for one month from March 1, 2023 through February 31, 2023, and increasing the maximum payable by \$40,000, from \$1,660,000 to \$1,700,000, to cover the extended term –

NO ACTION TAKEN

CA

- 11) Proposed Amendment No. 1 to Agreement 19120 for Personal/Professional Services with Cofer & Oberlies, Inc., doing business as Open and Shut Enterprises, an independent contractor, for service and maintenance of commercial gate systems, for the period March 30, 2020 through March 29, 2023, extending the term for three years from March 30, 2023 through March 29, 2026, at no additional cost –

NO ACTION TAKEN

CA

- 12) Proposed Personal/Professional Services Agreement with Perspective Design Architects, Inc., doing business as PDA, Inc., an independent contractor, for architectural design services for budgeted construction projects, for the period February 15, 2023 through February 14, 2026, in an amount not to exceed \$750,000 –

NO ACTION TAKEN

- 13) Presentation on Report of Independent Auditors from Moss Adams LLP regarding the audit of Kern Medical Center financial statements for the fiscal year ended June 30, 2022 –

NO ACTION TAKEN

CA

- 14) Kern County Hospital Authority Chief Financial Officer report –

NO ACTION TAKEN

CA

- 15) Kern County Hospital Authority Chief Executive Officer report –

NO ACTION TAKEN

CA

- 16) Monthly report on What's Happening at Kern Medical Center –

NO ACTION TAKEN

CA

- 17) Miscellaneous Correspondence as of January 31, 2023 –

NO ACTION TAKEN

CA

- 18) Claims and Lawsuits Filed as of January 31, 2023 –
NO ACTION TAKEN

ADJOURNED TO CLOSED SESSION

NO ACTION TAKEN

CLOSED SESSION

- 19) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 20) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Jihad Akil Hashim v. Kern County Hospital Authority, (A California Public Entity), and DOES 1 through 50, inclusive, Defendants, United States District Court, Eastern District of California, Case No. 1:21-cv-00773-JLT-CDB – SEE RESULTS BELOW
- 21) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Maria Elena Lopez-Rodriguez v. Kern Medical Surgery Center, LLC (a California Limited Liability Company); Kern Medical Center Foundation (a California Corporation); Kern Medical Center (an organization form unknown); Kern County Hospital Authority (an organization form unknown; Marie Ruffin (an Individual); and DOES 3-100, inclusive, Defendants, United States District Court, Eastern District of California, Case No. 1:20-cv-01187-ADA-CDB – SEE RESULTS BELOW
- 22) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB – SEE RESULTS BELOW
- 23) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M – SEE RESULTS BELOW
- 24) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – SEE RESULTS BELOW
- 25) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION

NO ACTION TAKEN

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 19 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – **NO ACTION TAKEN**

Item No. 20 concerning CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Jihad Akil Hashim v. Kern County Hospital Authority, (A California Public Entity), and DOES 1 through 50, inclusive, Defendants, United States District Court, Eastern District of California, Case No. 1:21-cv-00773-JLT-CDB – **NO ACTION TAKEN**

Item No. 21 concerning CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Maria Elena Lopez-Rodriguez v. Kern Medical Surgery Center, LLC (a California Limited Liability Company); Kern Medical Center Foundation (a California Corporation); Kern Medical Center (an organization form unknown); Kern County Hospital Authority (an organization form unknown; Marie Ruffin (an Individual); and DOES 3-100, inclusive, Defendants, United States District Court, Eastern District of California, Case No. 1:20-cv-01187-ADA-CDB – **NO ACTION TAKEN**

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

Item No. 23 concerning CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M – **NO ACTION TAKEN**

Item No. 24 concerning CONFERENCE WITH LABOR NEGOTIATORS – Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff – Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – **NO ACTION TAKEN**

Item No. 25 concerning PUBLIC EMPLOYEE PERFORMANCE EVALUATION – Title: Chief Executive Officer (Government Code Section 54957) – **NO ACTION TAKEN**

ADJOURNED TO WEDNESDAY, MARCH 15, 2023 AT 11:30 A.M.
NO ACTION TAKEN

/s/ Mona A. Allen
Authority Board Coordinator

/s/ Russell E. Bigler
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**

Special Meeting
Wednesday, February 22, 2023

11:30 A.M.

BOARD TO RECONVENED

Board Members: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz
Roll Call: 4 Present; 2 Absent - Bigler, McLaughlin

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

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

BOARD ACTION SHOWN IN CAPS

PUBLIC PRESENTATIONS

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ASHLEY BAILEY, SURGICAL TECHNICIAN, HEARD REGARDING STAFF RETENTION AND SALARIES FOR SURGICAL TECHNICIANS; ANA CEJA, NURSE, ICU, HEARD REGARDING STAFF RETENTION AND TURNOVER; PATRICIA BALDIVA, CLINICAL SUPERVISOR, TELEMETRY, HEARD REGARDING STAFFING SHORTAGE, RESPECT AND PROPER RESOURCES; ALICE HAYES, EVS, HEARD REGARDING SALARIES AND WORKLOAD; ANA CARINA GONZALEZ, EMERGENCY DEPARTMENT, HEARD REGARDING STAFFING SHORTAGE, STAFF RETENTION AND TRAINING; LAUREN LOPEZ, BIOMEDICAL, HEARD REGARDING LOCATION OF POLICIES AND PROCEDURES, EQUIPMENT NEEDS AND SALARIES; MARTHA CHAN-DE-SANDOVAL, PCT, ICU/DOU, HEARD, REGARDING SALARIES, STAFFING, STAFF RETENTION AND PATIENT SAFETY

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

RECOGNITION

CA

- 3) Presentation by the Chief Executive Officer recognizing Emily Duran, Chief Executive Officer, Kern Health Systems, for her dedication and service to the community and Kern Medical Center –
MADE PRESENTATION
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on January 18, 2023 –
APPROVED
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

CA

- 5) Proposed Amendment No. 5 to Agreement 078-2018 with Ray A Morgan Company, an independent contractor, for the period April 1, 2019 through March 31, 2024, for replacement equipment, at no additional cost –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 017-2023; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN FOR RECEIPT OF DELIVERY
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

CA

- 6) Proposed Contract Supplement OPTY-708442 to Agreement 276-99 with Change Healthcare Technologies, LLC, an independent contractor, for data migration services from February 15, 2023 through February 14, 2025, in an amount not to exceed \$41,140 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 018-2023
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

CA

- 7) Proposed Quote 2023-1781675 with Schneider Electric IT Corp., an independent contractor, containing nonstandard terms and conditions, for on-site maintenance of data center chillers, effective February 15, 2023, in an amount not to exceed \$3,500, plus applicable taxes – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 019-2023; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN FOR RECEIPT OF DELIVERY
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

CA

- 8) Proposed Order Number 369983.1 with Nuance Communications, Inc., an independent contractor, for the purchase of dictation software for the Picture Archiving and Communication System (PACS), for a term of two years, in an amount not to exceed \$2,500 – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 020-2023
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

CA

- 9) Proposed Amended and Restated Credit Agreement with PNC Bank, National Association (PNC Bank) for a revolving line of credit, extending the maturity date of the Line of Credit to a date not later than March 1, 2024, amending and restating the previously approved Credit Agreement and certain administrative amendments necessary to comply with PNC Bank current policies, provided that the Line of Credit shall otherwise be substantially on the same terms set out in the previously approved Credit Agreement, and providing further that the maximum available principal amount of credit provided under the Credit Agreement may not exceed \$20,000,000 and that any indebtedness incurred thereunder at any time shall be secured only by personal property, substantially the same as the personal property described in the previously executed General Security and Pledge Agreement, in favor of PNC Bank , and delegating authority to certain officers – APPROVED; ADOPTED RESOLUTION 2023-002; AUTHORIZED AND DIRECTED ANY TWO OF THE FOLLOWING OFFICERS (EACH, AN “AUTHORIZED OFFICER”) OF THE AUTHORITY, FOR AND IN THE NAME OF AND ON BEHALF OF THE AUTHORITY, TO EXECUTE AMENDED AND RESTATED CREDIT AGREEMENT 021-2023 AND AN AMENDMENT TO THE NOTE, OR A NEW NOTE IF THE AUTHORIZED OFFICERS DETERMINE THAT A NEW NOTE IS ADVISABLE, AS THE AUTHORIZED OFFICERS EXECUTING THE SAME, TOGETHER WITH THE VICE PRESIDENT & GENERAL COUNSEL OF THE AUTHORITY, SHALL APPROVE: CHAIR OF THIS BOARD, VICE-CHAIR OF THIS BOARD, CHIEF EXECUTIVE OFFICER OF THE AUTHORITY OR CHIEF FINANCIAL OFFICER OF THE AUTHORITY
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

CA

- 10) Proposed Amendment No. 7 to Agreement 20119 with Juan M. Lopez, M.D., a contract employee, for professional medical and administrative services in the Department of Obstetrics and Gynecology, for the period July 1, 2019 through February 28, 2023, extending the term for one month from March 1, 2023 through February 31, 2023, and increasing the maximum payable by \$40,000, from \$1,660,000 to \$1,700,000, to cover the extended term – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 022-2023
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

CA

- 11) Proposed Amendment No. 1 to Agreement 19120 for Personal/Professional Services with Cofer & Oberlies, Inc., doing business as Open and Shut Enterprises, an independent contractor, for service and maintenance of commercial gate systems, for the period March 30, 2020 through March 29, 2023, extending the term for three years from March 30, 2023 through March 29, 2026, at no additional cost –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 023-2023
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

CA

- 12) Proposed Personal/Professional Services Agreement with Perspective Design Architects, Inc., doing business as PDA, Inc., an independent contractor, for architectural design services for budgeted construction projects, for the period February 15, 2023 through February 14, 2026, in an amount not to exceed \$750,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 024-2023
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

- 13) Presentation on Report of Independent Auditors from Moss Adams LLP regarding the audit of Kern Medical Center financial statements for the fiscal year ended June 30, 2022 –
STELIAN DAMU, MOSS ADAMS LLP, HEARD REGARDING THE REPORT OF THE AUDIT OF KERN MEDICAL CENTER FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED JUNE 30, 2022; GILBERT GARCIA, COMMUNITY MEMBER AND SEIU MEMBER, HEARD REGARDING PAYMENTS TO CANTU MANAGEMENT GROUP, DEMANDS PLACED ON SEIU MEMBERS AND REQUEST TO HOLD MANAGEMENT ACCOUNTABLE; LAUREN LOPEZ, BIOMEDICAL, HEARD REGARDING PUBLIC ACCESS TO KERN COUNTY HOSPITAL AUTHORITY BOARD AGENDA AND RELATED ITEMS; RECEIVED AND FILED; REFERRED TO KERN COUNTY BOARD OF SUPERVISORS; CHIEF EXECUTIVE OFFICER SCOTT THYGERSON RESPONDED TO MS. LOPEZ'S QUESTION
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

CA

- 14) Kern County Hospital Authority Chief Financial Officer report –
RECEIVED AND FILED
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

CA

- 15) Kern County Hospital Authority Chief Executive Officer report –
RECEIVED AND FILED
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

CA

- 16) Monthly report on What's Happening at Kern Medical Center –
RECEIVED AND FILED
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

CA

- 17) Miscellaneous Correspondence as of January 31, 2023 –
RECEIVED AND FILED
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

CA

- 18) Claims and Lawsuits Filed as of January 31, 2023 –
RECEIVED AND FILED
Pelz-Brar: 4 Ayes; 2 Absent - Bigler, McLaughlin

ADJOURNED TO CLOSED SESSION
Brar-Alsop

CLOSED SESSION

- 19) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 20) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Jihad Akil Hashim v. Kern County Hospital Authority, (A California Public Entity), and DOES 1 through 50, inclusive, Defendants, United States District Court, Eastern District of California, Case No. 1:21-cv-00773-JLT-CDB – SEE RESULTS BELOW
- 21) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Maria Elena Lopez-Rodriguez v. Kern Medical Surgery Center, LLC (a California Limited Liability Company); Kern Medical Center Foundation (a California Corporation); Kern Medical Center (an organization form unknown); Kern County Hospital Authority (an organization form unknown; Marie Ruffin (an Individual); and DOES 3-100, inclusive, Defendants, United States District Court, Eastern District of California, Case No. 1:20-cv-01187-ADA-CDB – SEE RESULTS BELOW
- 22) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB – SEE RESULTS BELOW
- 23) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M – SEE RESULTS BELOW
- 24) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – SEE RESULTS BELOW
- 25) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION
Pelz-Alsop

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 19 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 ALSOP, SECOND BY DIRECTOR PELZ; 2 ABSENT - DIRECTORS BIGLER AND MCLAUGHLIN), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, REQUEST CHANGE IN STAFF STATUS, VOLUNTARY RESIGNATION OF PRIVILEGES, AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 20 concerning CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Jihad Akil Hashim v. Kern County Hospital Authority, (A California Public Entity), and DOES 1 through 50, inclusive, Defendants, United States District Court, Eastern District of California, Case No. 1:21-cv-00773-JLT-CDB – NOT HEARD

Item No. 21 concerning CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Maria Elena Lopez-Rodriguez v. Kern Medical Surgery Center, LLC (a California Limited Liability Company); Kern Medical Center Foundation (a California Corporation); Kern Medical Center (an organization form unknown); Kern County Hospital Authority (an organization form unknown; Marie Ruffin (an Individual); and DOES 3-100, inclusive, Defendants, United States District Court, Eastern District of California, Case No. 1:20-cv-01187-ADA-CDB – NOT HEARD

Item No. 22 concerning CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/ Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB – NOT HEARD

Item No. 23 concerning CONFERENCE WITH LEGAL COUNSEL – FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1580-M – NOT HEARD

Item No. 24 concerning CONFERENCE WITH LABOR NEGOTIATORS – Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff – Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 25 concerning PUBLIC EMPLOYEE PERFORMANCE EVALUATION – Title: Chief Executive Officer (Government Code Section 54957) – NOT HEARD

ADJOURNED TO WEDNESDAY, MARCH 15, 2023 AT 11:30 A.M.

Brar

/s/ Mona A. Allen
Authority Board Coordinator

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



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY OPEN SESSION**

March 15, 2023

Subject: Proposed retroactive appointment of Amber L. Jones, D.O., as Program Director, Department of Surgery, Residency Training Program, effective May 1, 2022 for an initial appointment of six years

Recommended Action: Make Appointment

Summary:

Kern Medical represents the Sponsoring Institution (SI) for four accredited residency programs and three accredited fellowship programs. In the past, Kern Medical also sponsored a General Surgery Residency Program that lost its accreditation by the Accreditation Council for Graduate Medical Education (ACGME) in June 2018. Over the last several years, the Department of Surgery has identified new leadership and faculty to apply for a new residency program.

ACGME Program Requirements for Graduate Medical Education in General Surgery provide a complete overview of all required personnel in the residency program. Section II.A.1. states the following:

There must be one faculty member appointed as program director with authority and accountability for the overall program, including compliance with all applicable program requirements.

The ACGME further requires that the program director's initial appointment should be for at least six years (Section II.A.1.c).

The Department of Surgery has identified Dr. Amber Jones, an alumnus of the prior residency program to serve in the role of program director for the future residency. Dr. Jones is board-certified in General Surgery, Trauma and Critical Care and has the prerequisite knowledge and skills to serve in this role.

In preparing the application for the new residency program, the ACGME requires confirmation of an initial appointment of six years for the program director. Therefore, it is recommended that your Board, on behalf of the Sponsoring Institution, retroactively appoint Dr. Amber Jones as program director of the general surgery residency training program, effective May 1, 2022, for an initial term of six years.



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

March 15, 2023

Subject: Proposed Master Software and Services Agreement with 3M Health Information Systems, Inc., an independent contractor for software pertaining to medical coding, billing and integration of the billing/coding system with the electronic health record.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Master Software and Services Agreement with 3M Health Information Systems, to provide coding and reimbursement software, for a term of five (5) years with a maximum payable not to exceed of \$3,546,763.

Medical billing coding is required for claims of medical service to be submitted for payment.

- Encoders is software program that helps to guide the medical billing coder through the various coding conventions and rules to arrive at a correct diagnostic, procedural, or service code. The encoder and APR/DRG grouping software aids in accuracy, compliance, coding productivity, and reimbursement functions of the revenue cycle.
- 360 Encompass provides a workflow for Clinical Documentation Improvement (CDI) that is designed to allow for Medicare and any Diagnosis Related Group payers to review with a concurrent review by the CDI/Registered Nurse.

The Agreement contains non-standard terms and conditions that cannot be approved as to form by Counsel including but not limited to the inability to terminate without cause, liability is limited to the cost of the agreement, and is governed by non-California laws and venue. Efforts were made to negotiate these term that cannot be approved as to form to no avail.

Although Counsel is unable to approve as to form, Kern Medical still recommends that your Board approve the Master Software and Services Agreement with 3M Health Information Systems, Inc. to provide for specialty coding and reimbursement software, for the period of August 28, 2023 to August 27, 2028, in an amount not to exceed \$3,546,763 for the five (5) year term, and authorize the Chairman to sign.

**MASTER SOFTWARE AND SERVICES AGREEMENT****SIGNATURE PAGE**

THIS MASTER SOFTWARE AND SERVICES AGREEMENT ("Agreement") between **3M Health Information Systems, Inc.** ("3M") having an office at 575 West Murray Boulevard, Murray, Utah 84123-4611 and **Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center** ("Client") with offices at 1700 Mount Vernon Avenue, Bakersfield, CA 93306 (collectively the "Parties" or individually the "Party") shall be effective as of the date last signed ("Effective Date").

The Parties acknowledge that the agreements(s) or schedule(s) listed below, shall be terminated as of **August 27, 2023**, with the exception of any Services being contracted for (but not yet completed and invoiced) under the agreement(s) below which were not added to this Agreement ("Outstanding Services"). Such Outstanding Services under the agreement(s) below shall not be cancelled and shall continue to be completed and invoiced under the agreement(s) they were originally contracted for, and such agreement(s) will be extended to the extent necessary to complete such Outstanding Services. After the completion of any such Outstanding Services, the agreement(s) below shall terminate in their entirety.

DESCRIPTION OF AGREEMENT	DATED	AGREEMENT NUMBER (IF APPLICABLE)
Software License Agreement	March 30, 1999	98-0670

REMIT ALL PAYMENTS DUE UNDER THIS AGREEMENT TO:	ACH AND WIRE TRANSFERS TO:
3M Health Information Systems Dept. 0881 PO Box 120881 Dallas, TX 75312-0881	JPMorganChase 1 Chase Manhattan Plaza New York NY 10081 Beneficiary A/C Name: 3M Health Information Systems, Inc. ABA # 021000021 Account # 192825864 Swift address: CHASUS33 (for International Use)

WRITTEN NOTICES UNDER THIS AGREEMENT SHALL BE SENT TO:	
Kern County Hospital Authority 1700 Mount Vernon Avenue Bakersfield, CA, 93306 Attention: Chief Executive Officer Email Address: contracts@kernmedical.com	3M HEALTH INFORMATION SYSTEMS 575 West Murray Boulevard Murray, UT 84123-4611 Attention: Pricing and Contract Director With copy to: Legal

To indicate acceptance and agreement to be bound by the terms and conditions of this Agreement, the Parties have executed this Agreement on the date(s) indicated below.

KERN COUNTY HOSPITAL AUTHORITY, A LOCAL UNIT OF GOVERNMENT, 3M HEALTH INFORMATION SYSTEMS, INC.
WHICH OWNS AND OPERATES KERN MEDICAL CENTER

BY:	BY: <i>John C. Mathison</i> ^{AW}
NAME: Russell Bigler	NAME: John C. Mathison
TITLE: Chairman, Board of Governors	TITLE: HIS Operations
DATE: March 15, 2023	DATE: March 3, 2023

Please email or fax a purchase order in the amount of **\$643,946.00**, this signed Agreement and applicable Tax-Exempt forms to:
hisilverspringcontractrequests@mmm.com or (651) 732-8469

ISSUE DATE / BY:	GPO:	BATCH NUMBER:	CLIENT SITE ID:	AGREEMENT NUMBER:	CLIENT EMR:
01/25/2023 EM	*****	039319	2930294	039391-23	
REVISION DATE/BY:	VERSION:				
	1.0.0				
	CMR NO:				
	37970931r1				

REVIEWED ONLY
NOT APPROVED AS TO FORM

By *[Signature]*
Legal Services Department

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. **"3M Information"** means all items, information, and data (technical and non-technical and tangible and intangible), provided by 3M or 3M Personnel, any 3M Product, Deliverables or Results of a 3M Product(s) in connection with this Agreement, and any ideas, input, and feedback provided by Client to 3M or 3M Personnel.
- 1.2. **"3M Personnel"** means 3M's employees, agents, contractors, and subcontractors.
- 1.3. **"3M Product"** means any item listed on a Schedule.
- 1.4. **"Agreement"** means the General Terms and Conditions, and all exhibits, Appendices, Schedules, SOW's, and other attachments.
- 1.5. **"Appendix"** means the document so titled, attached to the Agreement and includes terms and conditions unique to a class of 3M Products.
- 1.6. **"Authorized Site"** means an entity that meets the requirements of Section 2.2.
- 1.7. **"Authorized User"** means an Authorized Site's employees and contingent workers (individuals hired by Client through a temporary staffing agency for a period not to exceed twelve months that supplements Client's employee workforce or serves as a temporary replacement of an employee position, and Client is responsible for the training and day-to-day direction of the individual) and, if applicable, an admitting physician (a licensed physician who has the privilege to admit patients at an Authorized Site) and a consulting physician (a licensed physician who provides medical consultation at an Authorized Site, or to an admitting physician).
- 1.8. **"Client Applications"** means Client developed software.
- 1.9. **"Client Data"** means all information provided by Client to 3M under this Agreement.
- 1.10. **"Client Equipment"** means the central processing unit(s), any peripheral equipment and all interconnecting cables and wires physically located at the Authorized Sites.
- 1.11. **"Client Portal"** means any proprietary secure electronic gateway provided by 3M to a collection of digital files, Consulting Services, Deliverables, Results, and other information accessible over the internet through a web browser.
- 1.12. **"Consulting Services"** means services identified on a Schedule attached to the Consulting Services Appendix.
- 1.13. **"Deliverables"** or **"Results"** means any report, file, document, presentation, analysis, analytics, recommendation, suggestion, methodologies, Software output or other work product that 3M delivers to Client or may make available to Client through the use of a 3M Product.
- 1.14. **"Documents"** means written reference, technical and hardware specifications, and operations and/or user manuals for 3M Products.
- 1.15. **"Implementation and Training"** or **"I&T"** means implementation (installation) and training services for a specific 3M Product.
- 1.16. **"Interface"** means enabling the communication between a non-3M Product and a 3M Product.
- 1.17. **"Intellectual Property Rights"** means all intellectual property rights throughout the world, including but not limited to registered or unregistered copyrights, trade secrets, patents, patent applications, designs, know-how, registered or unregistered trademarks and service marks, and trade names.
- 1.18. **"License Start Date" or "Go-Live"** means with respect to: (a) Software to be installed on 3M equipment or by 3M on Client Equipment - the date on which 3M has completed all I&T tasks and the respective module(s) of Software are made available to Client for productive use; or (b) Software to be installed by Client on Client Equipment - seven (7) days after the date on which such Software is made available to Client (without regard to actual Client installation).
- 1.19. **"Perpetual Software"** means Software identified on a Schedule attached to the Perpetual Software Appendix.
- 1.20. **"Schedule"** means the document so titled and attached to the respective Appendix, which lists each 3M Product to be provided, the Authorized Site(s), and the associated fees.
- 1.21. **"Services"** means Implementation and Training, Support Services, or Consulting Services.
- 1.22. **"Software"** means any and all (a) 3M owned computer program(s) with incorporated Third-Party Content, including any and all software implementation of algorithms, models and methodologies, whether in source code, object code, human readable form or other form and whether embodied in software or otherwise, including application programming interfaces, architecture, records, schematics, computerized databases, software implementations of algorithms, software tool sets, software models, (b) databases, libraries and compilations, including any and all data and

collections of information or data, each to the extent relating to or otherwise used in support or for the benefit of, or embodied within, any of the items in (a) above, (c) descriptions, flow charts and other work products used to design, plan, organize and develop any of the foregoing, and (d) screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons, which are licensed under this Agreement and are identified on the applicable Schedule.

1.23. "Software as a Service" or "SaaS" means the cloud infrastructure including hosting, maintenance, and support of the servers, databases and code that constitute the services environment, including, without limitation, system administration, system management, and system monitoring activities for such SaaS products.

1.24. "Support Services" means 3M's maintenance and support of 3M Products as further defined in Section 3.1.3.

1.25. "SOW" means a statement of work or scope of work document so titled that describes the 3M Product and sets forth project specific details.

1.26. "Territory" means the United States of America, its territories and protectorates.

1.27. "Third-Party Content" means all non-3M owned software, algorithms, rules, analytical tools, materials, and content incorporated into, or distributed by 3M for use in combination with the 3M Product.

1.28. "Update" means a modification to Software provided by 3M to each customer licensing the Software without an additional or increased fee.

1.29. "Use Rights" means the limited rights to specific 3M Information granted by 3M.

2. OWNERSHIP; RESTRICTIONS; USE; SERVICES

2.1. Ownership. 3M, and its suppliers, are the sole and exclusive owners of all Intellectual Property Rights in and to the 3M Information. Client obtains no ownership interest in the 3M Product or 3M Information by virtue of providing 3M with Client Data under this Agreement.

2.2. Authorized Site. A facility is an Authorized Site if it is (a) Controlled by Client, and (b) has been added to the applicable Schedule. "Controlled" means Client possessing more than fifty percent (50%) of the voting stock or similar ownership interest. The Controlled requirement may be waived by 3M on a facility-by-facility basis.

2.2.1. "Access Site" means an Authorized Site that accesses the Software and is identified on the applicable Schedule as an "ACCESS" site.

2.2.2. "Host Site" means a Third-Party Contractor authorized by 3M to host the Software on behalf of Client and is identified on the applicable Schedule as a "HOST" site.

2.2.3. "Install Site" means the Authorized Site's physical location where the Software has been installed and which is listed on the applicable Schedule as an "INSTALL" site.

2.3. Use Rights. Use Rights to 3M Information are found in the applicable Appendix and are specific to the 3M Product(s) added to the applicable Appendices Schedule(s). Any Use Rights not explicitly granted in this Agreement are reserved by 3M.

2.4. Restrictions. Including any additional Restrictions on the applicable Appendices, the Use Rights granted in this Agreement do not permit access or use of 3M Information in any manner not specifically authorized in this Agreement. Client shall not, and shall not permit Authorized Users to:

- (a) download, attempt to download, or make extra copies of the 3M Information, provided however, Client may make: (i) one (1) copy of the Software (non SaaS) for archival purposes and such number of backup copies of the Software (non SaaS) and/or Results as are consistent with Client's normal periodic backup procedures with all such copies remaining subject to the terms of this Agreement, and (ii) reproduce or copy any portion of the Documents into machine-readable or printed form for its internal use and only as required to exercise its rights hereunder;
- (b) sublicense, lease, lend, transfer, redistribute, or permit any third-party to have access to, or the use of, the 3M Information;
- (c) process transactions of any entity or facility that has not been specifically listed as an Authorized Site under the applicable Schedule, including using the Software or Results in a service bureau or any other manner to provide a service or analytics for a third-party;
- (d) disassemble, decrypt, decompile, reverse-engineer, disclose, or use any means to discover the source code, methodologies, or other trade secrets embodied in any 3M Information;
- (e) create derivative works based upon 3M Information;

- (f) engage in any activity or introduce any device, software or routine that interferes with or disrupts the Software, Support Portal (as defined in Section 3.1.3), Client Portal, or the servers or networks which are connected to such;
- (g) remove the Software (non SaaS) from the installation site without 3M's written consent, which shall not be unreasonably withheld; however, during any period of Client Equipment malfunction causing the Software (non SaaS) to be inoperative, Client may use the Software (non SaaS) on alternate Client Equipment if Client promptly notifies 3M in writing of the new location (upon correction of the Client Equipment malfunction, Client shall immediately delete Software from the alternate Client Equipment and certify in writing to 3M such deletion is complete);
- (h) modify or otherwise alter the 3M Information;
- (i) remove the trademarks, trade names or any notice of 3M or 3M's suppliers from any 3M information;
- (j) use, allow access to, or distribute Results or Deliverables that is not permitted in the applicable Appendix;
- (k) create or offer a "wrapper," which is software that hides the underlying Software or Client Portal by any means;
- (l) use or access any 3M Information for benchmarking, consulting, or data analytics.

2.5. Third-Party Access to or Use of 3M Information. Client is prohibited from providing or allowing a third-party to view, use, execute, or display 3M Information, or create and/or maintain an Interface using 3M Information, unless the third-party has executed a 3M prepared confidentiality agreement and is listed as a limited license Authorized Site on the applicable Schedule.

2.6. Suspension. 3M may temporarily suspend portions of its performance in the event (a) of a denial of service attack or other attack on the Software; (b) 3M determines there is a reasonable likelihood of risk to 3M, 3M Products, or 3M customers if performance is not suspended; (c) 3M determines it is prudent to do so for legal or regulatory reasons; or (d) Client is in breach of the Agreement, subject to the cure period set forth in Section 8.2 (with the exception of a breach of 3M intellectual property, for which no cure period shall apply). 3M Shall endeavor to provide Client notice of any suspension under this section. Any suspension shall only be to the extent and duration necessary to investigate and remediate the adverse condition. If a suspension occurs as a result of items (a)-(c) above which last more than five (5) consecutive days, if Client submits a written request for a credit within thirty (30) days of the end of such suspension, 3M will provide a pro-rated credit for the term of the suspension for the suspended 3M Products, to be applied on a future invoice.

2.7. Verification. Upon thirty (30) day notice, and no more than once every twelve (12) months, during Client's regular business hours, Client shall allow 3M, or a third-party designated by 3M, to inspect and audit applicable books and records to verify Client's compliance with its obligations under this Agreement. In addition to other available remedies, the cost of any audit conducted by a third-party shall be paid for by Client if the audit reveals a violation of 3M's Intellectual Property Rights, or unauthorized release or use of 3M Information. Consistent with 3M's efforts to ensure its business operations are conducted in compliance with applicable laws, 3M's audit rights of Section 9.12 Compliance with Laws, shall apply during the Term, and will survive three years thereafter.

2.8. Third-Party Content. Client agrees to comply with Exhibit B (Third-Party Content Terms and Conditions) which contain flow-down provisions for Third-Party Content that may be incorporated in 3M Products and are contractually required by the Third-Party Content providers. 3M may by written notice, modify the contents of Exhibit B, that do not result in Client incurring additional fees, as may be required by its contracts with Third-Party Content providers by sending Client written notice of the contractually required changes to Exhibit B.

2.9. Use of Client Data. When Client Data is uploaded, submitted, stored, or otherwise sent to 3M through or in connection with a 3M Product, Client gives 3M the right to use, aggregate, and modify Client Data; to develop, enhance, deliver, and support the 3M Product(s) and their underlying technologies, in compliance with the terms of the Business Associate Agreement between the Parties. This right is subject to all applicable laws restricting the use of the applicable types of Client Data.

3. ADDITIONAL OBLIGATIONS

3.1. 3M's Obligations.

3.1.1. Security. 3M is responsible for the security of, access to, and use of Client Data, and the security of any 3M Product that is installed or stored on 3M equipment.

3.1.2. Implementation and Training. When I&T for a module of Software is added to a Schedule, 3M will contact Client and establish a mutually agreed upon I&T plan. 3M agrees to reasonably cooperate with Client including, but not limited to: (i) adhering to the I&T plan; (ii) providing constant and informative communication; and (iii) providing the necessary personnel, equipment (if any is required by be provided by 3M), and technical resources contemplated and required.

3.1.3. Support. Support Services shall be provided as set forth on 3M's website <https://support.3Mhis.com> as updated from time to time ("Support Portal"). Updates and the notifications of Updates for Software installed on Client Equipment, as well as updates to

Documents are provided through the Support Portal. Updates to Software installed on 3M equipment are performed by 3M. Support Services do not apply if Client: (a) is in breach of the Agreement; (b) fails to place a Support Service request as set forth in the Support Portal; (c) fails to provide 3M reasonable access to Client's Equipment, data, and qualified Client personnel; and (d) has not installed the most recent Software Update.

3.1.4. Access. To the extent required by law, 3M and applicable subcontractors, shall make available upon written request to the Secretary of Health and Human Services or the Comptroller General of the United States, or to any of their duly authorized representatives, this Agreement and such books, documents and records necessary to verify the cost of services furnished to Client by 3M.

3.2. Client Obligations.

3.2.1. General. Client is responsible for: (a) ensuring Authorized Sites and Authorized Users adhere to the requirements of the Agreement; (b) its business decisions and any medical care it provides; (c) accuracy of Client Data, (d) verifying the accuracy of the Results of the 3M Product(s), (e) any Interfaces not created by 3M, (e) the acquisition and maintenance of Client Equipment and any non-3M software; (f) installing Updates on Client Equipment, and testing and running a commercially reasonable software security scan on all Updates before releasing the Update into its production environment; (g) performing routine backups (e.g., incremental backups performed daily, and full backups performed weekly) of its data and providing 3M with only copies of Client's original data set; (h) provide a list of Client Applications upon request; (i) reasonably cooperating with requests made by 3M; (j) delays or deficiencies caused by special requests made by Client or a government authority (authorized to regulate or supervise Client); and (k) installing all Software for which it has not added I&T to the applicable Schedule. Reasonable cooperation entails but is not limited to: (i) adhering to the I&T plan; (ii) providing constant and informative communication; and (iii) providing the necessary access, data, personnel, facilities, equipment, and technical resources contemplated and required.

3.2.2. Security. Client is responsible for: (a) security of, access to, and use of 3M Information; and (b) within fifteen (15) calendar days of discovery, notifying 3M of unauthorized use, disclosure of, or access to 3M Information.

4. CONFIDENTIAL INFORMATION

4.1. Protected Health Information. The Parties will comply with the applicable provisions of HIPAA and the HITECH Act, and when exchange of protected health information ("PHI") is reasonably anticipated, will enter into a business associate agreement that will be the controlling document as it relates to use, disclosure, confidentiality, and notifications relating to PHI. Unless explicitly contracted for otherwise, PHI delivered to 3M does not constitute a "designated record set" as defined under 45 CFR § 164.501.

4.2. Confidential Information. For the purposes of this Agreement, "Confidential Information" means any business, technical, or personnel information that a Party ("Disclosing Party") discloses to the other Party ("Receiving Party") that: (a) if disclosed in writing, is marked "confidential" or "proprietary" at the time of disclosure; (b) if disclosed orally, is identified as "confidential" or "proprietary" at the time of disclosure, or is later summarized in writing by the Disclosing Party to the Receiving Party; or (c) if not so identified or marked as stated previously, information that would be reasonably understood to be confidential due to the nature of the information or the circumstances in which it was disclosed. At all times, this Agreement, 3M Information, and pricing information are Confidential Information.

4.3. Confidential Treatment. Each Party will: (a) keep the Disclosing Party's Confidential Information confidential; (b) use the Disclosing Party's Confidential Information only as authorized or necessary to perform its obligations under this Agreement; and (c) protect the Disclosing Party's Confidential Information by using the same degree of care, but not less than a reasonable degree of care, to prevent the unauthorized disclosure or use of Confidential Information as the Receiving Party uses to protect its own confidential information of a like nature. 3M's privacy standards for confidentiality of contact information of Client personnel (i.e. Personal Information) are found in the 3M Global Privacy policy. Neither Party acquires rights to the other Party's Confidential Information, and a Receiving Party shall hold harmless the Disclosing Party and its personnel, from any unauthorized use or disclosure by the Receiving Party, or its suppliers, of the Disclosing Party's Confidential Information.

4.4. Disclosures Required by Law. The Receiving Party may release Confidential Information as required to comply with applicable law, regulation, valid court order, or other binding requirement of a competent governmental authority, provided that in any such case, where permitted by applicable law: (a) the Receiving Party will immediately notify the Disclosing Party in writing of any such requirement (and in any event, prior to disclosure of Confidential Information); (b) the Receiving Party provides all reasonable assistance to the Disclosing Party in any attempt by the Disclosing Party to limit or prevent the disclosure of Confidential Information; and (c) the Receiving Party agrees to furnish only that portion of the Confidential Information that is legally required to be furnished and, in consultation with the Disclosing Party, to use all reasonable efforts to ensure, to the extent possible, that the information is maintained in confidence by the party to whom it is furnished. 3M is aware that Client 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.

4.5. Exceptions. A Party's Confidential Information does not include information that: (a) is made available to the public by the Disclosing Party; (b) was known to the Receiving Party without an obligation of confidentiality prior to its receipt from the Disclosing Party as evidenced by the Receiving Party's written records; (c) is received by the Receiving Party from a third-party who is not subject to an obligation of confidentiality and without breach of any agreement or violation of law to the Disclosing Party and without breach of any agreement or violation of law; or (d) is independently developed by the Receiving Party without reference to Confidential Information received hereunder. The Parties agree that the existence of a copyright notice shall not cause or be construed to cause the Software or Documents to be a published copyrighted work or in the public domain. A Party's information that would otherwise be Confidential Information, but for a breach of an agreement or violation of law, shall remain the Disclosing Party's Confidential Information.

5. WARRANTIES; INDEMNIFICATION

5.1. 3M Warranties and Indemnification.

5.1.1. Debarment/Exclusion from Participation Warranty. 3M warrants to Client that upon the Effective Date, neither it nor any of its officers, directors, or employees performing 3M's obligations under the Agreement (collectively "3M Participant") is excluded from participation in any applicable Federal or State health benefits program. Upon discovery that a 3M Participant is excluded, 3M will immediately remove the 3M Participant from involvement with this Agreement. REMOVAL OF A 3M PARTICIPANT FOR EXCLUSION IS CLIENT'S SOLE REMEDY, UNLESS 3M ITSELF IS THE EXCLUDED PARTICIPANT, IN WHICH CASE CLIENT'S REMEDY IS TERMINATION OF THE AGREEMENT AND A PRORATED CREDIT OF PREPAID FEES.

5.1.2. Software Performance Warranty. Software shall perform in substantial accordance with the Documents; however, 3M does not represent or warrant the operation of the Software will be uninterrupted, error-free, or that immaterial non-conformance between the Software and Documents can be corrected. Upon receipt of written notice from Client that Software fails to meet this warranty, 3M shall provide Support Services in accordance with the terms of the Agreement. IF 3M IS UNABLE TO REMEDY A BREACH OF THIS WARRANTY, CLIENT'S REMEDY SHALL BE TO TERMINATE THE 3M PRODUCT THAT FAILS TO MEET THE WARRANTY AND RECEIVE A PRORATED CREDIT OF APPLICABLE PREPAID ANNUAL FEES.

5.1.3. Services Warranty. 3M warrants to Client that Services will be performed in a workman-like manner, using generally recognized commercial practices and standards. Provided 3M receives written notice of breach of this warranty from Client within thirty (30) days after the Service was performed, CLIENT'S REMEDY IS, AT 3M'S OPTION TO EITHER: (A) RE-PERFORM THE SERVICES IN A MANNER CONSISTENT WITH THIS WARRANTY; OR (B) REFUND TO CLIENT ANY AMOUNTS PAID FOR THE SERVICES THAT FAIL TO MEET THIS WARRANTY AND TERMINATE THE SERVICES GIVING RISE TO THE CLAIM WITHOUT FURTHER OBLIGATION ON THE PART OF EITHER PARTY.

5.1.4. Hardware Warranty. Any warranty for Hardware is provided by the manufacturer of the Hardware. "Hardware" means tools, machinery, and other tangible equipment.

5.1.5. Disabling Code Warranty. 3M warrants to Client that after using reasonable, industry-standard, up-to-date anti-virus technology, the 3M Product does not contain viruses, worms, trojan horses, spyware, ransomware, trap doors, time bombs, or other similar devices and techniques. Nothing prevents the inclusion of technical protection measures in the 3M Product for purposes of preventing unauthorized use, are not considered Disabling Code. IF 3M IS UNABLE TO REMEDY A BREACH OF THIS WARRANTY, CLIENT'S REMEDY SHALL BE TO TERMINATE THE 3M PRODUCT THAT FAILS TO MEET THE WARRANTY AND RECEIVE A PRORATED CREDIT OF APPLICABLE PREPAID ANNUAL FEES.

5.1.6. 3M Indemnification. 3M shall indemnify, defend and hold Client harmless from any liability for any damages, cost or expense actually and finally awarded against Client, or any settlement made by 3M, that is caused by or resulting from any third-party claim, action, suit or proceeding that a specific 3M Product licensed under this Agreement infringes or misappropriates such third-party's U.S. patent, trademark, copyright or trade secret ("Infringement Claim"). Client shall give 3M prompt notice of any Infringement Claim and provide 3M with a copy of any pleadings or claim. The selection of counsel, the conduct of the defense of any lawsuit and any settlement shall be within the sole control of 3M. Client shall reasonably cooperate with 3M in 3M's defense and settlement of an Infringement Claim. In the event that use of the 3M Product is enjoined or, in 3M's opinion, likely to be enjoined, 3M will, at its option and expense, either: (a) procure for itself, or Client, as applicable, the right to continue using the relevant 3M Product; (b) replace or modify the same so that the relevant 3M Product is comparable and non-infringing, or (c) terminate the alleged infringing 3M Product, require Client to cease all further access to and use of the relevant 3M Product and in such case, 3M will provide Client pro-rated credit of prepaid fees, except with respect to Perpetual Software, a credit in an amount equal to the unamortized portion (based on straight-line depreciation over a five-year period) of the license fee. 3M shall have no obligation or liability under this Section in the event any Infringement Claim results solely from licensure of the 3M Product in combination with any item not furnished by 3M such liability would not have occurred from the licensure of the 3M Product itself. THIS SECTION STATES CLIENT'S REMEDY FOR ANY ALLEGED INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED.

5.2. Client Warranties and Indemnifications.

5.2.1. Client Data Use. Client represents and warrants that Client has all rights and permissions necessary to grant 3M the use rights set forth in Section 2.9, Use of Client Data.

5.2.2. Client Indemnification. To the extent permitted by law, Client shall indemnify, defend and hold 3M harmless from any liability for any damages, cost or expense actually and finally awarded against 3M, or any settlement made by Client, that is caused by or resulting from any third-party claim, action, suit or proceeding related to any of Client's obligations or responsibilities in Section 2.9 and 3.2.

5.3. Exclusions

5.3.1. Warranty Exclusions. THE WARRANTIES SET FORTH IN THIS AGREEMENT DO NOT APPLY IF: (A) THE 3M PRODUCT IS USED, IN WHOLE OR IN PART, WITH COMPUTER EQUIPMENT, INTERFACE(S) OR OTHER SOFTWARE OTHER THAN THOSE RECOMMENDED IN WRITING BY 3M FOR USE WITH THE 3M PRODUCT; (B) ANYONE OTHER THAN 3M OR 3M PERSONNEL IN ANY WAY MAINTAINS, ATTEMPTS TO MAINTAIN, MODIFIES OR ATTEMPTS TO MODIFY THE 3M PRODUCT OR ANY PART THEREOF IN ANY MANNER, EXCEPT FOR THOSE ELEMENTS OF THE 3M PRODUCT THAT ARE SPECIFIED IN THE DOCUMENTS AS BEING USER-DEFINABLE; (C) THE 3M PRODUCT IS USED IN ANY MANNER OTHER THAN AS SPECIFIED IN THE DOCUMENTS; (D) CLIENT FAILS TO USE ANY UPDATE, NEW OR CORRECTED VERSIONS OF THE 3M PRODUCT OR ANY COMPONENT THEREOF MADE AVAILABLE BY 3M; (E) CLIENT FAILS TO FOLLOW ANY WRITTEN DIRECTIONS OR TO PERFORM ANY PROCEDURES PRESCRIBED BY 3M IN WRITING; (F) ANY ABUSE, MISUSE, ACCIDENT OR NEGLIGENCE, IN EACH CASE OTHER THAN BY 3M OR 3M PERSONNEL SHALL HAVE OCCURRED IN RELATION TO THE 3M PRODUCT; (G) THE NON-CONFORMANCE OF THE 3M PRODUCT WITH THE WARRANTY IS CAUSED BY CIRCUMSTANCES OTHER THAN BY THE 3M PRODUCT ITSELF, OR BY 3M OR 3M'S PERSONNEL; OR (H) MODIFICATIONS TO THE 3M PRODUCT MADE BY 3M AT CLIENT'S REQUEST UNLESS 3M HAS AGREED TO WARRANT SUCH MODIFICATIONS IN WRITING.

5.3.2. Third-Party Content. IF 3M RECEIVES A WARRANTY ON THE THIRD-PARTY CONTENT, TO THE EXTENT ALLOWABLE, SUCH WARRANTY SHALL BE PASSED THROUGH TO CLIENT, OTHERWISE, ALL THIRD-PARTY CONTENT IS PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

5.3.3. Disclaimer. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 5, 3M AND ITS SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM TRADE USAGE OR COURSE OF DEALING.

6. LIMITATIONS OF LIABILITY

6.1. RESTORATION OF CLIENT DATA. ALL CLIENT DATA SENT TO 3M IS TO BE A COPY OF CLIENT'S ORIGINAL DATA SET. IF CLIENT DATA IS LOST DUE TO 3M'S NEGLIGENT ACT OR OMISSION, OR BREACH OF WARRANTY, CLIENT'S EXCLUSIVE REMEDY SHALL BE FOR 3M TO USE COMMERCIALY REASONABLE EFFORTS TO RECOVER THE LOST CLIENT DATA SINCE CLIENT'S LAST REQUIRED BACKUP.

6.2. EXCLUDED DAMAGES. EXCEPT FOR A BREACH OF 3M'S INTELLECTUAL PROPERTY RIGHTS, NEITHER CLIENT, NOR 3M AND ITS SUPPLIERS SHALL BE LIABLE TO THE OTHER UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR ECONOMIC LOSS, BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY EVEN IF 3M OR ITS SUPPLIERS OR CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUE (EXCEPT FOR LOSS OF PROFITS OR REVENUE TO 3M ARISING FROM CLIENT'S FAILURE TO PAY AMOUNTS DUE UNDER THIS AGREEMENT), EQUIPMENT USE, DATA OR INFORMATION OF ANY KIND. 3M AND ITS SUPPLIERS SHALL NOT HAVE ANY LIABILITY ARISING FROM ANY INTERRUPTION OR LOSS OF USE OF THE 3M PRODUCT, NOR FROM THE UNAVAILABILITY OF, OR CLIENT'S INABILITY TO OBTAIN OR ACCESS, MEDICAL OR OTHER DATA.

6.3. MAXIMUM LIABILITY. 3M'S AND ITS SUPPLIERS' MAXIMUM CUMULATIVE ANNUAL LIABILITY FOR ALL DAMAGES, COSTS OR EXPENSES OF ANY TYPE OR NATURE BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY IS LIMITED TO TWO (2) TIMES THE FEES PAID TO 3M FOR THE 3M PRODUCT GIVING RISE TO THE LIABILITY, IN THE YEAR LIABILITY AROSE. ALL OTHER LIABILITIES NOT SPECIFICALLY LINKED TO A 3M PRODUCT IS LIMITED TO THE FEES PAID IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. 3M AND ITS SUPPLIERS MAXIMUM CUMULATIVE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED FIVE MILLION DOLLARS (\$5,000,000). THIS SECTION DOES NOT APPLY TO ANY NON-INFRINGEMENT INDEMNIFICATION OBLIGATIONS OR BREACH OF UNSECURED PROTECTED HEALTH INFORMATION.

6.4. **Liability of Client.** The liabilities or obligations of Client with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Client and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California, to the extent required by California Health and Safety Code Section 101853(g).

7. FEES; AND INVOICING

7.1. **Payment of Fees.** All fees and other charges are payable in U.S. dollars, are due upon date of the invoice, and are delinquent thirty (30) days after the date of the invoice ("Payment Period"). During the Payment Period, Client may dispute an invoiced item that Client reasonably believes is incorrect, and for which Client intends to withhold payment; provided that, within the Payment Period, Client: (a) gives 3M a written notice detailing the specific items and amount in dispute and the basis of the dispute (or the invoiced item shall be deemed undisputed), and (b) pays all undisputed amounts in full.

7.2. **Late Payment; Suspension.** If Client becomes thirty (30) days delinquent on any undisputed fees, upon written notice to Client, 3M may suspend its obligations under the Agreement until such past due charges are brought current. All delinquent fees are subject to a late payment charge at a rate up to one percent (1%) per month calculated daily.

7.3. **Delays and Additional Expenses.** If Client delays or postpones a scheduled event with less than seven (7) day notice, Client shall pay to 3M all reasonably incurred and nonrefundable expenses associated with the delayed or postponed event, and a rescheduling fee calculated to represent one (1) day's fees for the canceled event. If business travel and miscellaneous expense are not included in the quoted fees, they will be billed to Client without mark-up, and will be incurred in accordance with 3M policies. If the delivery of a scheduled event, Services, or Consulting Services is delayed at Client's request, the entire schedule may be extended at 3M's discretion, it being understood that any such extension may exceed the delay requested by Client.

7.4. **Taxes.** Quoted fees do not include applicable taxes, duties, or amounts levied in place of taxes (collectively "Taxes"). 3M will invoice Client all applicable Taxes unless Client provides 3M a tax-exempt form. Client is not responsible for paying 3M's personal property taxes on the 3M Products nor taxes based on 3M's net income.

8. TERM AND TERMINATION

8.1. **Term of the Agreement.** The Agreement begins on the Effective Date and ends upon the termination of the last Schedule.

8.2. **Termination for Cause.** Either Party may terminate the Agreement if: (a) the other Party has failed to take reasonable steps to cure a breach of this Agreement within thirty (30) days after receiving written notice describing the breach; (b) the other Party becomes insolvent; or (c) either Party ceases to conduct business relevant hereunder. In the event Client terminates a 3M Product due to a material breach of a performance warranty by 3M, Client's remedy is for 3M to a refund to Client (i) for Perpetual Software, the unamortized portion of the pre-paid license fee based on straight-line depreciation over a five-year period, (ii) for Software other than Perpetual Software, the unused portion of the current year's pre-paid fee for the Software, or (iii) for Services, the actual fees paid to 3M for the Service not yet performed.

8.3. **Obligations upon Termination.** Upon termination of this Agreement or a Use Right for a specific 3M Product, each Party shall immediately cease use of the other Party's Confidential Information as it relates to the Use Right that was terminated, or all Confidential Information if the entire Agreement has terminated. Within thirty (30) days of termination, Client shall: (a) certify that the relevant Software has been de-installed, or if the applicable Software requires 3M to assist in the de-installation have scheduled with 3M a date acceptable to 3M for 3M to de-install the Software; and (b) returned or destroyed all applicable Documents. Within ninety (90) days of the termination of the Agreement, the Parties will have destroyed all the other Party's Confidential Information, or Confidential Information related to the Use Right terminated, except those copies necessary to comply with legal obligations and items for which a perpetual license has been issued. IN THE EVENT CLIENT DOES NOT COMPLY WITH THE TERMINATION PROVISIONS, CLIENT IS IN BREACH OF 3M INTELLECTUAL PROPERTY RIGHTS, AND 3M MAY ELECT TO EITHER: (I) DEEM 3M PRODUCT(S) TO BE IN USE BY CLIENT AND CONTINUE TO INVOICE FOR THE FULL LIST PRICE AND THE AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT; OR (II) SEEK ALL REMEDIES AT LAW TO ENSURE CLIENT HAS DE-INSTALLED THE SOFTWARE AND DESTROYED THE DOCUMENTS.

8.4. **Divestiture of Authorized Sites.** In the event an Authorized Site is divested, subject to 3M's right of approval, the Parties shall honor the Transition Period. "Transition Period" means a period of time the divested site is to remain an Authorized Site on this Agreement, which shall end the earlier of the date the divested site (a) has an active license for the relevant 3M Products under another agreement with 3M, (b) six (6) months following the date of divestiture, or (c) the divested site's notice to 3M it wishes to terminate all 3M Products under this Agreement. Upon conclusion of the Transition Period, the Use Rights for the divested site will terminate, and 3M will issue a prorated refund to Client applicable prepaid and unused fees.

9. GENERAL PROVISIONS

9.1. Entire Agreement. This Agreement represents the final, complete, exclusive and fully integrated agreement between the Parties with respect to its subject matter and supersedes any understanding, discussions, negotiations, representation or warranty of any kind made prior to or simultaneous with the execution of this Agreement, and no ancillary agreement or obligations are binding on 3M or 3M Personnel unless added to this Agreement by amendment. Terms or conditions found on a purchase order(s) or any other Client prepared document are specifically rejected and do not form any part of this Agreement. A failure or delay in enforcing any right or remedy under this Agreement shall not be construed as a waiver of any existing or future right or remedy.

9.2. Amendments. Any changes to the Agreement must be done through a 3M prepared amendment executed by both Parties, or 3M may, at its option, acknowledge and accept a written request from Client for changes, by returning to Client a numbered amendment letter prepared and signed by 3M (having the same effect as a fully executed amendment).

9.3. Interpretation, Priority. The headings and captions contained in this Agreement are for convenience only and shall not constitute a part hereof. In the event of any conflict of terms, the more specific parts of the Agreement prevail over more general; as such, any conflict shall be resolved in the following order of priority unless specifically stated otherwise (the more specific and controlling document listed first): Schedule, SOW, Appendix, Exhibit, and the Agreement's General Terms and Conditions.

9.4. Assignment. Client shall not assign or otherwise transfer this Agreement, including but not limited to, an acquisition or change of control of Client (e.g. merger, sale, voting membership) without 3M's prior written consent, which shall not be unreasonably withheld, and any attempt to do so shall be void. The Parties acknowledge and agree that 3M has provided notice that 3M Health Information Systems, Inc. will be part of a spin off entity via public notice, and 3M shall provide notice of the name of the spin off entity after the name goes into effect.

9.5. Force Majeure. A Party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event. Notwithstanding the foregoing, if such force majeure event precludes payment of fees or the fulfillment of an obligation hereunder, the Parties will work together in good faith to come to a mutually agreeable resolution. In the event of any such delay, all performance obligations shall be tolled to the extent necessary under the circumstances.

9.6. Announcements; Trade Name. Neither Party may use the other Party's trade name or logo, or issue an announcement concerning this Agreement to the trade press or industry consultants without prior written consent.

9.7. Notices. All required legal notices shall be given to the address listed on the cover page of the Agreement, by authorized personnel in writing and delivered by personal delivery, certified or registered mail, overnight carrier, or to a designated email address. Any change of address or representative shall be promptly communicated in writing to the other Party. All other correspondence can be addressed to the parties' representatives listed on Exhibit D. If Exhibit D is not completed or the designated party's representative is not reachable, such notices may be delivered to the address on the cover page of the Agreement. Both Parties may also utilize email as acceptable written notice to the other Party except a notice of breach of contract must be sent via the methods described above.

9.8. Intentionally omitted.

9.9. Dispute Resolution. The parties shall attempt in good faith to resolve any controversy, claim or dispute (cumulatively, "Dispute") arising from or relating to this Agreement by negotiations between representatives of the parties. Prior to any litigation, the parties agree that "C-Level" executive from each party will discuss with one another to seek a resolution ("C-Level Meeting"), and if the C-Level Meeting doesn't resolve the Dispute, the Dispute may undergo mediation using a mediator with a background in the industry and subject matter of the Dispute (mediation costs shall be shared equally). In the event of litigation, both Parties hereby waive any right of trial by jury. Nothing herein shall preclude a Party from taking any action necessary to preclude imminent and irreparable harm, nor diminish a Party's obligation to minimize damages.

9.10. No Third-Party Beneficiaries. Unless stated otherwise the Parties expressly acknowledge and agree that no third-party is intended to be nor shall be considered a beneficiary of any provision of this Agreement.

9.11. Insurance. The Parties shall each maintain insurance policies appropriate to its obligations under this Agreement, certificates of which shall be provided to the other Party upon request. 3M's insurance information, including 3M's insurance policy(ies) and certificate(s) of insurance, is Confidential Information. Notwithstanding the foregoing, Client may disclose the applicable 3M certificate(s) of insurance to EBIX for the purpose of storage only.

9.12. Compliance with Laws. Each Party shall comply with the provisions of all applicable federal, state, county and local laws, ordinances, regulations and orders pertaining to the performance of its obligations under this Agreement including, but not limited to the Deficit Reduction Act of 2005, the Federal False Claims Act, the U.S. Foreign Corrupt Practices Act, and other federal and state laws addressing anti-kickback, anti-bribery, self-referral, fraud, waste, and whistleblower protections for those reporting violations of such laws. If one Party believes that the other may not comply with one of the foregoing, it shall so notify the other Party, which will promptly look into the matter and take measures necessary to remedy any non-compliance. Notwithstanding any other provision in this Agreement, this Agreement is not intended to designate 3M as a delegated

entity or First Tier, Downstream, or Related Entity (FDR) under this Agreement or applicable Centers for Medicare & Medicaid Services (CMS) rules. Each Party will observe its own standards of business conduct that are generally consistent with 3M's Code of Conduct and underlying Principles which are located on 3M's website <http://www.3m.com/>.

9.13. Independent Contractors. Nothing contained in this Agreement shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship.

9.14. Injunctive Relief. The Parties agree that a breach of the Agreement may cause immediate and irreparable harm to the damaged party and that monetary damages will not be adequate to fully compensate the damaged Party. Therefore, each Party is entitled to seek injunctive relief for a threatened, anticipated, or actual breach of the Agreement.

9.15. Severability. The provisions of this Agreement are severable. If any part of this Agreement is deemed or rendered void, invalid, or unenforceable, in any jurisdiction in which this Agreement is performed, then that part will be severed from the remainder of the Agreement only as to that jurisdiction. Such severance will not affect the validity or enforceability of the remainder of this Agreement unless such severance substantially impairs the value of the whole agreement to any Party.

9.16. Survival. Sections 2, 4, 5, 7, 8, and 9 hereof shall survive any termination of any Appendix, and/or 3M Product(s), and/or this Agreement, as applicable.

9.17. Attachments. The following are 3M's standard Exhibits and Appendices, which are added only when applicable, based on the 3M Products added by Client on the Agreement:

APPENDICES:

Appendix 1	Annuity Products Additional Terms
Appendix 2	RESERVED
Appendix 3	RESERVED
Appendix 4	RESERVED
Appendix 5	RESERVED
Appendix 6	RESERVED
Appendix 7	RESERVED
Appendix 8	RESERVED
Appendix 9a	RESERVED
Appendix 9b	RESERVED
Appendix 9c	RESERVED
Appendix 10	RESERVED
Appendix 11	RESERVED

EXHIBITS:

- Exhibit A Business Associate Agreement
- Exhibit B Third-Party Content Required Terms
- Exhibit C Network and/or Facility Access and Confidentiality Agreement
- Exhibit D Client Contact Information

* * *

EXHIBIT A BUSINESS ASSOCIATE AGREEMENT

Parties:

Executed as an Exhibit to Software License Agreement #039391-23

Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center
1700 Mount Vernon Ave. Bakersfield, CA 93306
("Covered Entity")

3M Health Information Systems Inc.
575 West Murray Boulevard
Murray, UT 84123-4611
("Business Associate")

The Parties agree that this Business Associate Agreement ("BAA") is executed with 3M Health Information Systems, Inc.'s authorized agent, by way of the Master Software and Services Agreement above, and shall be incorporated by reference into all contracted relationships between the Parties in which the exchange of Protected Health Information is required.

1. Purpose:

Whereas, Business Associate may provide certain software and services as set forth in the Software License and/or Services Agreement(s) ("**Underlying Agreement(s)**") to Covered Entity which may require Covered Entity to disclose certain information to Business Associate, some of which may constitute Protected Health Information ("**PHI**") and/or Electronic Protected Health Information ("**EPHI**"). As a result, Business Associate may be considered a Business Associate of Covered Entity as defined by the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), and regulations promulgated thereunder. Furthermore, this BAA applies to all Underlying Agreement(s) between Business Associate and Covered Entity.

Whereas, Business Associate and Covered Entity intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Underlying Agreement(s) in compliance with (i) HIPAA; (ii) Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), also known as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009; (iii) regulations promulgated thereunder by the U.S. Department of Health and Human Services, including the HIPAA Omnibus Final Rule (the "HIPAA Final Rule"), which amended the HIPAA Privacy and Security Rules (as those terms are defined below) pursuant to the HITECH Act, extending certain HIPAA obligations to business associates and their subcontractors; and any applicable state privacy laws and regulations,

Whereas, the purpose of this BAA is to satisfy certain standards and requirements of HIPAA, the Privacy Rule and the Security Rule (as those terms are defined below), the HIPAA Final Rule, including, but not limited to, Title 45, §§ 164.314(a)(2)(i), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R."), and California's Confidentiality of Medical Information Act, Cal.Civ.Code § 56 et seq. ("CMIA"),

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, it is hereby agreed as follows:

2. Definitions.

Terms used in this BAA shall have the same meaning as those terms in the Privacy and Security Rules or the HIPAA Final Rule.

"Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

"Security Rule" shall mean the Security Standards at 45 CFR Part 160 and Part 164, Subparts A and C.

The terms "Protected Health Information" or "PHI" and "Electronic Protected Health Information" or "EPHI" when used in this BAA shall have the same meanings given to such terms in the Privacy and Security Rules, limited to the information that Business Associate creates, receives, maintains or transmits from or on behalf of Covered Entity. Wherever the term PHI is used in this BAA, it shall mean, include and be applicable to EPHI. Wherever the term EPHI is used, it shall mean and be applicable to EPHI only.

3. Obligations and Activities of Business Associate: Business Associate agrees, that with respect to PHI, it will:

- a. not use or further disclose PHI other than as permitted or required by this BAA or as Required By Law;
- b. use appropriate safeguards and comply with the Security Rule with respect to Electronic PHI, to prevent use or disclosure of such information other than as provided for by the Underlying Agreement(s) and this BAA;
- c. in accordance with 45 CFR § 164.502(e)(1)(ii) and 45 CFR § 164.308(b)(2), as applicable, enter into a written agreement with any agent or subcontractor that creates, receives, maintains or transmits PHI on behalf of Business Associate for services provided to Covered Entity, providing that the agent agrees to restrictions and conditions that are substantially similar to those that apply through this BAA to Business Associate with respect to such PHI;
- d. report to Covered Entity any use or disclosure of PHI not permitted under this BAA, Breach of Unsecured PHI or Security Incident, without unreasonable delay, and in any event no more than Ten (10) Business Days following discovery; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which notice to Covered Entity by Business Associate shall be required only upon request. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Business Associate's notification to Covered Entity of a Breach shall include, to the extent such information is available to Business Associate: (i) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during the Breach; and (ii) any particulars regarding the Breach that Covered Entity would need to include in its notification, as such particulars are identified in 45 CFR § 164.404;
- e. to the extent Business Associate maintains PHI in a Designated Record Set, make such information available pursuant to 45 CFR § 164.524 upon receipt of a written request of Covered Entity; provided, however, that Business Associate is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by Covered Entity. If an Individual makes a request for access pursuant to 45 CFR § 164.524 directly to Business Associate, or inquires about his or her right to access, Business Associate shall direct the Individual to his or her healthcare provider;
- f. to the extent Business Associate maintains PHI in a Designated Record Set, make such information available to Covered Entity for amendment pursuant to 45 CFR § 164.526 upon receipt of a written request of Covered Entity. If an Individual submits a written request for amendment pursuant to 45 CFR § 164.526 directly to Business Associate, or inquires about his or her right to amendment, Business Associate shall direct the Individual to his or her healthcare provider. Any amendments to PHI made by Business Associate at the direction of Covered Entity shall be the responsibility of the Covered Entity;
- g. document disclosures of PHI made pursuant to applicable law and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528;
- h. make available to Covered Entity the information collected in accordance with Section 3(g) of this BAA as is in the possession of Business Associate to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. If an Individual submits a written request for an accounting of disclosures pursuant to 45 CFR § 164.528 directly to Business Associate, or inquires about his or her right to an accounting of disclosures of PHI, Business Associate shall direct the Individual to his or her healthcare provider;
- i. make internal practices, books, and records, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health and Human Services (the "Secretary"), in a reasonable time and manner or as designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule; and
- j. 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.

4. Permitted Uses and Disclosures by Business Associate:

Except as otherwise limited in this BAA, Business Associate may use or disclose PHI:

- a. on behalf of, or to provide services to, Covered Entity, as provided for in the Underlying Agreement(s) and in accordance with the Privacy Rule, provided that such disclosure would not violate the Privacy Rule. To the extent Business Associate is carrying out any of Covered Entity's obligations under the Privacy Rule pursuant to the terms of the Underlying Agreement(s) or this BAA, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation(s). Business Associate shall request, use and disclose the minimum amount of PHI necessary to accomplish the intended purpose of such request, use or disclosure, in accordance with 45 CFR § 164.514(d), and any amendments thereto;

- b. for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that, in the case of disclosure to third parties, Business Associate shall obtain reasonable assurances from the person or entity to whom the PHI is disclosed that it will remain confidential, be used or further disclosed only as Required by Law or for the purpose for which it was disclosed (which purpose must be consistent with the limitations imposed upon Business Associate pursuant to this BAA), and the person or entity will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached;
- c. to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B); and
- d. to de-identify PHI in accordance with the standards set forth in 45 CFR § 164.514(b), and to use de-identified data solely and exclusively as permitted by applicable law.

5. Obligations of Covered Entity: Covered Entity shall:

- a. not transmit Unsecured PHI to Business Associate. Any Secured PHI, as defined under the HITECH Act and guidance promulgated thereunder, transmitted by Covered Entity to Business Associate shall be secured by a technology standard that is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute and is consistent with guidance issued by the Secretary specifying the technologies and methodologies that render PHI unusable, unreadable, or indecipherable to unauthorized individuals. Any Electronic PHI disclosed by Covered Entity to Business Associate shall be rendered unusable, unreadable or indecipherable through the use of a technology or methodology specified by the Secretary in guidance issued under the HITECH Act and shall not constitute Unsecured PHI;
- b. notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI. Covered Entity shall provide such notice no later than fifteen (15) days prior to the effective date of the limitation;
- c. notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI. Covered Entity shall provide such notice no later than fifteen (15) days prior to the effective date of the change. Covered Entity shall obtain any consent or authorization that may be required by the HIPAA Privacy Rule, or applicable state law, prior to furnishing Business Associate with PHI;
- d. notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI. Covered Entity shall provide such notice no later than fifteen (15) days prior to the effective date of the restriction.
- e. not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the Security Rule or the HIPAA Final Rule if done by Covered Entity.

6. Term and Termination

- a. Term. The Term of this BAA begins on the Effective Date (above) and ends when all Underlying Agreement(s) have expired and PHI provided by Covered Entity to Business Associate is destroyed or returned to Covered Entity, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with Section 6.c.
- b. Breach. Upon either Party's knowledge of a material breach by the other Party of this BAA, such Party shall provide written notice to the breaching Party stating the nature of the breach and providing an opportunity to cure the breach within thirty (30) business days. Upon the expiration of such 30-day cure period, the non-breaching Party may terminate this BAA and, at its election, the Underlying Agreement(s) (which requires compliance with this BAA), if cure is not possible. However, all rights and obligations arising prior to such termination shall remain in effect. All other Agreements between Covered Entity and Business Associate shall remain in effect in accordance with their terms.
- c. Effect of Termination. Upon termination of this BAA, Business Associate shall, if feasible, return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI except as provided for in this BAA. If return or destruction of PHI is not feasible, Business Associate shall: (i) extend the security protections of this BAA to such PHI; and (ii) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

7. Miscellaneous

- a. Cooperation in Investigations. The Parties acknowledge that certain breaches or violations of this BAA may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each Party shall cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry, unless such Party is a named adverse party in such litigation or investigation.

- b. HIPAA Final Rule Applicability. Business Associate acknowledges that enactment of the HITECH Act, as implemented by the HIPAA Final Rule, amended certain provisions of HIPAA in ways that now directly regulate, or will on future dates directly regulate, Business Associate under the Privacy Rule and the Security Rule. Business Associate agrees, as of the compliance date of the HIPAA Final Rule, to comply with applicable requirements imposed under the HIPAA Final Rule and CMIA.
- c. Third Party Beneficiaries. Nothing expressed or implied in this BAA is intended, nor shall be deemed, to confer any benefits on any third party.
- d. Regulatory References. A reference in this BAA to a section in the Privacy Rule, the Security Rule or other law or regulation means the section as in effect or as amended.
- e. Entire Agreement. This BAA supersedes and replaces any other agreement terms with 3M Health Information Systems with respect to the terms and obligations relating to HIPAA and PHI.
- f. Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA and the Privacy and Security Rules. This BAA may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both Parties.
- g. Survival. The respective rights and obligations of Business Associate under this BAA shall survive the termination of this BAA.
- h. Interpretation. Any ambiguity in this BAA shall be resolved to permit compliance with the Privacy and Security Rules and the HIPAA Final Rule.
- i. Designated Record Set. Unless explicitly contracted for, Business Associate does not maintain a Designated Record Set for the Covered Entity.
- j. Notices. Any notices required or permitted to be given hereunder by any party to the other shall be in writing and shall be deemed delivered upon personal delivery; twenty-four (24) hours following deposit with a courier for overnight delivery; or seventy-two (72) hours following deposit in the U.S. Mail, registered or certified mail, postage prepaid, return-receipt requested, addressed to the parties at the following addresses or to such other addresses as the parties may specify in writing:

If to Covered Entity:

Kern County Hospital Authority
1700 Mount Vernon Ave.
Bakersfield, CA 93306
Attention: Chief Executive Officer

If to Business Associate:

3M Health Information Systems, Inc.
575 West Murray Blvd
Murray, UT 84123
Attention: Compliance Officer
With Copy to: Legal Services

EXHIBIT B**THIRD-PARTY CONTENT REQUIRED TERMS****AMA TERMS AND CONDITIONS**

The following terms and conditions apply to Client's use of Software containing Current Procedural Terminology (CPT®) and/or material published in CPT® Assistant (collectively referred to herein as "AMA Editorial Content") in addition to the terms and conditions set forth in the License Agreement ("Agreement"). In the event of a conflict between the terms and conditions in the Agreement and those set forth in this Exhibit B, with respect to Client's use of the AMA Editorial Content, the terms and conditions of this Exhibit B shall control.

Grant of Rights Restrictions. Client has a nontransferable, nonexclusive license to use the AMA Editorial Content contained within the Software solely for its internal purposes within the United States. Client is prohibited from publishing, distributing via the Internet or other public computer based information system, creating derivative works (including translations), transferring, selling, leasing, licensing or otherwise making the AMA Editorial Content, or a copy or portion thereof, available to any unauthorized party. Client's access to updated AMA Editorial Content depends upon a continuing contractual relationship between 3M and the AMA. Client shall ensure that anyone with authorized access to the AMA Editorial Content will comply with the provisions of the Agreement, including this Exhibit B. Any printing or downloading of CPT® Assistant from the Software must be solely for Client's internal use, without any modification to the content, and in such a way that all references to the AMA are included.

Notices. CPT and CPT Assistant are copyrighted works of the American Medical Association. CPT is a registered trademark of the American Medical Association. The following U.S. Government Rights notice shall apply: U.S. Government Rights. This product includes CPT and/or CPT Assistant which is commercial technical data which was developed exclusively at private expense by the American Medical Association, 515 North State Street, Chicago, Illinois, 60610. The AMA does not agree to license CPT to the Federal Government based on the license in FAR 52.227-14 (Data Rights – General) and DFARS 252.227-7015 (Technical Data – Commercial Items) or any other license provision.

Backup Rights. Client may make backup copies of the Software containing AMA Editorial Content for backup or archival purposes only provided that all notices of proprietary rights, including trademark and copyright notices, appear on all backup or archival copies made.

Warranty Disclaimer. TO THE FULLEST EXTENT POSSIBLE UNDER APPLICABLE LAW, ALL WARRANTIES (EXPRESS AND IMPLIED) INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM TRADE USAGE OR COURSE OF DEALING ARE DISCLAIMED WITH RESPECT TO THE AMA EDITORIAL CONTENT. CLIENT'S USE OF THE AMA EDITORIAL CONTENT AS CONTAINED IN THE SOFTWARE IS "AS IS" WITHOUT ANY LIABILITY TO 3M OR THE AMA INCLUDING, WITHOUT LIMITATION, ANY LIABILITY FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS FOR SEQUENCE, ACCURACY, OR COMPLETENESS OF DATA, OR THAT THE AMA EDITORIAL CONTENT WILL MEET CLIENT'S REQUIREMENTS. THE SOLE RESPONSIBILITY OF THE AMA IS TO MAKE AVAILABLE TO 3M REPLACEMENT COPIES OF THE AMA EDITORIAL CONTENT IF THE DATA IS NOT INTACT. THE AMA DISCLAIMS ANY LIABILITY FOR ANY CONSEQUENCES DUE TO USE, MISUSE, OR INTERPRETATION OF INFORMATION CONTAINED OR NOT CONTAINED IN THE AMA EDITORIAL CONTENT.

AMA as Third-Party Beneficiary. The AMA is a third-party beneficiary of those terms and conditions of the Agreement, including this Exhibit B, necessary to protect the rights and interests of the AMA with respect to AMA Editorial Content.

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EXHIBIT B - 2

THIRD-PARTY CONTENT REQUIRED TERMS

HEALTH FORUM TERMS AND CONDITIONS

To the extent Client has licensed Software which contains AHA Coding Clinic™ for ICD-9-CM, ICD-9-CM Coding Handbook, Revised Edition, by Faye Brown, and/or AHA Coding Clinic™ for HCPCS, the following terms and conditions apply to Client's use of such Software in addition to the terms and conditions set forth in the Agreement. In the event of a conflict between the terms and conditions in the Agreement and those set forth in this Exhibit B-2, with respect to Client's use of such Software, the terms and conditions of this Exhibit B-2 shall control.

ICD-9-CM Coding Handbook, Revised Edition, by Faye Brown, is copyrighted by Health Forum, LLC, Chicago, Illinois, which licenses its use. No portion of ICD-9-CM Coding Handbook may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior express, written consent of Health Forum, LLC.

ICD-10-CM and ICD-10-PCS Coding handbook (most current year), by Nelly Leon-Chisen, is copyrighted by Health Forum, LLC, Chicago, Illinois, which licenses its use. No portion of ICD-10-CM and ICD-10-PCS Coding Handbook may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior express, written consent of Health Forum, LLC.

It is understood that Health Forum, LLC did not enter the ICD-9-CM Coding Handbook information and data into the computer and therefore Health Forum, LLC is not responsible for the accuracy, completeness or appropriateness of the information.

It is also understood that Health Forum, LLC did not enter the ICD-10-CM and ICD-10-PCS Coding Handbook information and data into the computer and therefore Health Forum, LLC is not responsible for the accuracy, completeness or appropriateness of the information. Health Forum, LLC makes no warranties of merchantability or fitness for a particular purpose.

Health Forum, LLC shall have no liability to anyone including 3M and the Sublicensed Location, for lost profits or indirect or consequential damages. Health Forum, LLC makes no warranties of any kind with respect to 3M, its products or services.

AHA Coding Clinic™ for ICD-9-CM is copyrighted by the American Hospital Association ("AHA"), Chicago, Illinois, which licenses its use. No portion of AHA Coding Clinic™ for ICD-9-CM may be copied without the express, written consent of Health Forum, LLC.

It is understood that AHA did not enter the AHA Coding Clinic™ for ICD-9-CM information and data into the computer and therefore AHA is not responsible for the accuracy, completeness or appropriateness of the information. AHA makes no warranties of merchantability or fitness for a particular purpose. AHA shall have no liability to anyone, including 3M and the Client, for lost profits or indirect or consequential damages. AHA makes no warranties of any kind with respect to 3M, its products or services.

AHA Coding Clinic™ for HCPCS is copyrighted by the American Hospital Association ("AHA"), Chicago, Illinois, which licenses its use. No portion of AHA Coding Clinic™ for HCPCS may be copied without the express, written consent of Health Forum, LLC.

It is understood that AHA did not enter the AHA Coding Clinic™ for HCPCS information and data into the computer and therefore AHA is not responsible for the accuracy, completeness or appropriateness of the information. AHA makes no warranties of merchantability or fitness for a particular purpose. AHA shall have no liability to anyone, including 3M and the Client, for lost profits or indirect or consequential damages. AHA makes no warranties of any kind with respect to 3M, its products or services.

The printing or downloading of ICD-9-CM Coding Handbook, AHA Coding Clinic™ for ICD-9-CM and AHA Coding Clinic™ for HCPCS (collectively, the "HF Documentation") or any portion thereof, is prohibited, other than the printing of an excerpt from HF Documentation on a specific topic without any modification to the excerpt for internal use only by the Authorized Site as long as the source of the excerpt(s) is printed on the printout(s).

The text of HF Documentation is and will remain inaccessible to other programs capable of generating paper printouts of HF Documentation (excluding the print screen functionality of Windows software) by encrypting all files containing source text of HF Documentation.

EXHIBIT B - 3**THIRD-PARTY CONTENT REQUIRED TERMS****NOTICES****LOINC NOTICE**

Certain Software may include all or a portion of the LOINC® table, LOINC panels and forms file, LOINC document ontology file, and/or LOINC hierarchies file, or is derived from one or more of the foregoing, subject to a license from Regenstrief Institute, Inc. Your use of the LOINC table, LOINC codes, LOINC panels and forms file, LOINC document ontology file, and LOINC hierarchies file also is subject to this license, a copy of which is available at <http://loinc.org/terms-of-use>. The current complete LOINC table, LOINC Users' Guide, LOINC panels and forms file, LOINC document ontology file, and LOINC hierarchies file are available for download at <http://loinc.org>. The LOINC table and LOINC codes are copyright © 1995-2013, Regenstrief Institute, Inc. and the Logical Observation Identifiers Names and Codes (LOINC) Committee. The LOINC panels and forms file, LOINC document ontology file, and LOINC hierarchies file are copyright © 1995-2013, Regenstrief Institute, Inc. All rights reserved. THE LOINC TABLE (IN ALL FORMATS), LOINC PANELS AND FORMS FILE, LOINC DOCUMENT ONTOLOGY FILE, AND LOINC HIERARCHIES ARE PROVIDED "AS IS." ANY EXPRESS OR IMPLIED WARRANTIES ARE DISCLAIMED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LOINC® is a registered United States trademark of Regenstrief Institute, Inc. A small portion of the LOINC table may include content (e.g., survey instruments) that is subject to copyrights owned by third parties. Such content has been mapped to LOINC terms under applicable copyright and terms of use. Notice of such third-party copyright and license terms would need to be included if such content is included.

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EXHIBIT B-4
THIRD-PARTY CONTENT REQUIRED TERMS
INTERSYSTEMS CORPORATION LICENSE AND SUPPORT TERMS

1. These License and Support Terms are part of the License Agreement between InterSystems Corporation ("InterSystems") and the end user customer ("you," the "Customer" or the "End User"), who has signed a Master Software and Services Agreement with 3M Health Information Systems, Inc. (the "Partner"). The License Agreement shall not be binding until an order form (the "Order Form") has been fully executed between Partner and InterSystems.
2. As of the date the Order Form has been fully executed (Partner will execute such Order Form prior to implementation of Customer) (the "Effective Date"), InterSystems hereby grants to you a nontransferable and nonexclusive license (the "License") to use the InterSystems product(s) incorporated into the Partner solution internally within your organization in the conduct of your business, provided that all fees are paid by Partner to InterSystems. You may only use the Licensed Software to run the Partner's solution and to connect the Partner's solution to other applications or systems, but not for any other purpose. No License shall be granted upon the physical delivery of any software to you. For the avoidance of doubt, the "Licensed Software" shall not include any open source or third-party software that may be shipped with, installed with or used in conjunction with InterSystems' proprietary software.
3. You are acquiring the License via the Partner so the Partner will be responsible for paying all fees specified therein to InterSystems.
4. If your use of the Licensed Software is regulated, you agree not to use or implement the Licensed Software in any manner that is outside the scope of intended use or otherwise violates any prohibitions or conditions set forth in a Quality Agreement or otherwise communicated to you by InterSystems.
5. Your License is a subscription License. The term ("License Term") of a subscription License begins on the Effective Date and terminates automatically on the last day of the final period for which InterSystems has received the proper fee.
6. The Licensed Software may only be used on servers operated by you or on your behalf. You may not sublicense the Licensed Software or otherwise make it available to third parties except as explicitly provided herein.
7. Software Update and Technical Assistance ("Product Support") shall be provided in accordance with the standard product terms in effect on the date such Product Support is invoiced. You shall receive all Product Support from the Partner and not from InterSystems directly.
8. InterSystems hereby warrants to you that (i) the Licensed Software will operate substantially in accordance with InterSystems' documentation relating thereto for one year from the Effective Date or the end of the License Term, whichever occurs first, and (ii) all Product Support shall be provided in a manner consistent with industry standards. The foregoing warranties are conditioned upon the use of the Licensed Software strictly in accordance with InterSystems' documentation and instructions, and the absence of any misuse, damage, alteration or modification thereof. INTERSYSTEMS SHALL NOT BE DEEMED TO HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, TITLE, NON-INFRINGEMENT, DESIGN, OPERATION OR FITNESS FOR A PARTICULAR PURPOSE OF THE LICENSED SOFTWARE OR PRODUCT SUPPORT. MOREOVER, The Licensed Software is not a substitute for the skill, knowledge and experience of the individuals who may use the Licensed Software. Your exclusive remedy for a breach of the above warranties shall be for InterSystems to use reasonable efforts to repair, replace or re-perform any non-conforming Licensed Software or Product Support, as applicable. The limited warranty provided in (i) above does not include Product Support and are not a substitute for Product Support. You must direct any warranty claim to the Partner and the Partner will send the claim directly to InterSystems.
9. In the event of a valid claim that any Licensed Software that has not been altered, modified, misused or damaged infringes upon the intellectual property rights of a third party when used in accordance with InterSystems' documentation and instructions, InterSystems shall either (a) modify the Licensed Software, (b) procure a license for you to use the Licensed Software or (c) terminate your License, at InterSystems' sole discretion.
10. InterSystems' liability to you shall in no event exceed the portion of the fee received by InterSystems in respect of the specific Licensed Software or Product Support on account of which such liability arose. In no event shall InterSystems be liable to you for any special, incidental, exemplary, indirect or consequential damages or lost profits.
11. Either party may terminate the License Agreement with 30 days advance written notice upon the other party's breach if the breach is not cured during that period. InterSystems will consult the Partner before terminating the License Agreement. The Partner shall be liable for all fees relating to Licensed Software or Product Support provided prior to termination, and Sections 10, 11, 12, 13, and 14 hereof shall survive termination or expiration of the License Agreement. Your rights to use the Licensed Software cease immediately upon termination or expiration of the License Agreement.
12. The Licensed Software and related documentation are and shall remain the sole property of InterSystems. You agree not to (i) decompile, disassemble, or reverse engineer the Licensed Software or (ii) with the exception of the Partner for the purposes of fulfilling your obligations under your agreement with Partner, disclose to others the Licensed Software or any data or information relating to the Licensed Software. You agree to allow InterSystems or its representatives to audit your use of the Licensed Software upon 5 days advance notice by InterSystems. You agree to provide access to your premises and otherwise cooperate with InterSystems in such audit. Any such audit shall be conducted with the assistance from the Partner.
13. The parties are and shall be independent contractors to one another, and the License Agreement shall not create an agency, partnership or joint venture between the parties. Neither party nor its employees, agents or representatives shall be deemed to be an agent or employee of the other party and each party acknowledges that it is not authorized to bind or in any way commit the other party to any legal, financial or any other obligation.
14. This License Agreement shall be governed by and construed in accordance with the laws of, and the parties agree to submit to exclusive jurisdiction of the Commonwealth of Massachusetts, USA. The English version of the License Agreement shall control unless otherwise required by local law.
15. You agree to comply with all applicable laws, including, but not limited to: U.S. export control or similar laws with respect to the distribution of the Licensed Software, Product Support and technical data; the US Foreign Corrupt Practices Act and any other anti-corruption laws; and applicable data protection laws. Without InterSystems' prior written consent, you may not allow the Licensed Software, Product Support or technical data to be exported to or used in a country or region where a license, permit or special permission is required. InterSystems may, but shall not be required to, apply for such license, permit or permission at your expense.
16. This document sets out all the terms (the "License Agreement") between you and InterSystems relating to your use of the Licensed Software and receipt of Product Support and supersedes any prior understandings between us as well as any purchase orders or similar documents that may be submitted to InterSystems. InterSystems shall have the right to transfer or assign the License Agreement without your consent or prior notice to you. You may not assign the License Agreement without InterSystems' prior written consent. The License Agreement may only be modified or amended by a writing signed by both parties.

EXHIBIT C

NETWORK AND/OR FACILITY ACCESS AND CONFIDENTIALITY AGREEMENT

This ACCESS AND CONFIDENTIALITY AGREEMENT (the "Access Agreement") is made by and between 3M Health Information Systems, Inc. ("3M") and **Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center** ("Customer"). The parties have contemporaneously entered into a Software License and/or Services Agreement, as amended (Agreement), pursuant to which, inter alia, Customer and 3M have agreed to terms and conditions setting forth the complete rights and obligations of the parties including, but not limited to, the use and confidentiality of the parties' systems and information, and provisions relating to the use of Protected Health Information (as set forth in the Exhibit to the Agreement entitled Business Associate Agreement or as an independent Business Associate Agreement ("BAA")). All of the terms and conditions of the Agreement shall continue in full force and effect and shall apply to this Access Agreement. In the event a conflict arises between the terms of this Access Agreement and the terms of the Agreement and BAA, the conflict shall be resolved in the following order of priority unless specifically stated otherwise (governing provision stated first): the Agreement, as amended (including all Attachments and Exhibits thereto, and the BAA), this Access Agreement.

As set forth in the Agreement, 3M understands that Customer must assure the confidentiality of its human resources, payroll, financials, research, internal reporting, strategic planning, communications, computer systems and management information (collectively, "Operational Information"). Therefore, in connection with this Agreement and the Agreement, including the BAA, 3M shall instruct its employees, agents and contractors ("3M Personnel") as follows:

1. Not to disclose or discuss any Operational Information with others who do not have a need to know such information.
2. Not to divulge, copy, release, sell, loan, alter, or destroy any Operational Information except as properly authorized.
3. Not to discuss Operational Information where others can overhear the conversation. It is not acceptable to discuss Operational Information even if the patient's name is not used.
4. Not to make any unauthorized transmissions, inquiries, modifications, or purging of Operational Information.
5. To immediately return to Customer any documents or media containing Operational Information upon termination of access.
6. That 3M and 3M Personnel have no rights to any ownership interest in any information accessed or created by the same during the relationship with Customer.
7. To abide by 3M's Compliance and Ethical Business Conduct Guidelines, found at https://www.3m.com/3M/en_US/ethics-compliance/code/.
8. That a violation of this Agreement may result in disciplinary action, up to and including termination of access or suspension/loss of privileges within Customer systems.
9. To only access or use systems or devices 3M Personnel are officially authorized to access and not to demonstrate the operation or function of systems or devices to unauthorized individuals.
10. That Customer may log, access, review, and otherwise utilize information stored on or passing through its systems, including e-mail, in order to manage systems and enforce security.
11. To practice good workstation security measures such as locking up diskettes when not in use, using screen savers with activated passwords appropriately, and positioning screens away from public view.
12. To practice secure electronic communications by transmitting Operational Information only to authorized entities, in accordance with approved security standards.
13. To use only 3M Personnel's officially assigned User-ID and password and use only approved licensed software.
14. To never share/disclose user-IDs, passwords or tokens, use tools or techniques to break/exploit security measures or connect to unauthorized networks through the systems or devices.
15. To notify the appropriate Information Services person, as directed by Customer, if any 3M personnel password has been seen, disclosed, or otherwise compromised, and will report activity that violates this agreement, privacy and security policies, or any other incident that could have any adverse impact on Operational Information.
16. This Agreement will terminate upon the expiration or termination of the Services Agreement; provided, however the confidentiality obligations hereunder will continue after termination or expiration of this Agreement, subject to the limitations on such obligations as defined in the Services Agreement, or if not defined, for four (4) years after the termination or expiration of the Services Agreement, unless such information becomes publicly available through no fault of 3M.

The Parties have agreed to this Access and Confidentiality Agreement, which has been signed by way of the MSSA Agreement and will be terminated by way of the MSSA Agreement. Please see MSSA Agreement Signature Page for the authorized signatures.

**SECTION BELOW TO BE FILLED OUT BY 3M PERSONNEL REQUIRING ACCESS TO CUSTOMER FACILITY (AS AND WHEN REQUIRED)
CUSTOMER WILL PROMPTLY PROVIDE ACCESS TO ALL REQUESTS BY 3M PERSONNEL**

NAME	3M EMPLOYEE ID #	EMAIL ADDRESS	PHONE NUMBER	NAME	3M EMPLOYEE ID #	EMAIL ADDRESS	PHONE NUMBER
NAME	3M EMPLOYEE ID #	EMAIL ADDRESS	PHONE NUMBER	NAME	3M EMPLOYEE ID #	EMAIL ADDRESS	PHONE NUMBER
NAME	3M EMPLOYEE ID #	EMAIL ADDRESS	PHONE NUMBER	NAME	3M EMPLOYEE ID #	EMAIL ADDRESS	PHONE NUMBER
NAME	3M EMPLOYEE ID #	EMAIL ADDRESS	PHONE NUMBER	NAME	3M EMPLOYEE ID #	EMAIL ADDRESS	PHONE NUMBER

EXHIBIT D
CLIENT CONTACT INFORMATION

Client shall provide the following information:

Send Invoices to:

Name: _____
Title: _____
Address: _____
Phone number: _____
Email Address: _____
Email Address for Invoices: _____

Accounts Payable Contact:

Name: _____
Title: _____
Phone number: _____
Email Address: _____

Contact for installation:

Name: _____
Title: _____
Phone number: _____
Email Address: _____

Renewal contact:

Name: _____
Title: _____
Phone number: _____
Email Address: _____

* * *

APPENDIX 1

ANNUITY PRODUCTS ADDITIONAL TERMS

IN ADDITION TO THE TERMS AND CONDITIONS SET FORTH IN THE AGREEMENT, THE PROVISIONS OF THIS APPENDIX SHALL ONLY APPLY TO 3M PRODUCTS ADDED UNDER THIS APPENDIX AND IDENTIFIED ON ANY SCHEDULE 1.

- A. **Definitions.** Capitalized terms used herein but not otherwise defined hereunder shall have the meaning ascribed to them in the Agreement.
- A.1. **"Annual Billing Cycle"** means each one-year period, beginning on the first License Start Date unless otherwise set forth on the applicable Schedule.
- A.2. **"Annuity Software"** means Software licensed to Client on an annual or multi-year annual basis, but less than a perpetual basis, which may be installed on Client's systems, 3M's systems (SaaS), or a combination of the two.
- A.3. **"Renewal Proposal"** means a 3M-prepared document that sets forth the fees for the first year of any subsequent Renewal Term hereunder invoiced by 3M and due by Client for such Renewal Term.
- B. **Use Rights.** Subject to the Client's compliance with this Agreement, 3M grants to Client, a non-exclusive, non-transferable and non-sublicensable license during the License Term of each Schedule 1 to (a) install the non-SaaS Annuity Software at the Client's designated Install Site(s) listed on the applicable Schedule 1 and located within the Territory, and (b) permit Authorized Users to access and use the Annuity Software and Documents solely for processing transactions and using the Results for Client's healthcare business reimbursement purposes of the Authorized Sites, and (c) permit Client to create an Interface between the Software and Client developed systems ("License"). Third party developed Interfaces and/or interfaces to third party software shall be in accordance with Section 2.5.
- C. **Term of Use Right.** The term of Client's License to the Annuity Software shall be as set forth on the applicable Schedule 1 ("License Term"). Once the License Start Date for any 3M Product on the applicable Schedule 1 has been established, all other 3M Products listed or added on the same Schedule 1 will share the same License Term, and any 3M Products added will be pro-rated to the next Annual Billing Cycle of the applicable Schedule 1.
- D. **Renewal Term.** Unless otherwise set forth on a Schedule, the License Term for any Schedule 1 **shall automatically renew**, for a successive License Term of one (1) year (each a "Renewal Term"), subject to either Parties right to choose not to renew any 3M Product(s) with at least sixty (60) days written Notice prior to the end of the then-current term of the applicable Schedule 1. If timely Notice is not provided, the fees for all the 3M Product(s) listed on the most current version of the Renewal Proposal, will automatically renew for the additional Renewal Term.
- E. **Annuity Software Fees, Invoicing and Payments.** License and I&T fees for each Authorized Site are set forth on the applicable Schedule 1 hereto, and unless otherwise set forth on such Schedule 1, shall be invoiced to Client as set forth below.
- E.1. **Fees; Invoicing.**
- E.1.1. **License Fees.** Annuity Software license fees, set forth on any Schedule 1, will be invoiced to Client on the earlier of: (a) shortly after their License Start Date, or (b) 30 days before the Annual Billing Cycle of each Schedule 1. 3M shall communicate Client's next Annual Billing Cycle fees for each Schedule 1 by e-mail, U.S. mail, or courier approximately ninety (90) days prior to the end of the Annual Billing Cycle of each Schedule 1. The annual License fee increases during any then-current License Term on any Schedule 1 shall not exceed five percent (5%) of the License fees for the immediately preceding year, unless otherwise set forth on the applicable Schedule 1. The fees for the first year of any Renewal Term will be provided to Client within a Renewal Proposal for any Schedule 1, delivered to Client's Notice address or the Renewal Contact in Exhibit D. The Renewal Proposal will: (i) reflect 3M's then-current list fee, less Client's applicable discounts, and (ii) be superseded by the most recent version of the Renewal Proposal for any Schedule 1 provided to Client.
- E.1.2. **Additional Annuity Software and/or Authorized Sites.** During the License Term, the Parties upon mutual consent, may add new items of Annuity Software and additional Authorized Sites to any Schedule 1. 3M will prorate the first year's License fees for any additional items of Annuity Software and new Authorized Sites from their License Start Date to the end of the current Annual Billing Cycle of the applicable Schedule 1.

E.1.3. Invoicing and Payment for Software Installation and Training fees. Software I&T fees, set forth on any Schedule 1, will be invoiced to Client on or shortly after the License Start Date for the associated item(s) of Annuity Software, unless otherwise set forth on the applicable Schedule 1 or SOW attached to any Schedule 1.



MASTER SOFTWARE AND SERVICES AGREEMENT

PROPRIETARY 3M CONFIDENTIAL TRADE SECRET, COMMERCIAL OR FINANCIAL INFORMATION.

Do not release or disclose any information in this document under any Open Records Act, Freedom of Information Act, or equivalent law. Release or disclosure is prohibited without 3M consent. Immediately report any request to 3M.

SCHEDULE 1-1

ANNUITY PRODUCTS FEE SCHEDULE

THE ITEMS LISTED HEREUNDER SHALL BE GOVERNED BY THE TERMS AND CONDITIONS OF THE AGREEMENT AND APPENDIX 1.

- Term of Schedule 1-1.** The License Term of this Schedule begins on the earlier of (i) the first License Start Date or (ii) August 27, 2023 (Annual Billing Cycle Date) and continues for five (5) years from the Annual Billing Cycle date.
- Itemized Schedule of 3M Products below.**

S/O ITEM	CPU ACTION	SKU	AUTHORIZED SITE(S) PRODUCT DESCRIPTION	SITE TYPE LIST FEE	TOTAL 1 ST YR ANNUAL & ONE TIME FEE	2 ND YR ANNUAL FEE	3 RD YR ANNUAL FEE	4 TH YR ANNUAL FEE	5 TH YR ANNUAL FEE
343991	WEB	--	KERN MEDICAL CENTER--1700 MT. VERNON AVE, BAKERSFIELD, CA, HI6007598	Install/Access Site					
1.	Existing	360E BPAS FOLLOW UP	360 Encompass System - Business Process Advisory Services (BPAS) Follow Up**						
2.	Existing	360E CAC INPATIENT	360 Encompass System - Computer Assisted Coding Inpatient						
3.	Existing	360E CAC OUTPATIENT	360 Encompass System - Computer Assisted Coding Outpatient						
4.	Existing	360E CDI	360 Encompass System - Clinical Documentation Improvement System Software						
5.	Existing	360E CODING EXCELLNC	360 Encompass System - Coding Excellence						
6.	Existing	360E MD PC	360 Encompass MD - Provider Communicator						
7.	Existing	360E PROFEE	360 Encompass System - Professional Facility						
8.	Existing	360E PROFEE CLINIC	360 Encompass Professional Clinic						
10.	Existing	CDIS FINCODEINTF	360E CDIS Final Coded Interface						
11.	Existing	CONNSFT BAS	Connections Software Basic						
12.	Existing	MNAPC CA A&B	Medical Necessity for APCfinder CA A&B						



13.	Existing	PSUS-360	3M Update Services 360 Encompass		
14.	Existing	RCS APR CAMED	Reimbursement Calculation Software APR Med-Cali		
SITE SUBTOTAL:					
343992	-----	--	CERNER CORP--2800 ROCK CREEK PKWY STE 601, KANSAS CITY, MO, H12630003	Host Site	
15.	Existing	360E CAC INPATIENT	360 Encompass System - Computer Assisted Coding Inpatient		
16.	Existing	360E CAC OUTPATIENT	360 Encompass System - Computer Assisted Coding Outpatient		
17.	Existing	360E CDI	360 Encompass System - Clinical Documentation Improvement System Software		
18.	Existing	360E CODING EXCELLNC	360 Encompass System - Coding Excellence		
19.	Existing	360E MD PC	360 Encompass MD - Provider Communicator		
20.	Existing	360E PROFEE	360 Encompass System - Professional Facility		
21.	Existing	360E PROFEE CLINIC	360 Encompass Professional Clinic		
22.	Existing	CONNSFT BAS	Connections Software Basic		
23.	Existing	MINAPC CA A&B	Medical Necessity for APCfinder CA A&B		
24.	Existing	RCS APR CAMED	Reimbursement Calculation Software APR Med-Cali		
SITE SUBTOTAL:					
SCHEDULE TOTAL:				\$643,946.00	\$675,393.31
The Annual Billing Cycle for the above products begins on August 27, 2023.				\$708,412.95	\$743,083.62
\$779,487.80					
FEE SUMMARY:					
FIRST YEAR ANNUAL SOFTWARE LICENSE & SUPPORT FEES:				\$628,946.00	
*TOTAL ONE TIME, IMPLEMENTATION & TRAINING FEES:				\$0.00	
**TOTAL CONSULTING SERVICES FEES:				\$15,000.00	
TOTAL THIS AMENDMENT:				\$643,946.00	

THE FEES LISTED ABOVE ARE GUARANTEED FOR A PERIOD OF NINETY (90) DAYS FROM THE ISSUE DATE OF THIS AMENDMENT OR DECEMBER 31, 2023, WHICHEVER OCCURS FIRST, UNLESS THIS AMENDMENT IS FULLY EXECUTED PRIOR TO.

In the event Client delays implementation of any module of Software or scheduling of Services, at no fault of 3M, for more than one hundred fifty (150) days from the execution date of this Amendment, 3M may, at its option, increase the price of such Software or Service to the then-current list price or 3M may terminate any such module of the Software or Service from this Agreement.



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

March 15, 2023

Subject: Request an increase to the maximum payable attributed to True Lease Schedule No. 001-6778724-001 to Master Lease Schedule No. 57662-50680 with Dell Financial Services, LLC (KCHA Agt. 010-2019) approved on 02/20/2019

Recommended Action: Approve

Summary:

The True Lease Schedule with Dell Financial Services, LLC., contained the final leasing schedule for the financing of desktop computers, required for the Cerner Millennium Electronic Health Record project, and initiated an industry standard 4-year technology lifecycle program for Kern Medical.

Due to an error on the True Lease Schedule, the maximum payable was calculated at \$850,186.56 plus taxes and fees, however that amount is inconsistent with the total monthly payments of \$18,342.70 over the approved 48 months. The maximum payable should have been calculated at \$880,643, plus taxes and fees.

Therefore, it is recommended that your Board approve the requested increase to the maximum payable of the approved True Lease Schedule with Dell Financial Services, LLC, by \$30,456 for the True Lease Schedule, effective May 1, 2019 through May 22, 2023.



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

March 15, 2023

Subject: Proposed RMA Quote 2003223301983-02 with Presidio Networked Solutions Group, LLC for the exchange of network infrastructure equipment to support core network services under the terms and conditions of the Master Services Agreement (053-2018)

Recommended Action: Approve; Authorize Chairman to sign and authorize the Chief Executive Officer to accept delivery.

Summary:

Kern Medical requests your Board approve the Quote with Presidio Networked Solutions Group, LLC (Presidio) for the return and replacement of network switches to replace the end of life or in the support of the network switches purchased in 2017. Due to unforeseen manufacturer technical issues, the original network switches purchased under Quote #2003222207515-07 are not able to be deployed into Kern Medical's network environment and must be returned and replaced with a model that will work. There are no additional costs associated with this revised proposed quote, all costs were approved under Quote#2003222207515-07.

The original purchase price for the CISCO MERAKI Network Switches in Quote #2003222207515-07 was \$1,963,371 plus taxes and fees which included the cost of the switches listed in this proposed Quote.

Solution Description	One Time Fee	Term	Estimated Taxes and Fees	Total
Meraki Enterprise Agreement (licenses) and Meraki 48GE L3 POE + Switches	\$1,963,371	60 months	\$196,337	\$2,159,708

Therefore, it is recommended that your Board approve the proposed Quote 2003223301983-02 with Presidio Networked Solutions Group, LLC, authorize the Chairman to sign, and authorize the Chief Executive Officer to accept delivery.



QUOTE: 2003223301983-02

DATE: 02/08/2023

PAGE: 1 of 1

TO: Kern Medical Center
Matt Smith
1700 Mt Vernon Ave
Bakersfield, CA 93306-4018

matthew.smith@kernmedical.com
(p) (661) 326-5119
(f) (602) 470-5063

FROM: Presidio Networked Solutions Group, LLC
Larry Porush
5000 Hopyard Rd
Suite 188
Pleasanton, CA 94588

lporush@presidio.com
(p) +1.818.936.9824

Customer#: KERNM001
Account Manager: Larry Porush
Inside Sales Rep: Timothy Kidd
Title: Meraki (143) MS250

#	Part #	Description	Unit Price	Qty	Ext Price
MS250-48FP-HW					
1	MS250-48FP-HW	Meraki MS250-48FP L3 Stck Cld-Mngd 48x GigE 740W PoE Switch	\$5,714.97	143	\$817,240.71
Total:					\$817,240.71
MA-CBL-40G-3M					
2	MA-CBL-40G-3M	Meraki 40GbE QSFP Cable, 3 Meter	\$159.97	21	\$3,359.37
Total:					\$3,359.37
MA-PWR-1025WAC					
3	MA-PWR-1025WAC	Meraki 1025WAC PSU	\$878.16	143	\$125,576.88
Total:					\$125,576.88
MA-CBL-40G-1M					
4	MA-CBL-40G-1M	Meraki 40GbE QSFP Cable, 1 Meter	\$106.65	109	\$11,624.85
Total:					\$11,624.85

Sub Total:	\$957,801.81
Grand Total:	\$957,801.81

This quote is governed by the Master Services Agreement HA 053-2018 dated August 15, 2018, as amended and is in exchange for equipment found on quote 2003222207515-07

No signed quote. PO required.

APPROVED AS TO FORM
Legal Services Department

By 
Kern County Hospital Authority



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

March 15, 2023

Subject: Proposed Amendment No. 3 to the Master Service Agreement #30718 with JDM Solutions Inc.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

The proposed Amendment No. 3 for continued professional services with JDM Solutions Inc. is required to meet the Kern Medical data and reporting operational requirements.

The proposed Amendment provides for continued staffing of consultants who can (1) Develop the Data Intelligence program that supports the Hospital Authority leveraging data analytics support and tools which feed the Population Health, HealtheRegistries, HealtheCare and Interoperability programs; (2) Implement and support Data Governance that maintains data integrity across legacy and core systems; (3) Develop quick access to reporting and dashboards for Kern Medical leadership through Tableau as the Kern Medical real time data tool. Also, JDM provides a cost reduction strategy reducing expensive CCL report writing consultants and building more intuitive dashboard data; and (4) Provide data tools for process improvement through data quality

Previous Agreements	Purpose of Amendment	Variance
Original Agreement, dated November 21, 2018	Agreement with JDM Solutions Inc. to provide consultants to develop the Data Intelligence program to support the Hospital Authority	\$249,500
Amendment No. 1, dated July 17, 2019	Amendment to provide continued staffing of consultants	\$1,289,600
Amendment No. 2, dated May 19, 2021	Amendment 2 provided continued staffing of consultants	\$1,361,200
Proposed Amendment No. 3	Amendment 3 will provide continued staffing of consultants	\$334,880

Therefore, it is recommended that your Board approve the proposed Amendment No. 3 to the Master Service Agreement with JDM Solutions, Inc., extending the term by one (1) year for the period May 1, 2023 through April 30, 2024, effective March 15, 2023, increasing the maximum payable by \$334,880 from \$2,900,300 to \$3,235,180 for the professional fees and travel expenses, and authorize the Chairman to sign.

**AMENDMENT NO. 3 TO
MASTER SERVICE AGREEMENT**

This Amendment No. 3 to the Master Service Agreement is made and entered into this 15th day of March 2023 between JDM Solutions Inc. ("Provider") and Kern County Hospital Authority, a local unit of government which owns and operates Kern Medical Center ("Client")

RECITALS

- a) Client and Provider have heretofore entered into a Master Services Agreement for professional services dated August 16, 2018, Amendment No. 1 dated July 17, 2019, and Amendment No. 2 dated 026-2021 for the period stated on the statement of work; and
- b) Client continues to require the professional services as outlined in Exhibit A and B; and
- c) Application analyst resources will be available to assist with the expertise and gaps in resources; and
- d) It is the intent of the parties to use the same terms as outlined in the original MSA; and
- e) The parties agree to amend certain terms and condition of the agreement as hereinafter set forth and
- f) The Agreement is amended effective March 15th, 2023

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

1. Section 27, EXHIBITS. shall be deleted in its entirety and replaced by the following:

“Exhibit A – Provider’s Rate schedule

Exhibit A-1 – Provider’s Rate schedule, effective July 17, 2019

Exhibit A-2 – Provider’s Rate schedule, effective May 1, 2021

Exhibit A-3 – Provider Rate schedule, effective March 15, 2023

Exhibit B – Work Order

Exhibit B-1 – Work Order, effective July 17, 2019

Exhibit B-2 – Work Order, effective May 1, 2021

Exhibit B-3 – Work Order, effective March 15, 2023

Exhibit C - Insurance

Exhibit D – Business Associate Agreement”

2. Except as otherwise defined herein, all capitalized terms used in this Amendment No. 3 have the meaning set forth in the Agreement.
3. This Amendment No. 3 shall be governed by and construed in accordance with the laws of the state of California.
4. This Amendment No. 3 may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
5. Except as provided herein, all other terms, conditions, and covenants of the Agreement and any and all amendments thereto shall remain in full force and effect.

[Signatures to follow on next page]

IN WITNESS TO FOREGOING, the parties have executed this agreement as of the date first above written. Both parties agree that a single original of this agreement will be executed:

THIS AMENDMENT IS AGREED TO AND ACCEPTED this 15th day of March 2023, by:

Kern County Hospital Authority

Printed Name: RUSSELL BIGLER

Title: Chairman, Board of Governors

APPROVED AS TO CONTENT:

Kern Medical Center

Printed Name: Reynaldo Lopez

Title: Chief Information Officer

APPROVED AS TO FORM:

Legal Services Department



Hospital Counsel

Kern County Hospital Authority


JDM Solutions, Inc.

Printed Name: JAISHREE MCLANE

Title: President

EXHIBIT A-3

RATE SCHEDULE

This exhibit is an addendum to the Master Services Agreement that was signed August 2018, between JDM Solutions Inc. (“Provider”) and Kern County Hospital Authority (“Client”).

FEE SCHEDULE:

		Hour/wk.	Yearly amount	FTE
	Data Intelligence Backfill (Jai McLane)	40	199,680.00	1
	Kyle Backfill (Russ Stimpson)	40	135,200.00	1
	TOTAL	80		
	Total Cost per year		\$334,880.00	
	Total contract price (1 year)		\$334,880.00	

EXHIBIT B-3

Statement of Work/Work Order

This exhibit is an addendum to the Master Services Agreement that was signed August 2018, between JDM Solutions Inc. (“Provider”) and Kern County Hospital Authority (“Client”).

WORK ORDER #:202301KERNBACKFILL

WORK ORDER SUBMISSION DATE: February 1st, 2023

WORK ORDER EXPECTED START DATE: March 15th, 2023

PLACE OF PERFORMANCE: ONSITE & REMOTE

EXPECTED DURATION: 1 year

OBJECTIVE:

- Support Manager duties as defined in job description
 - Manage data intelligence team
 - Data Infrastructure strategy
 - Regulatory strategy
 - Data Governance strategy
 - Data and reporting strategy
 - Kern EDW strategy
- Support Data reporting duties as defined in job description
 - Support users operational need of data question
 - Support project with data need
 - Support master data processes
 - MPI
 - Provider
 - Reference tables
 - Support business with ticket needs (Average 50/data ticket per month)

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

March 15, 2023

SUBJECT: Proposed renewal and binding of all-risk property insurance through PRISM and earthquake coverage through Specialty Risk Underwriters and Evanston Insurance Company

RECOMMENDED ACTION: Approve renewal and binding of all-risk property insurance and earthquake coverage from March 31, 2023 through March 31, 2024, in an amount not to exceed \$727,862, which includes administrative and financing fees; and Authorize the Chief Executive Officer to sign the Premium Finance Agreement with Bank Direct Capital Finance

SUMMARY: The Authority requests your Board approve the renewal and binding of the following insurance coverages for the period March 31, 2023 through March 31, 2024:

- Property
- Earthquake

Property

The Authority recommends renewing property coverage through PRISM for all-risk coverage protecting buildings, contents, equipment, business interruption and flood.

- Insurance Carriers: Various Carriers within Tower I of the PRISM Program
- A.M. Best Rating: Pursuant to PRISM's minimum financial rating specifications
- Term: March 31, 2023 – March 31, 2024
- Coverage: Provides the Authority and its named-insureds with all-risk property coverage, through various carriers in a group policy procured and through a Joint Powers Authority, to include buildings, contents, equipment, business interruption and flood
- Limits: \$600,000,000 per Occurrence All Risk; \$200,000,000 per Occurrence and Annual Aggregate Flood
- Retention (SIR): \$100,000
- Annual Premium: \$314,000 (Not yet finalized; refer to included summary)

Earthquake

The Authority recommends renewing earth movement coverage through Specialty Risk Underwriters and Evanston Insurance Company for coverage protecting buildings, contents, equipment and business interruption against the peril of earthquake.

- Insurance Carriers: Specialty Risk Underwriters (with Lloyd's syndicates and other insurers) and Evanston Insurance Company

- A.M. Best Rating:
 - Specialty Risk Underwriters, All syndicates and other insurers with a minimum of (A- (Excellent) IX)
 - Evanston Insurance Company (A (Excellent) XV)
- Term: March 31, 2023 – March 31, 2024
- Coverage: Provides the Authority and its named-insureds with dedicated limits of coverage against the peril of earthquake, through various underwriters/syndicates and insurance companies for buildings, contents, equipment, and business interruption
- Limit: \$25,000,000 per Occurrence and Annual Aggregate
- Retention (SIR): 5% per unit / \$100,000 minimum
- Annual Premium: \$397,721

Total Annual Premiums: \$711,721 (as recommended)

Summary Regarding Variance in Property Premiums:

The Authority presently insures its property, including contents, via a member-directed insurance risk sharing pool administered by Public Risk, Innovation, Solutions, and Management (PRISM). PRISM, a Joint Powers Authority, provides to its members an ultra-competitively priced all-risk policy, including business interruption. Coverage is for damage to real and personal property from all risk perils, including flood.

For the renewing term starting March 31, 2023, the combined cost for all-risk property coverage (excluding earthquake) has yet to be finalized due to a continuing volatile and hard market. However, the latest premium estimate (version 2) provided by PRISM to the Authority reflects a preliminary not-to-exceed premium of \$314,000 versus last year's final premium of \$251,322. This represents an increase of up to \$62,678 with a final premium allocation to be determined and disclosed by PRISM following its March board meeting, which occurs after your Board's March 15 meeting. This represents an increase of up to 25% over the prior year with rates expected to continue rising in each subsequent renewal for the foreseeable future. This situation is not unique to the Authority and is a direct result of.

Summary Regarding Variance in Earthquake Premiums:

For the term renewing March 31, 2023, Specialty Risk Underwriters and Evanston, the incumbent carrier/underwriter, has offered to renew the policy with the same policy limits as expiring with a nominal increase in premium and no material changes. This was primarily the result of an increase in general rates versus trended property and business interruption values. The renewing policy period, when compared to the expiring period, represents an increase of 13% for a total of \$44,228 over last year.

Premium Financing

PRISM provides in-house premium financing for the property insurance coverage referenced above. Financing rates have substantially increased from 1.2% to 4.5%. Despite this, the rate remains competitive.

Following negotiations, Bank Direct Capital Finance has agreed to offer premium financing for the earthquake policy at 5.26%, a rate higher than the previous 2.5%, and while still rather competitive, the increase is due to substantial increases in federal borrowing rates.

The Authority recommends financing the referenced premiums as follows:

1. PRISM will provide in-house financing of the property coverage for an additional fee of up to \$6,504 (or less, depending on the final premium allocation) with the cost of coverage and financing split between 12 equal monthly payments; and
2. Bank Direct Capital Finance will finance the earthquake coverage. Financing terms include 12 equal monthly payments of \$33,947, which includes finance charges at a rate of 5.26% (up to \$9,637), with total payments not to exceed \$407,358, as set forth below:

Total Premium	\$397,921
1st Month (Cash Down Payment)	\$33,946
Amount Financed	\$363,774
Finance charges (5.26%)	\$9,637
Total Payments (Excluding Cash Down Payment/1st Month)	\$407,358

3. Financing through Bank Direct Capital Finance requires the signing of a separate Premium Finance Agreement.

Attached for your ease of reference is a Summary of Changes Per Policy Year from July 1, 2020 to the present.

Therefore, it is recommended that your Board approve the renewal and binding of property and earthquake insurance coverage from March 31, 2023 through March 31, 2024, with the option to finance property premiums through PRISM and earthquake premiums through Bank Direct Capital Finance, in an amount not to exceed \$727,862, which includes all administrative and finance fees; and authorize the Chief Executive Officer to sign the Premium Finance Agreement with Bank Direct Capital Finance.

PREMIUM FINANCE AGREEMENT-PROMISSORY NOTE

660 Newport Center Drive, Suite 1050 Newport Beach, California 92660
Phone 877-226-5456 www.bankdirectcapital.com

Quote Number
2457998.1

Agent/Broker/Producer (Name and Address)
Alliant Insurance Services, Inc. - San Francisco (Mission)
560 Mission Street, 6th Floor
San Francisco, CA 94105

Telephone Number: 925-287-7263 Agency Code: ALLIANT-W07

Insured (Name and Address as shown on the policy(ies) including all insureds covered by the policies below)
Kern County Hospital Authority
1700 Mount Vernon Ave
Bakersfield, CA 93306

Telephone Number: 661-326-2000

Creditor: AFCO Acceptance Corporation				Federal Truth In Lending Disclosures	
(A) Total Premiums	(B) Down Payment	(C) Amount Financed (The amount of credit provided to you or on your behalf)	(D) FINANCE CHARGE (The dollar amount the credit will cost you)	(E) Total of Payments (The amount you will have paid after you have made all payments as scheduled)	(F) ANNUAL PERCENTAGE RATE (The cost of your credit as a yearly rate)
\$397,720.72	\$33,946.48	\$363,774.24	* \$9,637.04	\$373,411.28	5.26%
Your PAYMENT SCHEDULE will be:Monthly			*Includes a minimum finance charge of \$25.00	If the borrower under this Agreement is a consumer, you will receive an Itemization of the Amount Financed.	
No. of Payments		Amount of Payments	When Payments are Due		
11		\$33,946.48	On the 30th day of the month, beginning 4/30/2023		
Security: You are giving a security interest in any and all unearned or return premium(s) and dividends which may become due under the policy(ies) being purchased. Late Charge: You will be charged 5% of the payment, subject to a minimum charge of \$1.00 on any payment received more than 10 days after the due date. Prepayment: If you voluntarily prepay in full prior to the last installment due date you will not be charged a prepayment fee and you may be entitled to a refund of part of the finance charge in the manner provided by Section 18637 of the Financial Code. See Above and on the last page of this document for any additional information about non-payment default, any repayment in full before the scheduled date, and prepayment refunds and penalties.					

SCHEDULE OF POLICIES

Policy Prefix and Numbers	Effective Date of Policy/Inst.	Name of Insurance Company and Address of General or policy Issuing Agent or Intermediary	Type of Coverage	Months Covered	Premium \$
TBD	3/31/2023	Underwriters Lloyds London (IL) Amwins 725 S Figueroa St 19th Fl Los Angeles, CA 90017	DIFFERENCE IN CONDITIONS	12	\$230,978.00
Audit= N Min Ernd= 35% AddCxlDays= 10	Insured acknowledges that upon satisfactory completion of this Agreement the undersigned Agent will receive from AFCO \$0.00 for the origination and administration of this Agreement.		Ref. Tax/Fee:		\$7,361.00
			Non-Ref. Tax/Fee:		\$500.00

In consideration of the payment(s) to be made by AFCO ACCEPTANCE CORPORATION ("AFCO") to the above insurance company(ies) ("Insurer(s)"), either directly or through your or their agents, representatives, or producer, the above-named insured ("Insured") (jointly and severally if more than one):

- PROMISE OF PAYMENT:** Promises to pay to the order of AFCO at the above address or any address AFCO may designate, the Total of Payments in accordance with the Payment Schedule set forth in the above Truth-in-Lending Disclosures as well as any other sums due pursuant to this Agreement. No additional authority, acts, approvals or licenses are or will be necessary as a prerequisite to the enforceability of this Agreement. AFCO may, at its option, pay loan proceeds to any agent, broker, general agent, managing general agent or insurer set forth herein. Payments to AFCO are deemed made only upon receipt in good funds. Checks are accepted, subject to collection.
- SECURITY INTEREST AND POWER OF ATTORNEY:** Irrevocably appoints AFCO as Attorney-In-Fact with full authority to affect cancellation of the policies covered hereby or any substitution, rewrite or renewal thereof in accordance with the provisions herein, to receive all sums assigned to AFCO or in which it has granted AFCO a security interest. AFCO may execute and deliver on behalf of the Insured all documents, forms and notices relating to the policies covered hereby in furtherance of this Agreement. The Power of Attorney is coupled with an interest and the powers given herein may be exercised by the Attorney-In-Fact, or its successors and assigns.
- RECEIPT OF AGREEMENT AND PRIVACY NOTICE:** Acknowledges that it has received a copy of all pages of this Agreement and if the borrower is a consumer, the Insured acknowledges that he has received a copy of AFCO's Privacy Statement.

NOTICE: 1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACE. 2. YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS AGREEMENT. 3. UNDER THE LAW, YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT AND UNDER CERTAIN CONDITIONS TO OBTAIN A PARTIAL REFUND OF THE SERVICE CHARGE.

INSURED AGREES TO THE TERMS SET FORTH ABOVE AND ON ALL PAGES OF THIS AGREEMENT

Scott Thygeron		Chief Executive Officer	
INSURED'S NAME	SIGNATURE OF THE INSURED OR AUTHORIZED REPRESENTATIVE	TITLE	DATE
INSURED'S NAME	SIGNATURE OF THE INSURED OR AUTHORIZED REPRESENTATIVE	TITLE	DATE

AGENT/BROKER/PRODUCER WARRANTIES AND REPRESENTATIONS

The undersigned warrants and agrees: 1. The policies listed in the Schedule of Policies are in full force and effect, and the information and the premiums are correct. 2. The Insured has received a copy of this Agreement, has authorized this transaction and recognizes the security interest assigned herein. 3. To hold in trust for AFCO any payments made or credited to the Insured through or to the undersigned, directly or indirectly, actually or constructively by the insurance companies, their representatives or AFCO and to pay the monies as well as any unearned commissions to AFCO upon demand to satisfy the outstanding indebtedness of the Insured. 4. Any lien the undersigned has or may acquire in the return premiums arising out of the listed insurance policies is subordinate to AFCO's lien or security interest therein. 5. The policies comply with AFCO's eligibility requirements. 6. No audit or reporting form policies, policies subject to retrospective rating or minimum earned premium are included. 7. The deposit or provision premiums are not less than anticipated premiums to be earned for the full term of the policies. 8. The policies can be cancelled by the Insured and the unearned premiums will be computed on the standard short-rate or pro-rata table. 9. A proceeding in bankruptcy, receivership, or insolvency has not been instituted by or against the named Insured borrower. 10. That it has received the down payment and any other sums due as required by the Agreement and is holding same or they are attached to this Agreement. 11. No additional authority, acts, approvals or licenses are or will be necessary as a prerequisite to the enforceability of this Agreement. 12. AFCO will rely upon these representations in determining whether to accept this Agreement.

THE UNDERSIGNED FURTHER WARRANTS THAT IT HAS RECEIVED THE DOWN PAYMENT AND ANY OTHER SUMS DUE AS REQUIRED BY THE AGREEMENT AND IS HOLDING SAME OR THEY ARE ATTACHED TO THIS AGREEMENT

AGENT OR BROKER	SIGNATURE OF AGENT OR BROKER	TITLE	DATE
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FOR INFORMATION CONTACT THE DEPARTMENT OF FINANCIAL INSTITUTIONS, STATE OF CALIFORNIA

(4) **ASSIGNMENT OF SECURITY INTEREST AND POWER OF ATTORNEY:** The Insured assigns and hereby gives a security interest to AFCO as collateral for the total amount payable in this Agreement and any other past, present or future extension of credit: (a) any and all unearned premiums or dividends which may become payable for any reason under all insurance policies financed by AFCO, (b) loss payments which reduce the unearned premiums, subject to any mortgagee or loss payee interests and (c) any interest in any state guarantee fund relating to any financed policy. If any circumstances exist in which all premiums related to any policy could become fully earned in the event of any loss, AFCO shall be named a loss-payee with respect to such policy. AFCO at its option may enforce payment of this debt without recourse to the security given to AFCO. The Insured irrevocably appoints AFCO as its attorney in fact with full authority to (i) cancel all insurance financed by AFCO for the reason set forth in paragraph 13, whether pursuant to this or any other agreement, (ii) receive all sums hereby assigned to AFCO and (iii) execute and deliver on the Insured's behalf all documents, instruments of payment, forms and notices of any kind relating to the insurance in furtherance of this Agreement.

(5) **WARRANTY OF ACCURACY:** The Insured (i) warrants that all listed insurance policies have been issued to it and are in full force and effect and that it has not and will not assign any interest in the policies except for the interest of mortgagees and loss payees; (ii) authorizes AFCO to insert or correct on this Agreement, if omitted or incorrect, the insurer's name, the policy numbers, and the due date of the first installment and to correct any obvious errors; and (iii) authorizes AFCO to correct or remedy any error or omission in the completion of this Agreement. In the event of any such change, correction or insertion, or of any change in Blocks (A) thru (F), or in the Federal Truth-In-Lending Disclosures or in the Itemization of the Amount Financed Disclosures the Insured will be notified at the address shown hereon.

(6) **REPRESENTATION OF SOLVENCY:** The Insured represents that it is not insolvent or the subject of any insolvency proceeding.

(7) **ADDITIONAL PREMIUMS:** The money paid by AFCO is only for the premium as determined at the time the insurance policy is issued. AFCO's payment shall not be applied by the insurance company to pay for any additional premiums owed by the Insured resulting from any type of misclassification of the risk. The Insured shall pay to the insurer any additional premiums or any other sums that become due for any reason. The Insured agrees that, in the event the total premiums are greater than that shown hereon, or if the Insured requests additional premiums be added or additional premiums financed, this Agreement may be amended to reflect the actual premiums and the Insured will either (i) pay the difference in premium due or (ii) pay any required additional down payment and any additional finance charge permitted by law. In such event AFCO will forward the Insured a revision notice showing all information required by law. If AFCO assigns the same account number to any additional extension or extensions of credit, (i) this Agreement and any agreement or agreements identified by such account number shall be deemed to comprise a single and indivisible loan transaction, (ii) any default with respect to any component of such transaction shall be deemed a default with respect to all components of such transaction and (iii) any unearned premiums relating to any component of such transaction may be collected and applied by AFCO to the totality of such transaction.

(8) **SPECIAL INSURANCE POLICIES:** If the insurance policy is auditable or is a reporting form policy or is subject to retrospective rating, then the Insured promises to pay to the insurance company the earned premium computed in accordance with the policy provisions which is in excess of the amount of premium advanced by AFCO which the insurance company retains.

(9) **FIRST NAMED INSURED:** If the insurance policy provides that the first named insured in the policy shall be responsible for payment of premiums and shall act on behalf of all other insureds regarding the policy, then the same shall apply to this Agreement and the Insured represents that it is authorized to sign on behalf of all insureds. If not, then all insureds' names must be shown on this Agreement unless a separate agreement appoints an insured to act for the others.

(10) **FINANCE CHARGE:** The finance charge shown in Block D begins to accrue as of the earliest policy effective date and that the rate of charge for a loan not exceeding \$2,499.99 shall not exceed: (a) 2% per month on the part of the unpaid principal balance not exceeding \$1000; 1% per month of any remainder of such unpaid balance in excess of \$1000; or (b) 1.6% per month of the unpaid principal balance. All other rates of charge shall be agreed upon by the parties to the contract.

(11) **AGREEMENT BECOMES A CONTRACT:** This Agreement becomes a binding contract when AFCO mails the Insured its written acceptance and is not a contract until such time. The Insured agrees that (i) this Agreement may be transmitted by facsimile, E-mail or other electronic means to AFCO, (ii) any such transmitted Agreement shall be deemed a fully enforceable duplicate original document and (iii) such Agreement, when accepted by AFCO, shall constitute a valid and enforceable contract.

(12) **DEFAULT AND DISHONORED CHECK CHARGES:** If the Insured is late in making a loan payment to AFCO by more than the number of days specified by law the Insured will pay to AFCO a delinquency charge equal to the maximum charge permitted by law. If a check is dishonored, AFCO may re-present the check electronically and collect a service fee not to exceed the lesser of \$25 or the amount permitted by law.

(13) **CANCELLATION:** AFCO may cancel all insurance policies financed by AFCO after giving statutory notice and the full balance due to AFCO shall be immediately payable if the Insured does not pay any installment according to the terms of this or any other Agreement with AFCO. Payment of unearned premiums shall not be deemed to be payment of installments to AFCO, in full or in part.

(14) **CANCELLATION CHARGES:** If AFCO cancels any insurance policy in accordance with the terms of this Agreement the Insured will pay AFCO a cancellation charge, if permitted, up to the limit specified by law.

(15) **MONEY RECEIVED AFTER NOTICE OF CANCELLATION:** Any payments made to AFCO after mailing of AFCO's Notice of Cancellation may be credited to the Insured's account without affecting the acceleration of this Agreement and without any liability or obligation to request reinstatement of a canceled policy. In the event that AFCO requests, on the Insured's behalf, reinstatement of the policy, such request does not guarantee that coverage will be reinstated. Any money AFCO receives from an insurance company shall be credited to the amount due AFCO with any surplus paid over to whomever it is entitled. No refund of less than \$1.00 shall be made. In case of a deficiency, the Insured shall remain liable and pay the same with interest as set forth above.

(16) **ATTORNEY FEES - COLLECTION EXPENSE:** If, for collection, this Agreement is referred to an attorney and/or other party who is not a salaried employee of AFCO, the Insured agrees to pay any reasonable attorney fees and costs as well as other reasonable collection expenses, as permitted by law or granted by the court.

(17) **PREPAYMENT AND REFUND CREDITS:** The Insured may voluntarily prepay the full amount due and may be entitled to receive a partial refund of the FINANCE CHARGE in accordance with Section 18629 of the Financial Code. If payment in full is made during the first three months and 15 days after the earliest policy effective date as shown on the front of the contract, AFCO will compute a finance charge by multiplying the agreed rate of charge as stated at the end of this Agreement by the unpaid principal balances for the number of days from the earliest policy effective date to the date of prepayment in full. AFCO will apply each payment made by the Insured, first to finance charge and then to principal. PR will then subtract this actual finance charge from the finance charge shown in Box D of the contract to obtain the refund credit. If prepayment in full is made more than three months and 15 days after the earliest policy effective date, the refund credit will be computed by the Rule of 78s method. If payment of the unpaid balance is accelerated for any reason, AFCO will make the same refund or credit as would be required if the loan was paid in full on the date of acceleration. The unpaid balance remaining after subtracting the refund or credit will be treated as the unpaid balance and thereafter the unpaid balance of the loan shall bear charges at the agreed rate of charge of the end of this Agreement, until PR is actually paid in full, notwithstanding any cancellation of coverage. If AFCO issues a Notice of Cancellation, AFCO may recalculate the total finance charge payable pursuant to this Agreement, and the Insured agrees to pay interest on the Amount Financed set forth herein, from the first effective date of coverage, at the highest lawful rate of interest.

(18) **INSURANCE AGENT OR BROKER:** The insurance agent or broker named in this Agreement is the Insured's agent, not AFCO's and AFCO is not legally bound by anything the agent or broker represents to the Insured orally or in writing. AFCO has not participated in the choice, placement, acquisition or underwriting of any financed insurance. Any disclosures made by the agent are made in its capacity as the Insured's agent and AFCO makes no representations with respect to the accuracy of any such disclosures.

(19) **NOT A CONDITION OF OBTAINING INSURANCE:** This Agreement is not required as a condition of obtaining insurance coverage.

(20) **SUCCESSORS AND ASSIGNS:** All legal rights given to AFCO shall benefit AFCO's successors and assigns. The Insured will not assign this Agreement and/or the policies without AFCO's written consent except for the interest of mortgagees and loss payees.

(21) **LIMITATION OF LIABILITY - CLAIMS AGAINST AFCO:** The Insured hereby irrevocably waives and releases AFCO from any claims, lawsuits and causes of action which may be related to any prior loans and/or to any act or failure to act prior to the time that this Agreement becomes a binding contract, pursuant to paragraph 11. AFCO's liability for breach of any of the terms of this Agreement or the wrongful exercise of any of its powers shall be limited to the amount of the principal balance outstanding, except in the event of gross negligence or willful misconduct. Any claims against AFCO shall be litigated exclusively in the Supreme Court of the State of New York, County of New York.

(22) **DISCLOSURE:** The insurance company or companies and their agents, any intermediaries and the insurance agent or broker named in this Agreement and their successors are authorized and directed to provide AFCO with full and complete information regarding all financed insurance policy or policies, including, without limitation, the status and calculation of unearned premiums.

(23) **ENTIRE DOCUMENT - GOVERNING LAW - ENFORCEMENT VENUE:** This document is the entire agreement between AFCO and the Insured and can only be changed in a writing signed by both parties except as stated in paragraph (5). The laws of the state indicated in the Insured's address as set forth herein will govern this Agreement. AFCO may, at its option, prosecute any action to enforce its rights hereunder in the Supreme Court of the State of New York, County of New York, and the Insured (i) waives any objection to such venue and (ii) will honor any order issued by or judgment entered in such Court.

(24) **WAIVER OF SOVEREIGN IMMUNITY:** The Insured hereby certifies that it is empowered to enter into this Agreement without any restrictions and that the individual signing it has been fully empowered to do so. To the extent that the Insured either possesses or claims sovereign immunity for any reason, such sovereign immunity is expressly waived and the Insured agrees to be subject to the jurisdiction of the laws and courts set forth in the preceding paragraphs.

ADDENDUM TO PREMIUM FINANCE AGREEMENT – PROMISSORY NOTE


SCHEDULE OF POLICIES

Policy Prefix and Numbers	Effective Date of Policy/Inst.	Name of Insurance Company and Address of General or policy Issuing Agent or Intermediary	Type of Coverage	Months Covered	Premium \$
TBD Audit= N Min Ernd= 25% AddCxlDays= 10	3/31/2023	Evanston Insurance Company Amwins 725 S Figueroa St 19th Fl Los Angeles, CA 90017	DIFFERENCE IN CONDITIONS Ref. Tax/Fee: Non-Ref. Tax/Fee:	12	\$153,985.00 \$4,896.72 \$0.00
Audit= Min Ernd= AddCxlDays=			Ref. Tax/Fee: Non-Ref. Tax/Fee:		
Audit= Min Ernd= AddCxlDays=			Ref. Tax/Fee: Non-Ref. Tax/Fee:		
Audit= Min Ernd= AddCxlDays=			Ref. Tax/Fee: Non-Ref. Tax/Fee:		
Audit= Min Ernd= AddCxlDays=			Ref. Tax/Fee: Non-Ref. Tax/Fee:		
Audit= Min Ernd= AddCxlDays=			Ref. Tax/Fee: Non-Ref. Tax/Fee:		
Audit= Min Ernd= AddCxlDays=			Ref. Tax/Fee: Non-Ref. Tax/Fee:		
Audit= Min Ernd= AddCxlDays=			Ref. Tax/Fee: Non-Ref. Tax/Fee:		
Audit= Min Ernd= AddCxlDays=			Ref. Tax/Fee: Non-Ref. Tax/Fee:		
Audit= Min Ernd= AddCxlDays=			Ref. Tax/Fee: Non-Ref. Tax/Fee:		

Recurring ACH Debit Authorization Form

Please complete this fillable digital form to have your payments automatically debited from your account listed below. Email the completed form to your Agent/Broker with your signed PFA. Or email directly to BankDirect Capital Finance ("BDCF") at payments@bankdirectcapital.com. If you need to print this form, please fax to 877.226.5297.

Name: Kern County Hospital Authority
Address: 1700 Mount Vernon Ave Bakersfield, CA 93306
Phone: 661-326-2000
BDCF Quote or Account # 2457998.1

Account Holder Name:	<u></u>	
Bank Name:	<u></u>	
Account Type:	Checking <input type="checkbox"/> Savings <input type="checkbox"/>	
Routing Number:	<u></u>	
Account Number:	<u></u>	
Account Holder Email Address:	<u></u>	

PLEASE ATTACH A VOIDED CHECK FOR ACCOUNT VERIFICATION & CONFIRMATION PURPOSES. It is agreed that you hereby authorize BankDirect to initiate an automatic debit to the financial account indicated (and authorize said financial institution to honor such debit) for any and all installments due under the BankDirect quote or account number listed above. It is further agreed that any additional fees, including but not limited to, late fees, non-sufficient funds fees and cancellations fee, will also be charged and debited from the indicated account should they accrue during the term of the loan. The debited installment amount is subject to change in the event of the financing of an additional premium or the crediting of an endorsement refund to the original PFA which has been processed to your existing account. You further understand, agree and affirm that: (1) the information you have provided above is correct and accurate; (2) you are authorized to enter into this agreement and are the signer on the above account; (3) funds will be available to cover the amount of the existing obligation on the payment due date or the business day prior to the due date should the due date fall on a weekend or holiday; (4) this authorization will remain in full force and effect until either (a) you request termination of this agreement by providing BankDirect written notice of the desire to terminate automatic ACH debit fifteen (15) days prior to desired termination date at the address or email below and/or (b) you receive written notification from BankDirect of termination resulting from the rejection of an ACH debit due to NSF or a closed account. BankDirect reserves the right to remove this ACH Debit Authorization at its sole discretion should an ACH debit be returned as unpaid for any reason, but BankDirect reserves its right to reestablish future ACH debits based on this authorization unless this authorization has been terminated as outlined above; (5) You may authorize changes to the bank account to be debited, authorize the extension of this document to additional BankDirect accounts or quotes, and authorize its use to ACH debit for the Down Payment on the indicated quote or account or any subsequent authorized quote or account, provided that authorization is granted in writing (an email request is deemed an acceptable notification in writing). You are authorizing BankDirect to act upon such request, without the necessity of an additional ACH Debit Authorization form; (6) Please check below if you wish for BankDirect to initiate an ACH Debit for the Down Payment on your quote/account. Do not provide this authorization if you have or intend to send the Down Payment directly to your authorized Insurance Agent. You hereby grant to your authorized Insurance Agent a limited attorney-in-fact to authorize BankDirect to initiate an ACH Debit for your Down Payment, either through use of the check box below or with their written instruction to BankDirect (an email request from your Insurance Agent to BankDirect is deemed an acceptable notification in writing).

* ☐ **INCLUDE DOWN PAYMENT.** By checking this box, you authorize BankDirect to initiate an ACH debit for your down payment and you are *
* confirming you have not issued, nor do you intend to issue, the down payment directly to your authorized Insurance Agent. *

Authorized & Agreed to by:

BY: _____
Authorized Signatory of Account Holder Printed Name & Title Date

150 North Field Drive, Suite 190, Lake Forest, IL. 60045
P: 877.226.5456 F: 877-226-5297
payments@bankdirectcapital.com

	Line of Coverage	FY 20/21	FY 21/22	FY 22/23	FY 23/24	% Change from 22/23 to 23/24
1	Property	\$ 170,448	\$ 221,226	\$ 251,322	\$ 314,000	24.94%
2	Earthquake	\$ 294,970	\$ 329,573	\$ 353,493	\$ 397,721	12.51%
	Total	\$ 465,418	\$ 550,799	\$ 604,815	\$ 711,721	Average % 18.73%

Summary of Significant Changes Per Policy Year

- 1 Property**
- In **FY 20/21**, KCHA opted not to include the peril of earthquake within the property policy due to a significant increase in costs, the inability to choose alternate coverage amounts nor an option for dedicated vs. shared limits.
- For **FY 21/22**, the incumbent carrier eliminated Communicable Disease Coverage in response to the present pandemic as well as reduced coverage for acts of terror from \$200M to \$100M.
- For **FY 22/23**, no substantial or material changes have been made to the renewing policy when compared to the expiring.
- For **FY 23/24**, no substantial or material changes have been made to the renewing policy when compared to the expiring.
- Premium shown above is represented as PRISM's 'Not to Exceed'*
-
- 2 Earthquake**
- In **FY 20/21**, KCHA opted to purchase a stand-alone earthquake policy with dedicated limits of \$25M resulting in a reduced annual premium.
- For **FY 21/22**, the incumbent carrier, Specialty Risk Underwriters, has declined to write or offer the same policy limits of \$25M. Instead, Specialty Risk Underwriters has offered to write \$15M at an increased premium per dollar of coverage. Alliant, KCHA's broker, sourced another carrier, Evanston Insurance Company, for the remaining \$10M in coverage for a total combined limit of \$25M.
- For **FY 22/23**, the incumbent carrier, both Specialty Risk Underwriters and Evanston have agreed to renew the same coverages, with no material changes, for a nominal change in premium due in large part to an increase in total insured values.
- For **FY 23/24**, both existing carriers have agreed to renew the same coverages, with no material changes.
-

Beginning FY 20/21, property and earthquake coverage was presented to the Board separately from the annual renewal of all other coverages. This was partly due to all other coverages renewing on 07/01/2021 but primarily due to the placement of earthquake separately with a standalone carrier as opposed to a covered peril within the property policy.



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

March 15, 2023

Subject: Proposed Resolution Revising the Extension of Excess Medical Professional Liability Coverage to Kern Medical Employed and Independent Contractor Physicians

Recommended Action: Approve; Adopt Resolution

Summary:

Kern County Hospital Authority provides professional liability coverage in the form of indemnification for all claims relating to the professional medical services rendered on behalf of the Authority; provided, however, that the indemnification does not extend to any services rendered at any location other than Kern Medical Center and its affiliated practice sites without approval of your Board. Effective July 1, 2022, the Authority has self-insured the first \$2,000,000 per medical incident or occurrence and has purchased umbrella coverage of \$25,000,000 in excess of the self-insured retention through MagMutual Insurance Company.

On September 21, 2022, your Board adopted Resolution No. 2021-019, which revised the extension of excess professional liability coverage to Kern Medical employed and independent contractor physicians at specific authorized off-site locations. Kern Medical is recommending that Empire Eye and Laser Center ("Empire") be added to the list of authorized off-site locations to facilitate the provision of ophthalmologic services to Kern Medical Center patients.

Extending excess medical professional liability coverage to employed and independent contractor physicians at this additional off-site location will enable our physicians to generate additional revenue for Kern Medical Center and will provide Kern Medical Center the opportunity to care for patients and continue to build its reputation as a hospital of excellence. There is no added cost to the Authority's medical professional liability program to extend the requested coverage.

The Authority will administer/submit claims, if any, in excess of the \$2,000,000 self-insured retention to CNA, the Authority's excess medical professional liability carrier.

Therefore, it is recommended that your Board approve the recommendation and adopt the attached resolution revising the extension of excess medical professional liability coverage for employed and independent contractor physicians, when providing professional medical services on behalf of Kern Medical Center at the facilities listed in the resolution, effective March 15, 2023.

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

In the matter of:

Resolution No. 2023-____

**REVISED EXTENSION OF EXCESS MEDICAL
PROFESSIONAL LIABILITY COVERAGE
FOR KERN COUNTY HOSPITAL AUTHORITY
EMPLOYED AND INDEPENDENT
CONTRACTOR PHYSICIANS**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 15th day of March, 2023, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

(a) The Kern County Hospital Authority (“Authority”) provides professional liability coverage in the form of indemnification for all claims relating to the services rendered on behalf of the Authority; provided, however, that the indemnification does not extend to any services rendered at any location other than Kern Medical Center and its affiliated clinics without approval of the Board of Governors; and

(b) On June 22, 2016, the Board of Governors adopted Resolution No. 2016-012, which extended excess professional liability coverage to Kern Medical Center employed and independent contractor physicians at specific authorized off-site locations; and

(c) On September 21, 2016, the Board of Governors adopted Resolution No. 2016-018, which revised the extension of excess professional liability coverage to include Millennium Surgery Center, Physicians Plaza Surgical Center, Northwest Surgery Center, and Southwest Surgical Center to the list of authorized off-site locations; and

(d) On March 21, 2018, the Board of Governors adopted Resolution No. 2018-004, which revised the extension of excess professional liability coverage to include Southern California Orthopedic Institute, Bakersfield Specialists Surgical Center, LLC, and Kern Medical Surgery Center, LLC to the list of authorized off-site locations; and

(e) On August 21, 2019, the Board of Governors adopted Resolution No. 2019-010, which revised the extension of excess professional liability coverage to include DaVita Casa Del Rio Ht at Home, DaVita Bakersfield Dialysis Center, and DaVita Northeast Dialysis to the list of authorized off-site locations; and

(f) On January 20, 2021, the Board of Governors adopted Resolution No. 2021-002, which revised the extension of excess professional liability coverage to include Omni Family Health to the list of authorized off-site locations; and

(g) On September 21, 2022, the Board of Governors adopted Resolution No. 2022-019, which revised the extension of excess professional liability coverage to include Adventist Health Physicians Network to the list of authorized off-site locations; and

(h) Kern Medical Center is recommending that Empire Eye and Laser Center, Inc., located at 4105 Empire Drive, Bakersfield, California 93309, be added to the list of authorized off-site locations to facilitate the provision of ophthalmologic services to Kern Medical Center patients; and

(i) Extending excess medical professional liability coverage to employed and independent contractor physicians at this additional off-site location will enable the physicians to generate additional revenue for Kern Medical Center and will provide Kern Medical Center the opportunity to care for patients and continue to build its reputation as a hospital of excellence; and

(j) The Authority has self-insured the first \$2,000,000 per medical incident or occurrence and has purchased umbrella coverage of \$25,000,000 in excess of the self-insured retention, effective July 1, 2022; and

(k) There is no added cost to the Authority's medical professional liability program to extend the requested coverage to this off-site location; and

(l) The Authority will administer/submit claims, if any, in excess of the self-insured retention to MagMutual Insurance Company, the Authority's excess medical professional liability carrier.

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

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

2. This Board finds the best interests of the Authority shall be served by extending excess medical professional liability coverage to Kern Medical Center employed and independent contractor physicians at the following authorized off-site locations:

- (a) Comprehensive Blood and Cancer Center;
- (b) Mercy Hospital;
- (c) Bakersfield Memorial Hospital;
- (d) Adventist Health Bakersfield;
- (e) Bakersfield Heart Hospital;
- (f) Millennium Surgery Center;
- (g) Physicians Plaza Surgical Center;
- (h) Northwest Surgery Center;
- (i) Southwest Surgery Center;
- (j) Bahamas Surgery Center;
- (k) Clinica Sierra Vista;
- (l) Southern California Orthopedic Institute;
- (m) Bakersfield Specialists Surgical Center, LLC;
- (n) Kern Medical Surgery Center, LLC;
- (o) Kern County owned and operated correctional facilities;
- (p) Kern County Behavioral Health and Recovery Services;
- (q) DaVita Casa Del Rio Ht at Home;
- (r) DaVita Bakersfield Dialysis Center;
- (s) DaVita Northeast Dialysis;
- (t) Omni Family Health;
- (u) Adventist Health Physicians Network;
- (v) Empire Eye and Laser Center, Inc.; and
- (w) Facilities owned or leased and operated by the Authority.

3. The provisions of this Resolution shall be effective, in force, and operative as of the 15th day of March, 2023.

4. Resolution No. 2021-019, adopted by the Board of Governors on September 21, 2022, is hereby repealed and superseded by this Resolution.

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

Kern Medical Center
Chief Executive Officer
Chief Financial Officer
Chief Medical Officer
Chief Ambulatory and Outreach Officer
Vice President, Strategic Development
Legal Services Department
Workers' Compensation & Liability Manager
MagMutual Insurance Company
Alliant Insurance Services, Inc.



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

March 15, 2023

Subject: Proposed acceptance of donation of travel and related expenses from Safety National and MedPro for “The 30th Annual California DWC Workers’ Compensation Educational Conference”

Recommended Action: Approve; Adopt Resolution

Summary:

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

Safety National covers the Authority’s workers’ compensation program; MedPro provides Hospital Professional Excess Liability insurance to the Authority. Safety National and MedPro have offered to donate to the Authority all travel and related expenses for one Kern Medical employee to attend “The 30th Annual California DWC Workers’ Compensation Educational Conference” in Los Angeles, California, from March 23-24, 2023. This training session is necessary in connection with official Authority business.

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

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

In the matter of:

Resolution No. 2023-____

**ACCEPTANCE OF DONATION OF TRAVEL
AND RELATED EXPENSES FROM SAFETY
NATIONAL AND MEDPRO FOR “THE 30TH
ANNUAL CALIFORNIA DWC WORKERS’
COMPENSATION EDUCATIONAL
CONFERENCE”**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 15th day of March, 2023, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

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

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

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

(d) Safety National and MedPro have offered to donate to the Authority all travel and related expenses for one Authority employee to attend "The 30th Annual California DWC Workers' Compensation Educational Conference" in Los Angeles, California, from March 23-24, 2023; and

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

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

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

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

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

2. This Board hereby accepts from Safety National and MedPro the donation of travel and related expenses to cover all costs for one Authority employee to travel to Los Angeles, California, to attend "The 30th Annual California DWC Workers' Compensation Educational Conference" from March 23-24, 2023.

3. This Board authorizes the Chief Executive Officer to designate one Authority employee to attend "The 30th Annual California DWC Workers' Compensation Educational Conference" in Los Angeles, California, from March 23-24, 2023.

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**

March 15, 2023

Subject: Proposed acceptance of donation of travel and related expenses from Safety National and MedPro for ASHRM Academy 2023

Recommended Action: Approve; Adopt Resolution

Summary:

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

Safety National covers the Authority's workers' compensation program; MedPro provides Hospital Professional Excess Liability insurance to the Authority. Safety National and MedPro have offered to donate to the Authority all travel and related expenses for one Kern Medical employee to attend ASHRM Academy 2023, sponsored by the American Society for Health Care Risk Management, in Fort Lauderdale, Florida, from April 24-29, 2023. This training session is necessary in connection with official Authority business.

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

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

In the matter of:

Resolution No. 2023-____

**ACCEPTANCE OF DONATION OF TRAVEL
AND RELATED EXPENSES FROM SAFETY
NATIONAL AND MEDPRO FOR ASHRM
ACADEMY 2023**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 15th day of March, 2023, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

(a) The 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 workers' compensation program; and

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

(d) Safety National and MedPro have offered to donate to the Authority all travel and related expenses for one Authority employee to attend ASHRM Academy 2023, sponsored by the American Society for Health Care Risk Management, in Fort Lauderdale, Florida, from April 24-29, 2023; and

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

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

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

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

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

2. This Board hereby accepts from Safety National and MedPro the donation of travel and related expenses to cover all costs for one Authority employee to travel to Fort Lauderdale, Florida, to attend ASHRM Academy 2023 from April 24-29, 2023.

3. This Board authorizes the Chief Executive Officer to designate one Authority employee to attend ASHRM Academy 2023 in Fort Lauderdale, Florida, from April 24-29, 2023.

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**

March 15, 2023

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

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests that your Board approve the attached Certification of Medical Necessity related to the BD Alaris™ System Infusion Pump ("Alaris") required by Alaris to be signed and returned by March 31, 2023. Your Board approved a similar Certification of Medical Necessity on January 18, 2021 and January 18, 2023, acknowledging receipt of four recall notifications issued specific to Alaris infusion pumps. Failure to sign the Certification will prevent Kern Medical from purchasing critically needed infusion pumps, which are necessary to provide patient care.

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

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

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



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

www.bd.com

Dear Valued BD Alaris™ System Customer:

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

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

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

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

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

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

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

Idal Beer, MD

Vice President of Medical Affairs for
Medication Management Solutions



CERTIFICATE OF MEDICAL NECESSITY

BD Alaris™ System Infusion Pump

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

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

In addition, on October 23, 2020, BD initiated a voluntary field correction involving certain plastic cases and handle parts that when cleaned with non-recommended chemicals or methods may result in cracks or damage over time and reduce the durability of these parts. BD has determined that this situation is not likely to cause adverse health consequences.

BD is committed to providing safe and secure products to our customers given their important benefits to patient health. As such, BD submitted a 510(k) notice for the Alaris™ System, which includes all modifications to the Alaris™ System since its last 510(k) clearance, implements updated features, and includes remediations intended to address the issues identified in the recalls referenced above. Although the 510(k) is under review, this device has not been cleared by FDA.

Until we receive a new 510(k) clearance, we have suspended the distribution of the Alaris™ System except for limited distribution to existing customers upon certification of medical need. In addition, after consultation with FDA, BD is releasing the Alaris™ System software v12.1.3 through certification of medical need to remediate the issues in the February 4, 2020 software-related recall letter. Until we can release additional recall remediations, the following hardware issues from the June 30, August 4, and October 23, 2020, recalls will remain open on devices upgraded to software v12.1.3:

- Dim Segment. The LED display on the affected module may have some segments that appear dim, and therefore, the number may not be clearly displayed. (June 30, 2020)
- PC Unit Keypad. Affected BD Alaris™ PC unit keypad may have one or more keys that become unresponsive or stuck (i.e., constantly pressed state) due to fluid ingress. (August 4, 2020)
- Syringe or PCA Module Syringe Barrel Clamp. Excessive force when extending and rotating the syringe barrel clamp either clockwise or counterclockwise can damage the internal mechanism of the syringe barrel clamp. Damage to this mechanism on either the Alaris™ Syringe Module or Alaris™ PCA Module may result in the Alaris PC unit displaying incorrect syringe types and/or sizes or in display of a "Syringe not Recognized" prompt. (August 4, 2020)
- Exterior Plastic Parts. Certain BD Alaris™ System plastic cases and handle parts, when cleaned with non-recommended chemicals or methods, may develop cracks or damage over time, reducing the durability of these parts. These parts consist of the Syringe rear case and the PCA rear case, left handle, and right handle. (October 23, 2020)

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

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In addition, on November 15, 2022, BD initiated a voluntary field correction to address the potential that the Pump Module Pivot Latch Screw may back out if the pivot latch screw is reused, improperly installed, or if an unauthorized (third party part) Pivot Latch Screw is used. BD has received complaints of death and serious injury that may be attributable to a backed-out Pivot Latch Screw.

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

Customer Name: KERN MEDICAL CENTER

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

City, State, Zip: BAKERSFIELD CA 93306-4018

Transaction #: CPQ-12871

Expiration Date: 03/31/2023

Model Number	Product Description	Expansion Quantity	Replacement Quantity
8015	BD Alaris™ PC Unit	4	
8100	BD Alaris™ Pump Module	8	
8110	Syringe Module	4	
8120	PCA Module	1	
8300	EtCO2 Module	1	

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

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

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

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

New Peds ED

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

- ☐ Other (Specify):

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

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

Authorized Signature: _____

Name (Print): Russell Bigler

Title: Chairman, Board of Governors

Date: _____ Telephone #: 661.326.2102 Email Address: mona.allen@kernmedical.com

For BD only:

Number of devices approved:

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

Rationale:

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

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

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

March 15, 2023

Subject: Proposed Quote #6900694186 for the purchase of Getinge Flixene Vascular Grafts from Getinge USA Sales, LLC

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests that your Board approve Quote #6900694186 with Getinge USA Sales, LLC to purchase the necessary Flixene vascular grafts required to expand our Vascular Program. These grafts are a proprietary early cannulation design required for vascular cases and are not currently available in Kern Medical's current product supply.

The term of this Purchase Agreement is for three (3) years, effective March 15, 2023, with a total maximum payable not to exceed \$60,000.

The Purchase Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to the vendor's inability to accept Counsel's edits. The nonstandard terms include venue and law in New York and issues with confidentiality of public records. Efforts were made to negotiate these nonstandard terms to no avail. Kern Medical believes the benefits outweigh the risk of moving forward with the Quote, despite the nonstandard terms.

Therefore, it is recommended that your Board approve Quote #6900694186 with Getinge USA Sales, LLC, effective March 15, 2023 through March 14, 2026, with a maximum payable not to exceed \$60,000, and authorize the Chairman to sign.

Getinge USA Sales LLC
1 Geoffrey Way
Wayne NJ 07470 USA
Customer Service (888) 943-8872



SOLD TO: 127160

KERN MEDICAL CENTER
1830 FLOWER ST
BAKERSFIELD CA 93305

SHIP TO: 127160

KERN MEDICAL CENTER
1830 FLOWER ST
BAKERSFIELD CA 93305

QUOTATION 6900694186

02/22/2023

Purchase order no.:	QUOTE ONLY
Purchase order date:	02/22/2023
Order placed by:	CATHY CARDER
Phone:	(661) 326-2000
Freight terms:	FOB Shipping Point

Terms of Payment: **net 30 days**
Quotation Validity Period: **02/22/2023 - 03/22/2023**

Getinge USA Sales, LLC (Getinge) is pleased to submit the following quotation for the Products and Services described herein at the stated prices and terms. Unless this quotation has been designated by Getinge as being governed by an applicable Group Purchasing Organization or Integrated Delivery Network agreement, THIS QUOTATION will be governed by GETINGE'S STANDARD CONDITIONS OF SALE found AT: getinge.com/salesandserviceterms. Any prior or collateral agreements, representations, promises or conditions, whether written or oral, in connection herewith, are superseded hereby. No modifications, waivers or termination of any provisions contained in this Agreement or any future agreements, representations, promises or conditions in connection with the subject matter hereof shall be binding upon Getinge unless made in writing and signed by an authorized officer thereof. Acceptance of any Customer's purchase order does not operate as acceptance of any different or additional terms. None of Getinge's terms may be rejected or revoked by Customer without the consent of Getinge's Legal Team. If you have any questions about this Agreement, please contact your local Getinge Sales Representative. By signing this Quotation, you agree that you have reviewed and accepted Getinge's Standard Conditions of Sale available at getinge.com/salesandserviceterms, and that you accept and agree to all of the terms hereof.

Item	Product No./ Description	Quantity	Unit price USD	Total price USD	Tax
10	25128 4-6MMX35CM FLIXENE GWT-GW,W/DBL GDS 171874 - Flixene Graduated Wall Taper Graduated Wall (GWT-GW), 4-6 mm x 35 cm with Double Slider GDS PTFE Vascular Graft	1 EA			
			1,731.39	1,731.39	Y
20	25134 4-6MMX45CM FLIXENE GWT,W/DBL GDS 171877 - Flixene Graduated Wall Taper (GWT), 4-6 mm x 45 cm with Double Slider GDS PTFE Vascular Graft	1 EA			
			1,514.97	1,514.97	N
30	25137 4-6MMX45CM FLIXENE GWT-GW,W/DBL GDS 171879 - Flixene Graduated Wall Taper Graduated Wall (GWT-GW), 4-6 mm x 45 cm with Double Slider GDS PTFE Vascular Graft	1 EA			
			1,731.39	1,731.39	N

QUOTATION/Date:
6900694186 / 02/22/2023

GETINGE 

Item	Product No./ Description	Quantity	Unit price USD	Total price USD	Tax
40	25141 4-7MMX30CM GWT-GW FLIXENE W/DBL GDS 171883 - Flixene Graduated Wall Taper Graduated Wall (GWT-GW), 4-7 mm x 30 cm with Double Slider GDS PTFE Vascular Graft	1 EA			
			1,623.18	1,623.18	N
50	25129 4-7MMX35CM FLIXENE GWT-GW,W/DBL GDS 171875 - Flixene Graduated Wall Taper Graduated Wall (GWT-GW), 4-7 mm x 35 cm with Double Slider GDS PTFE Vascular Graft	1 EA			
			1,731.39	1,731.39	Y
60	25135 4-7MMX45CM FLIXENE GWT,W/DBL GDS 171878 - Flixene Graduated Wall Taper (GWT), 4-7 mm x 45 cm with Double Slider GDS PTFE Vascular Graft	1 EA			
			1,514.97	1,514.97	N
70	25138 4-7MMX45CM FLIXENE GWT-GW,W/DBL GDS 171880 - Flixene Graduated Wall Taper Graduated Wall (GWT-GW), 4-7 mm x 45 cm with Double Slider GDS PTFE Vascular Graft	1 EA			
			1,731.39	1,731.39	N
Sub Total				11,578.68	
Tax Total				34.45	
				0.00	
Tax State				25.05	
Tax County				5.22	
Tax City				0.00	
Tax District County				4.18	
Tax District City				0.00	
Tax Jur Code Level 6				0.00	
Freight Charges				0.00	
Total Amount				11,613.13	

Submitted By: _____

Name:

Title:

Date:

Customer's Acceptance: _____

Name: Russell Bigler

Title: Chairman, Board of Governors

Date: March 15, 2023

REVIEWED ONLY
NOT APPROVED AS TO FORM

By 
Legal Services Department

GETINGE TERMS AND CONDITIONS OF SALE

The sale of any products sold by Getinge ("Products") is expressly conditioned on Customer's assent to these Terms and Conditions. Any additional or different terms proposed by Customer, in a purchase order or otherwise, are expressly rejected and will not be binding upon Getinge unless agreed to in writing. Any oral or written representation, warranty, course of dealing or trade usage not contained in these Terms and Conditions shall not be binding on either party. Any order for Products or Getinge's delivery of Products shall constitute assent to these Terms and Conditions.

- 1) Pricing: End-User. The price for any Product is as set forth on the applicable Getinge price quotation or proposal, or, if the order is placed in another manner, the price shall be the Customer's pre-negotiated price approved by and on file with Getinge at the time an order is placed. Getinge's prices do not include sales, use, excise or similar taxes. Unless otherwise agreed in writing, extra charges may apply for shipping, handling, and installation. Unless otherwise approved by Getinge, Customer represents that it is an end-user of the Products and not purchasing the Products for subsequent sale or commercialization.
- 2) Taxes. Each Party will be responsible, as required under applicable law, for identifying and paying all taxes that are imposed on that Party with respect to the transactions and payments thereunder. Customer agrees to pay applicable sales, use, value added and services taxes that Getinge includes on invoice and is legally obligated to collect from Customer. However, if Customer furnishes Getinge with an exemption certificate covering such taxes, it is not obligated to pay such taxes.
- 3) Payment Terms. Customer will make payment for Products within thirty (30) days from the date of Getinge's invoice. Customer shall promptly notify Getinge of any pricing errors, provided, however, that any billing dispute will not be cause for Getinge's non-delivery of any future Products. Customer may not deduct or set off any amount owed between Getinge and Customer.
- 4) Inspection: Acceptance: Returns. Customer shall inspect all deliveries upon receipt for damage or missing Products, and shall promptly notify Getinge of any issues. Products shall be deemed accepted upon the earlier of installation, first use, or thirty (30) days following delivery. All Product returns are subject to Getinge's Returned Goods Policy, available at: [getinge us sales llc returned goods policy](#)
- 5) Cancellations. Customer may not cancel orders for custom-manufactured or custom-configured Products or off the shelf Products for which Getinge includes a quote for special configuration without Getinge's prior written consent. Such orders are subject to a 30% cancellation fee.
- 6) Delivery Terms. Products shall be shipped FOB Shipping Point (Incoterms 2010) from Getinge's warehouse. Getinge will select the method of shipment and carrier to be used.
- 7) Product Warranty. Getinge's Standard Warranty Policy shall apply to all Product purchases. Getinge's Standard Warranty Policy is available at: [getinge usa sales llc standard warranty policy](#)
- 8) Indemnification.
 - a) General Indemnity. Each party shall, at its expense, indemnify, hold harmless and, at the other party's request, defend the other party and its directors, officers, employees and agents, from and against all losses, costs, liabilities, or expenses (including reasonable attorneys' fees and legal costs) arising out of any third-party claims related to the indemnifying party's performance under this Agreement to the extent caused by any grossly negligent act or omission or willful misconduct of the indemnifying party, or its employees or agents, that contributes to: (i) any personal injury, sickness, disease, or death; (ii) any damage to, or destruction of, property of the indemnified party; or (iii) the indemnifying party's violation of any statute, ordinance, or regulation.
 - b) Infringement Indemnity. Getinge shall indemnify and hold harmless Customer and its directors, officers, employees, and agents, from and against all losses, costs, liabilities, or expenses (including reasonable attorneys' fees and legal costs) arising out of any third-party claims brought against Customer that the Products infringe any U.S. patent or copyright of such third-party. The foregoing indemnity shall not apply to the extent such alleged or actual infringement arises as a result of modifications of the Products made by Customer or any of its directors, officers, employees, or agents, or the Products' use with any items not sold by Getinge.
 - c) Indemnity Procedure. The indemnifying party shall defend, at its expense, any such third-party claims provided that: (i) the indemnified party gives the indemnifying party prompt notice in writing of the third-party claims and permits the indemnifying party, through counsel of its choice, to answer and defend such claims; and (ii) provides all needed information, assistance, and authority, at the indemnifying party's expense, to enable them to defend such claims. The indemnifying party shall not be responsible for payment of any amounts under any settlement made without its prior written consent. In settling any claims hereunder, neither party shall be entitled to admit any liability on behalf of the other party.
 - d) Limitations of Indemnities. Notwithstanding the foregoing, neither party shall have any indemnification obligation to the other, to the extent: (i) the Products are used in a manner inconsistent with their instructions for use, Product labeling, or other Product documentation, including the use of the Products with any attachments, systems, or devices not identified

in the instructions for use as compatible; (ii) any modifications of the Products made by Customer or any third-party, or (iii) the losses, costs, liabilities, or expenses (including reasonable attorneys' fees and legal costs) arose as a result of the indemnified party's gross negligence or willful misconduct.

- 9) **Insurance.** Getinge and Customer each agree to maintain the following insurance coverages with licensed insurers with a minimum A.M. Best rating of "A" with the following minimum limits: (a) Commercial general liability, including products liability and completed operations coverage, with a least \$1,000,000 each occurrence and \$3,000,000 general aggregate; (b) Automobile liability coverage for all owned, non-owned, and hired vehicles, with at least \$1,000,000 each occurrence; and, (c) Workers compensation insurance in amounts that satisfy applicable statutory limits. Upon request, Getinge shall provide to Customer a certificate or other evidence of insurance in form and amounts in compliance with this section.
- 10) **LIMITATION OF LIABILITY.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY COMMERCIAL LOSSES, LOSS OF REVENUES OR PROFITS, LOSS OF GOOD WILL, INCONVENIENCE, OR EXEMPLARY, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, REGARDLESS OF THE FORM OF ANY CLAIM, WHETHER IN CONTRACT OR TORT, WHETHER FROM BREACH OF THIS AGREEMENT OR DEFECTIVE PRODUCTS, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR CLAIMS FOR INDEMNIFICATION, THE MAXIMUM LIABILITY OF EITHER PARTY FOR ANY BREACH OF THIS AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO GETINGE FOR PRODUCTS SOLD UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.
- 11) **Confidential Information.** Each party agrees to keep confidential any non-public information of the other party received in any form, including without limitation, these Terms and Conditions, any Product instructions for use or documentation, and any line-item Product pricing and discounts. Each party will treat confidential information with the same degree of care as it keeps its own confidential information, but in no event with less than reasonable care. Each party may share the confidential information with its employees, representatives, and advisors, subject to the same restrictions set forth herein. If the disclosure of the other party's confidential information is required by law, the party required to make such disclosure shall provide sufficient notice to the other party to allow such party time to take legal or other action to prevent or obtain confidential treatment of such disclosure. The Product line-item pricing offered by Getinge is a trade secret likely to cause Getting substantial competitive harm if disclosed, and is exempt from freedom of information act disclosure on this basis, provided, however, that the total price paid under such transaction may be disclosed.
- 12) **Discount Disclosure.** The prices for the Products may reflect discounts, rebates, or other reductions in price. Customer agrees to appropriately report and reflect the net price of purchased Products, inclusive of all discounts, rebates, and reductions in price, on cost reports or claims submitted to third-party payors, including federal and state healthcare programs, in accordance with Section 1128B(b)(3)(A) of the Social Security Act, 42 C.F.R. §1001.952(h), and 42 U.S.C. §1320a-7b(b)(3)(A), and other applicable laws and regulations, as amended. Customer shall retain these Terms and Conditions, applicable price quotations, and related documentation identifying Product discounts, rebates, and reductions in price, and make such information available to federal and state healthcare programs upon request. Customer may request additional information and documentation from Getinge to facilitate its reporting obligations.
- 13) **Fraud and Abuse.** Getinge and Customer intend and acknowledge that no part of this transaction, nor any payment made hereunder, is in exchange for any explicit or implicit agreement or understanding that Customer refer, prescribe, recommend, use, or purchase any products of Getinge, and that the prices for the Products purchased hereunder represents the fair market value thereof, and have not been determined in any manner that takes into account the volume or value of any referrals or business between Getinge and Customer.
- 14) **Debarment.** Each party represents and warrants that neither it, nor any of its affiliates, employees, agents, or representatives ("Representatives") performing under these Terms and Conditions are, or have within the past five (5) years have been, debarred or excluded from participation in any federal or state healthcare programs. Each party will promptly notify the other in the event of any actual or threatened debarment of any party or its Representatives. Either party may terminate any pending transactions made pursuant to these Terms and Conditions upon receiving such notice.
- 15) **Force Majeure.** Neither party shall be liable for any delay or failure of performance if and to the extent such delay or failure is caused, directly or indirectly, by circumstances beyond its reasonable control and that by the exercise of due diligence it is unable to prevent, including without limitation acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, flood, the elements, epidemics or pandemics, strikes, labor disputes, shortages of fuel, power, suitable parts, materials, labor or transportation, government or regulatory restrictions or regulations, provided that the non-performing party uses its commercially reasonable efforts to overcome the same.

- 16) Remedies. The rights and remedies of each party provided under these Terms and Conditions are cumulative and not exclusive, and are in addition to any other rights and remedies provided at law or in equity.
- 17) Independent Contractors. The relationship of the parties is that of independent contractors. Neither party shall be considered a partner, agent, or employee of the other. Neither party has any express or implied right to assume or create any obligation on behalf of, or in the name of, the other party or to bind the other party to any contract, agreement or undertaking with any third party, and no conduct of a party shall be deemed to imply such right.
- 18) Assignment. Neither party shall assign their rights and obligations under this transaction to any third-party, except to a wholly-owned subsidiary, without the prior written consent of the other party. Any permitted assignee shall assume in writing all obligations of the assigning party as set forth hereunder.
- 19) Entire Agreement. These Terms and Conditions and the applicable Getinge price quotation or proposal contains the entire agreement between the parties with respect to this transaction, and supersedes all previous agreements, negotiations, discussions, writings, understandings, and commitments related thereto. Any modification to these Terms and Conditions or the applicable Getinge price quotation or proposal must be in writing and signed by each party's authorized representative.
- 20) Governing Law. These Terms and Conditions shall be governed by the laws of the State of New York, United States, without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 21) Arbitration. Getinge and Customer agree that all disputes arising out of these Terms and Conditions will be resolved by a single binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and will be conducted exclusively in New York and governed by New York laws.
- 22) Notice. Any notices required or permitted under these Terms and Conditions shall be in writing and will be sent by recognized national or international overnight courier or registered or certified mail, postage prepaid, return receipt requested, or delivered by hand to the address set forth in the Purchase Order. Notices will be deemed to be duly given: (a) when delivered by hand; (b) two days after deposit with a recognized national or international courier; or (c) on the delivery date indicated in the return receipt for registered or certified mail. A party may change its contact information immediately upon written notice to the other party in accordance with this section.
- 23) Waiver. Any waiver of any rights or obligations under these Terms and Conditions must be mutually agreed upon in writing and signed by an authorized representative of each party. No act or omission, including delivery or payment for a Product, shall constitute of waiver of any right or obligation hereunder.
- 24) Severability. If any provision of the Terms and Conditions is held to be invalid or unenforceable, the remaining provisions will remain in full force and effect.
- 25) Survival. All provisions of these Terms and Conditions that by their nature should survive the performance of the transactions made hereunder shall do so, subject to the limitations contained herein.



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

March 15, 2023

SUBJECT: Proposed Master Agreement with Protenus, Inc. for their Healthcare Compliance Analytics Platform containing Nonstandard Terms and Conditions

Requested Action: Approve; Authorize Chairman to Sign

Summary:

Drug diversion is a significant risk to any health care organization. Kern Medical currently utilizes a manual approach to monitoring for diversion, however, in order to improve efficiencies and provide more timely identification of potential issues, Kern Medical is requesting your Board's approval of this agreement with Protenus for their compliance analytics platform. The Protenus Healthcare Compliance Analytics Platform is a solution that detects privacy violations and drug diversion by interfacing between the automated drug dispensing system, time and attendance system and HR system in order to identify potential flags for diversion. This software will allow for improved operational efficiencies, allowing staff to focus on additional responsibilities.

Kern Medical reviewed two additional vendors with similar pricing and functionality, however Protenus set itself apart with its ease of use and overall product design. KLAS research ranked Protenus first compared to the others viewed in its 2023 rankings.

This agreement contains nonstandard terms which require your Board's approval, specifically that there is no provision for termination for convenience. Efforts were made to negotiate these terms that cannot be approved as to form to no avail.

Although Counsel is unable to approve as to form, Kern Medical still recommends that your Board approve the proposed Master Agreement with Protenus, Inc. for their Healthcare Compliance Analytics Platform, effective March 15, 2023 through March 14, 2026, in an amount not to exceed \$105,000 over the three-year term of the agreement, and authorize the Chairman to sign.

MASTER AGREEMENT

between

PROTENUS, INC.

and

KERN COUNTY HOSPITAL AUTHORITY

This Master Agreement (this “**Agreement**”), effective as of the date last signed below (the “**Effective Date**”), is entered into by and between Protenus, Inc., a Delaware corporation with its principal offices located at 1629 Thames Street, Suite 200, Baltimore, Maryland 21231 (“**Protenus**”), and Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center with its principal offices located at 1700 Mount Vernon Avenue, Bakersfield, California 93306. (“**Customer**”). Customer and Protenus are sometimes referred to herein collectively as the “**Parties**” and individually as a “**Party**.”

BACKGROUND

Protenus offers the “**Protenus Solution(s)**,” a suite of web-based healthcare compliance and analytics software to detect, track and manage workflow anomalies or incidents of non-compliance designed to assist healthcare institutions with analyzing clinical or administrative workflows, as well as services related to implementation, management and compliance programs (the “**Services**”).

The Protenus software contains an analytics engine which brings together multiple customer data feeds and completes identity resolution between them, focused on detecting instances of questionable behaviors that may be in violation of Customer's organizational policies (“**Policy Deviations**”) and a forensics platform with a user interface designed to assist Customer in understanding the context for questionable activity and address potential Policy Deviations.

Customer desires to access and use the Protenus Solution(s) and/or Services, and Protenus desires to give Customer such access to and use of the Protenus Solution(s) and/or Services, on the terms and subject to the conditions set forth in this Agreement and the Statement(s) of Work attached hereto as exhibits or any successor Statement of Work or Customer Order adopted in writing by both Parties.

NOW, THEREFORE, in consideration of the mutual promises and conditions herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1 DEFINITIONS

1.1. “**Activation**” means the date that (i) Protenus determines that it has sufficient data to deliver the functionality of the Protenus Solution; (ii) Customer has received login credentials and instructions to the Protenus Solution; and (iii) Protenus has performed initial onboarding and training of Customer.

1.2. “**Affiliate**,” (a) with respect to Protenus, means all persons or entities controlling, controlled by or under common control with Protenus, and (b) with respect to Customer, includes all present or future entities or operational facilities (i) systematically connected with, controlling, controlled by or under common control with Customer, (ii) participating in any joint venture to

which Customer or an entity referred to in the preceding clause is a party, or (iii) for which Customer provides clinical, administrative or information services (including on a time-sharing or service bureau basis).

1.3. “**Authorized User**” means an individual specifically authorized by Customer to access and use the Protenus Solution.

1.4. “**BAA**” means that certain Business Associate Agreement between the Parties attached hereto as **Exhibit B**, as may be amended from time to time.

1.5. “**Core Software**” means the Protenus proprietary algorithms and related software designed to assist healthcare institutions with analyzing clinical and administrative workflows in electronic health records using analytical tools that detect certain instances of questionable behaviors.

1.6. “**Customer Data**” means any information input by Customer into the Protenus Solution and any Customer-specific information extracted from or generated by the Protenus Solution, but excluding Protenus Data (as defined in **Section 1.11**). Customer Data includes data and information (i) about or relating to Customer, its other vendors, and the products or services such vendors provide to Customer to which Protenus has access in connection with the provision of the Protenus Solution and/or Services under this Agreement; (ii) Customer’s information security plans and measures or vulnerabilities; (iii) Confidential Information of Customer; (iv) Customer’s Protected Health Information (“**PHI**”), as defined under HIPAA; and (vi) personal information, as defined in state consumer protection laws (such as social security numbers, driver license numbers or any financial information) (“**PII**”) stored on the Customer System.

1.7. “**Customer System**” means Customer’s internal website(s), servers and other equipment and software used in the conduct of Customer’s business.

1.8. “**Documentation**” means technical or functional descriptions, manuals, instructions and other materials provided to Customer relating to capabilities, functions and uses of the Protenus Solution, including any updates to such materials, as may be updated from time to time and are available electronically at <https://help.protenus.com>.

1.9. “**Engagement**” means the transactions amongst the Parties contemplated by this Agreement.

1.10. “**Intellectual Property Rights**” means all trade secrets, patents and patent applications (including all domestic, international and foreign patents and patent applications including without limitation provisional, non-provisional, divisional, continuation, continuation-in-part, reexamination, and reissue applications), trademarks (whether registered or unregistered and including any goodwill acquired in such trademarks), service marks, trade names, Internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (including rights to practice or to exclude others from practicing inventions, whether patentable or not) including any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent, analogous, or similar rights that may subsist anywhere in the world, including any and all renewals or extensions thereof.

1.11. “**Protenus Data**” means information (a) used by the Core Software to analyze Customer’s clinical and administrative workflows in order to identify potentially abnormal behaviors (“**Behavioral Data**”) and (b) derived by the Protenus Solution from Behavioral Data or

aggregated anonymized data created using Customer Data (but not the underlying Customer Data itself). Protenus Data does not include any PHI or PII, but includes only aggregated, de-identified information related to activities documented in event or access logs, and use of Customer Data and related behaviors and circumstances.

1.12. “**Privacy Laws**” means all laws and regulations relating to the privacy of individually identifiable medical, financial or other information, including the Health Insurance Portability and Accountability Act of 1996, Subtitle D (Privacy) of the HITECH Act of 2009, and the rules and regulations promulgated thereunder (collectively, “**HIPAA**”), and applicable state laws and regulations relating to privacy and security of similar information, including consumer protection laws, relating to PII.

1.13. “**Subscription License Term**” means the length of time specified for the SaaS subscription purchased and set forth in any applicable SOW or Customer Order appended to this Agreement.

1.14. “**Territory**” means the United States of America.

1.15. “**Third Party**” means any entity or person other than Protenus, Customer or Affiliates of either Party.

SECTION 2

ENGAGEMENT DESCRIPTION

2.1. Protenus Solution and Services.

(a) Scope of Agreement. From time to time, Protenus and Customer may execute written SOWs or Customer Orders for provision of the Protenus Solution and/or Services, which will be governed by the terms and conditions of this Agreement. Protenus will not make any Protenus Solution or Service available to Customer unless the Parties have first executed an SOW or Customer Order under this Agreement.

(b) Obligations of Protenus. During the Term, Protenus shall perform the Services and grant Customer a license, as set forth in Section 3.4 below, to access and use the Protenus Solution as a web-based application in accordance with the terms and conditions of this Agreement, the SOW(s) and the Customer Order(s). Protenus shall provide Customer such technical assistance and Documentation as is reasonably necessary to access and operate the Protenus Solution, and training in the access and use of the Protenus Solution, as described in the SOW(s).

(c) Obligations of Customer. Customer shall provide all information, materials and resources necessary for the effective operation of the Protenus Solution, as described in the SOW(s). Customer shall notify Protenus of any failure or malfunction of, or error in, any part of the Protenus Solution as soon as possible after learning of such occurrence. Customer is solely responsible for its actions and the actions of its Authorized Users while using the Protenus Solution. Customer agrees to provide accurate, current and complete information as necessary for Protenus to communicate with Customer from time to time regarding the Protenus Solution, Services, issue invoices or accept payment, or for other account-related purposes.

(d) Equipment and Third Party Software. Customer is responsible for (i) obtaining, deploying and maintaining the Customer System, and all computer hardware, software, data feeds, modems, routers and other communications equipment necessary for Customer and its Authorized Users to access and use the Protenus Solution and the Services via the internet; (ii) contracting with Third Party ISP, telecommunications and other service providers to access and use the Protenus Solution and the Services via the internet; and (iii) paying all Third Party

fees and access charges incurred in connection with items (i) and (ii). Except as specifically set forth in this Agreement, Protenus shall not be responsible for supplying any hardware, software or other equipment to Customer under this Agreement. Customer is responsible for maintaining the physical and electronic security of the equipment and Customer System.

2.2. Pricing and Fees.

(a) General. Customer shall pay Protenus the fees specified in the applicable SOW or Customer Order (the "**Fees**"). Each Party shall be responsible for all costs and expenses that it incurs in connection with the Engagement and its performance under this Agreement. All invoices will be due and payable by Customer within thirty (30) days of receipt. All Fees are exclusive of any additional costs associated with Customer's chosen method of payment, which costs shall be the responsibility of Customer and will be added to any invoice as applicable. If applicable, Third Party Fees levied upon Protenus, including charges assessed by Customer's EHR vendor, will be passed through to Customer.

(b) Taxes. The Fees payable to Protenus under this Agreement do not include taxes and other similar charges. Except for taxes on Protenus' net income and net worth and withholding taxes, Customer is responsible for, and shall pay or reimburse Protenus for, all taxes, including sales, use, value-added (VAT), general services (GST), gross receipts, excise, personal property, import duties, or any similar assessments based on the licenses granted and services provided by Protenus under this Agreement. If Protenus is required to withhold or pay any such taxes to a taxing authority, Customer shall be responsible for such taxes and Protenus shall include such taxes as a line item in its invoices to Customer.

(c) Tax Exemption. If applicable, Customer must provide Protenus with a tax exemption certificate acceptable to the taxing authorities in lieu of paying such taxes. Customer shall reimburse Protenus for any fines, penalties, taxes and other charges, including expenses incurred by Protenus due to Customer's submission of invalid information or change in Customer's tax exemption status.

2.3. Term. The term of the Agreement begins on the Effective Date; the Subscription License Term for the Protenus Solution or Services will be as specified in the applicable SOW or Customer Order (the "**Term**"). The Agreement will terminate when the last applicable Subscription License Term ends. Commencing on or about the date falling sixty (60) days before the expiration of the Subscription License Term, the Parties will discuss in good faith the possibility of entering into an agreement to renew on terms mutually acceptable to the Parties. If the Subscription License Term expires before a renewal agreement is executed and the Parties are in active discussion to execute a renewal, the Protenus Solution will continue to be provided on a month to month basis at Protenus' then-current rates until a renewal term begins or the Agreement is terminated, and Customer will pay Fees prorated for the period of the continuation.

2.4. Termination. This Agreement may be terminated by either Party upon written notice if the other Party breaches any of the material provisions of this Agreement and fails to remedy such breach within thirty (30) days after written notification by the non-breaching Party, subject to the Parties' obligations under the provisions of this Agreement that survive its termination. Upon termination of the Agreement, Protenus will cease to provide any further Services, Protenus will terminate Customer's access to the Protenus Solution as soon as reasonably possible without jeopardizing the security of data on the Customer System (but in no event longer than ten (10) business days), Customer will return all Protenus Property (as defined below) to Protenus, and Protenus will return all Customer Property (as defined below) to Customer.

2.5. Feedback. If Customer sends or transmits any communications, comments, questions, suggestions or related materials to Protenus suggesting or recommending changes to the Protenus Solution or Services, including new features or functionality relating thereto

("Feedback"), all such Feedback is and will be exclusively owned by Protenus. Customer hereby assigns to Protenus all right, title and interest in and to, and Customer hereby agrees that Protenus shall be free to use without any attribution or compensation to Customer, any ideas, know-how, concepts, techniques and all applicable Intellectual Property Rights relating to the Feedback, whether or not patentable, for any purpose whatsoever, including developing, manufacturing, having manufactured, licensing, marketing and selling (directly or indirectly) products and services using such Feedback. Customer agrees and understands that Protenus is not obligated to use, display, reproduce or distribute any such ideas, know-how, concepts or techniques contained in the Feedback, and Customer has no right to compel such use, display, reproduction or distribution.

2.6. Software Availability. Protenus warrants that the Protenus Solution will perform in all material respects in accordance with the Service Level Agreement attached hereto as **Exhibit A**. If the service level provided to Customer for any given month during the Term was not as warranted, Customer must provide written notice to Protenus no later than five business days after the last day of that particular month.

2.7. Software Suspensions. Protenus may temporarily suspend Customer's use of and access to the Protenus Solution ("**Software Suspension**") if Protenus reasonably determines that (i) Customer's use of the Protenus Solution may materially harm Protenus' or its Third Party service providers' systems or may subject Protenus to liability; (ii) Customer is, in Protenus' reasonable judgment, using the Protenus Solution for fraudulent or illegal activities; or (iii) such suspension is required by law. Protenus will use commercially reasonable efforts to provide advance written notice of any Software Suspension to Customer, and will inform Customer if and when such Software Suspension has been lifted and Customer's use of the Protenus Solution has been reinstated. Protenus shall have no liability for any damage, liabilities, losses (including any loss of data or profits or impairment of / injury to reputation) or any other consequences that the other party may incur as a result of any Software Suspension.

2.8. Protenus Obligation Relating to Policy Deviations. Customer acknowledges and agrees that Protenus' obligation under this Agreement is limited solely to performance in accordance with this Agreement. Protenus shall have no obligation to notify, and shall have no liability relating to the failure to notify, Customer or any other person or entity (including any governmental entity) of any Policy Deviation. Customer has sole responsibility for all responsive and/or remedial actions relating to all Policy Deviations identified by Protenus or the Protenus Solution.

SECTION 3 OTHER TERMS

3.1. Confidentiality and Privacy. The terms of this section shall supersede any separate confidentiality or non-disclosure agreements between the Parties.

(a) Obligations. Each of the Parties agrees to maintain in confidence any non-public information of the other Party or such Party's Affiliates, whether written or otherwise, disclosed by the other Party or such Affiliates in the course of performance of this Agreement, which information a Party knows or reasonably should know is considered confidential by the disclosing Party ("**Confidential Information**"). The Parties agree that Confidential Information includes the terms and conditions of this Agreement, excepting those terms and conditions that must be disclosed due to California law as specified below, and any discussions related thereto or to the Protenus Solution, Protenus Data, and Customer Data. As to PHI and PII, confidentiality shall also be subject to the BAA, which shall control in the event of any conflict with this Section 3.1. The receiving Party shall not disclose, use, transmit, inform or make available to any entity, person or body any of the disclosing Party's Confidential Information, including to an Affiliate, except as a necessary part of performing its obligations hereunder or as required by law or regulation, and shall take all such actions as are reasonably necessary and appropriate to

preserve and protect the Confidential Information and the Parties' respective rights therein, at all times exercising at least a reasonable level of care. Each Party agrees to restrict access to the Confidential Information of the other Party to those employees or agents who require access in order to perform under this Agreement, and, except as otherwise provided in this Agreement, neither Party shall make the disclosing Party's Confidential Information available to any other person or entity without the prior written consent of the other Party. Protenus covenants that (i) any Third Party agents of Protenus that access or maintain PHI or PII will be under a second-tier BAA with Protenus with terms and conditions at least as restrictive as the BAA; (ii) Protenus will be responsible for such Third Party's compliance with the second-tier BAA; and (iii) Protenus will disclose the existence of such Third Party to Customer in advance of such access or maintenance.

(b) Exclusions. Confidential Information shall not include any information that (i) is already known to the receiving Party at the time of the disclosure without violation of any legal or contractual obligation of confidentiality by the receiving Party or, to the receiving Party's knowledge, any Third Party; (ii) is publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the receiving Party or, to the receiving Party's knowledge, any Third Party (except that the foregoing shall not apply to PHI or PII); (iii) is subsequently disclosed to the receiving Party on a non-confidential basis by a Third Party not having a confidential relationship or legal obligation of confidentiality with the other Party or with respect to the information itself, which Third Party rightfully acquired such information; or (iv) is communicated to a Third Party by the receiving Party with the express written consent of the disclosing Party. A disclosure of Confidential Information that is legally compelled to be disclosed pursuant to a subpoena, summons, order, or other judicial or governmental process shall not be considered a breach of this Agreement; *provided* that the disclosing Party shall provide prompt notice of any such subpoena, order or the like to the other Party with the intention that such Party will have the opportunity to obtain a protective order or otherwise oppose the disclosure. Protenus 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.

(c) Security. Subject to Section 3.1(d) below and to the BAA, Protenus agrees that it will use commercially reasonable efforts to (1) secure the Customer Data and information within its custody or control, (2) prevent unauthorized access or disclosure of such data and information, (3) maintain the accuracy of the data and information within the system, and (4) ensure the appropriate use of such data and information by Protenus personnel.

(d) Passwords. Protenus shall either issue to Customer or authorize a Customer administrator to create and issue to each Authorized User a user identification number and/or password for access to and use of the Protenus Solution. Customer and its Authorized Users are responsible for maintaining the confidentiality and security of all Customer and end user accounts and all user identification numbers and/or passwords and for ensuring that each user identification number and/or password is used only by the Authorized User to which it was issued. Customer is solely responsible for any and all activities that occur under Customer's account and all charges incurred from use of the Protenus Solution accessed with such user identification numbers and/or passwords. Customer shall restrict its Authorized Users from sharing passwords. Customer shall promptly notify Protenus of any unauthorized use of Customer's account, user identification number and/or password, or any other breach of security. Protenus shall have no liability for any loss or damage arising from Customer's failure to comply with the terms set forth in this Section 3.1(d).

(e) No Circumvention. Customer shall not, and shall ensure that its Authorized Users do not, circumvent or otherwise interfere with any user authentication or security of the Protenus Solution. Each Party will immediately notify the other of any breach, or attempted breach, of security relating to Customer's use of the Protenus Solution known to such Party. Nothing in this Section will limit or alter the responsibilities of Protenus under the BAA.

(f) No Guarantee of Security. Protenus does not provide absolute guaranty of the privacy, security, integrity or authenticity of any information transmitted over or stored in any system connected to or accessible via the internet or otherwise, or that any security precautions will be adequate or sufficient.

(g) Privacy. Protenus and Customer each commit to comply with the applicable standards contained in HIPAA. Customer and Protenus have entered into the BAA, which shall be deemed to be part of this Agreement. In the event of a conflict between the terms of this Agreement and the terms in the BAA as relates to PHI or PII, the terms of the BAA will control; otherwise, the Agreement will control. Nothing in this Agreement authorizes Protenus to use or disclose PHI or PII for any purpose other than as contemplated by this Agreement.

(h) No Third Party Confidential Information. Protenus and Customer each promises that it shall not, in the course of or in connection with the Engagement, disclose or transfer to the other, or upload to or incorporate into the Protenus Solution, any information or data protected as a trade secret or "confidential information" (by agreement or otherwise by law), or subject to intellectual property rights, of any third party.

(i) Third Party Platforms. If Customer uses a third party platform or service to exchange its data with the Protenus Solution, this Section applies. Customer is solely responsible for determining whether to use the Protenus Solution with a third party platform. Protenus will have no responsibility for any third party platforms, including without limitation their availability, reliability, security, functionality, operation, or integrity. Customer acknowledges that the Protenus Solution application programming interface ("API") may change over time, requiring updates or revisions to Customer's or its third party platform's integration code. Protenus will provide Customer with advance notice of any material changes to its API.

3.2. Representations, Warranties and Covenants.

(a) Representations and Warranties of Both Parties. Each Party hereby represents and warrants (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (ii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms; and (iii) that it is in compliance with and will comply with any and all local, state and/or national laws and/or regulations applicable to such Party with respect to any Customer Data uploaded to, submitted to or processed by the Protenus Solution, including Privacy Laws and other laws related to data privacy and the transmission of personal data, without limitation of the other specific provisions of this Agreement and the BAA.

(b) Representations and Warranties of Protenus. Protenus further represents and warrants that the Protenus Solution and the Services provided by Protenus or licensed to Customer under this Agreement do not contain any viruses, malware or similar items or other computer instructions or technological means to disrupt, damage or interfere with the use of the Customer System.

(c) Covenants of Protenus. Protenus covenants that (i) the Protenus Solution and Services provided under this Agreement will conform in all material respects with this Agreement,

the Documentation, the applicable SOW and generally accepted industry practices, and (ii) the Services shall be performed in a professional, competent manner.

(d) Representations and Warranties of Customer. Customer represents and warrants that it has obtained all permissions necessary (including without limitation those that may be required of Customer's patients, customers, employees, representatives, and third party technology providers) in order for Customer to enter into this Agreement and to use the Protenus Solution throughout the Engagement without violating the legal rights of any third party.

3.3. Ownership.

(a) Protenus Property. Customer agrees that Protenus shall own all right, title and interest in and to (A) the Protenus Solution; (B) the Feedback; and (C) all Protenus Data, Protenus Confidential Information and all Intellectual Property Rights in and to the same (collectively, the "**Protenus Property**"). This Agreement does not grant Customer, its Affiliates or any Third Party any rights or implied licenses with respect to any Protenus Property other than those expressly granted in this Agreement. Protenus shall have the right to access identifiable patient information and use it for the purposes contemplated by this Agreement. All rights in and regarding any Protenus Property not expressly granted to Customer or its Affiliates under this Agreement are expressly reserved to Protenus.

(b) Customer Property. Customer owns all right, title and interest, including all Intellectual Property Rights, in and to all Customer Data; Customer Confidential Information; and, as between the Parties, PHI and PII (collectively, "**Customer Property**"). All rights, express or implied, in and the foregoing not expressly granted to Protenus in this Agreement are expressly reserved by Customer.

(c) Adequacy of Customer Data. Customer acknowledges and agrees that the efficacy of the Protenus Solution is dependent on Customer Data as inputs. If Protenus determines, in its reasonable discretion, that (i) Protenus cannot fulfill its obligations under this Agreement because Customer is not providing adequate Customer Data as inputs for the Protenus Solution and/or (ii) there is a substantial risk of conflict with, or a violation of third party rights of challenge by, a third party relating to such third party's intellectual property and/or data rights, Protenus and Customer shall work together in good faith to address the issue. If, after 30 days of such attempted resolution in good faith, the Parties are unable to resolve such issue, Protenus may, in its sole and complete discretion, terminate this Agreement.

3.4. License Grants by Protenus. Protenus hereby grants Customer during the Term, and terminable as specified in Section 2.3, a limited, non-exclusive, non-transferable, non-sublicensable license to permit its Authorized Users to access and use the Protenus Solution in the Territory, but only for internal business purposes. This license is granted on the condition that Customer complies, and causes its Authorized Users and Affiliates to comply, with all of the terms and conditions of this Agreement, including the following restrictions:

(i) Customer and its Affiliates shall not, directly or indirectly, sublicense, resell, transfer, distribute, or otherwise make available the Protenus Solution, to any Third Parties other than consultants or other individuals engaged by Customer with a genuine need for such access in connection with Customer's performing its obligations under this Agreement and using the Protenus Solution (and Customer shall be responsible for ensuring such Third Parties' compliance with this Agreement);

(ii) Customer and its Affiliates shall not, and shall not permit any Third Party to, directly or indirectly, (a) reverse-engineer, decompile, disassemble or otherwise attempt to discover the source code; or underlying structure, ideas or algorithms of the Protenus Solution or any other software, documentation or data related thereto; (b) modify, translate or create

derivative works based on the Protenus Solution; (c) use the Services or Protenus Solution for any purpose other than Customer's own use for the benefit of Customer's Authorized Users or for demonstration of Customer's compliance with applicable laws; or (d) use the Services or Protenus Solution other than in accordance with this Agreement and in compliance with all applicable laws and regulations; and

(iii) Customer and its Affiliates shall not, directly or indirectly, create, develop, or otherwise provide any technology, software or platform similar to or the same as the Protenus Solution using Protenus Confidential Information or Protenus Intellectual Property Rights during or after the Term.

3.5. License Grants by Customer. Subject to Section 3.3(b), Customer hereby grants Protenus and its Affiliates a royalty-free, worldwide right and license to (a) access, use, manipulate and copy the Customer Data (or any portions or components thereof) in any and all media, now known or hereafter developed, for the sole purpose of performing the Services, performance of the Protenus Solution, and providing access to the Protenus Solution to Customer in accordance with the terms of this Agreement; and (b) any aggregated, anonymized, de-identified data or information collected or compiled by Protenus under this Agreement.

3.6. Indemnification.

(i) Protenus shall indemnify, defend, and hold harmless from and against any third party claims, demands, actions, causes of actions, obligations, judgments, rights, fees, damages, fines, penalties, debts, obligations, liabilities, and expenses (inclusive of reasonable attorneys' fees) of any kind whatsoever (collectively, "**Claims**") arising out of or relating to allegations that the Protenus Solution itself, as used by Customer as marketed and directed by Protenus, violates the intellectual property rights of any third party. To the extent that use of the Protenus Solution is enjoined, Protenus may at its option either (A) procure for Customer the right to use the Protenus Solution, (B) replace the Protenus Solution with another suitable solution, or (C) terminate this Agreement.

(ii) Customer shall indemnify, defend, and hold harmless Protenus from and against any third party Claim arising out of or related to (A) Customer's violation of any of its representations, warranties, promises, or obligations in this Agreement, (B) allegations involving rights in or relating to any prior or non-Protenus software, system, technology, solution, and/or platform that Customer uses or used; (C) any action or inaction by Customer in connection with the Policy Deviations identified by Protenus or the Protenus Solution; and/or (D) violation of any Privacy Laws.

(iii) To be entitled to indemnification under this section, an indemnitee subject to a nonparty claim must promptly (and in any event no later than ten days after the indemnitee first knew of that nonparty Claim) notify the indemnitor of that nonparty Claim and deliver a copy of all legal pleadings with respect to the nonparty Claim. If the indemnitee fails to timely notify the indemnitor of a nonparty Claim, the indemnitor will be relieved of its indemnification obligations with respect to that nonparty Claim to the extent that it was prejudiced by that failure to timely notify, and the indemnitor will not be required to reimburse the indemnitee for any litigation expenses the indemnitee incurred during the period in which the Indemnitee failed to notify the indemnitor.

3.7. Warranty Disclaimer. **CUSTOMER AGREES AND ACKNOWLEDGES THAT, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE PROTENUS SOLUTION AND SERVICES ARE PROVIDED BY PROTENUS HEREUNDER "AS IS" AND WITHOUT ANY FURTHER WARRANTY OF ANY KIND. PROTENUS DOES NOT GUARANTEE THAT THE PROTENUS SOLUTION WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT PROTENUS WILL CORRECT ALL SERVICE ERRORS. CUSTOMER ACKNOWLEDGES THAT**

PROTENUS DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. PROTENUS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. FOR ANY BREACH OF THE SERVICE LEVEL WARRANTY, PROTENUS WILL REMIT A SERVICES FEE CREDIT TO CUSTOMER CALCULATED PURSUANT TO THE SERVICE LEVEL AGREEMENT, AND THE REMITTANCE OF SUCH CREDIT WILL REPRESENT CUSTOMER'S EXCLUSIVE REMEDY, AND PROTENUS'S SOLE LIABILITY, FOR ALL BREACHES OF ANY SERVICE LEVEL WARRANTY SPECIFIED IN THE AGREEMENT. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

3.8. Limitation of Liability. IN NO EVENT WILL PROTENUS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES ARISING OUT OF THE AGREEMENT, INCLUDING LOST PROFITS OR LOST REVENUES, REGARDLESS OF WHETHER PROTENUS WAS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE LEGAL THEORY ON WHICH ANY SUCH DAMAGES MAY BE BASED. THE ENTIRE LIABILITY OF PROTENUS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL OF ALL FEES PAID TO PROTENUS OVER THE PRIOR SIX (6) MONTH PERIOD. Notwithstanding anything to the contrary, Protenus' limitations of liability shall not apply to, affect, or limit: (i) any of Protenus' duties to indemnify Customer in accordance with this agreement and/or (ii) any third party claims.

3.9. Insurance. Protenus, at its sole cost and expense, will insure its activities in connection with providing the Services or Protenus Solution and obtain, keep in force, and maintain the following insurance with the minimum limits set forth below:

A. Commercial Form General Liability Insurance (contractual liability included) with limits as follows:

1.	Each Occurrence	\$ 1,000,000
2.	Products/Completed Operations Aggregate	\$ 2,000,000
3.	Personal and Advertising Injury	\$ 1,000,000
4.	General Aggregate	\$ 2,000,000

B. If applicable, Professional Liability Insurance with a limit of two million dollars (\$2,000,000) per occurrence with an aggregate of not less than two million dollars (\$2,000,000). If this insurance is written on a claims-made form, it will continue for three years following termination of the Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the effective date of the Agreement.

C. Workers' Compensation as required by applicable state law and Employer's Liability with limits of one million dollars (\$1,000,000) per occurrence.

D. Cyber liability insurance covering liability with an aggregate limit of at least ten million dollars (\$10,000,000).

E. The coverages referred to in this section shall, to the extent practicable, include Customer as an additional insured. Protenus will furnish Customer with certificates of insurance (and the

relevant endorsement pages) upon request.

3.10. Governing Law, Venue, and Dispute Resolution.

(a) This Agreement will be construed and enforced in all respects in accordance with the laws of the State of California, without reference to its choice of law rules.

(b) In the event of a dispute arising out of or relating to this Agreement, each Party agrees that, prior to initiating any formal legal action, it will attempt to resolve the dispute amicably without resort to formal legal action.

This does not apply to any dispute involving the actual or threatened misappropriation of Protenus Property or Customer Property, or infringement of a Party's Intellectual Property Rights, or unauthorized disclosure of PHI or PII, or any other dispute in which a Party genuinely believes in good faith that it requires and is entitled to emergency or interim injunctive relief to avoid irreparable injury.

(c) The federal and state courts seated in Kern County, California, will have sole and exclusive jurisdiction for all purposes in connection with any action or proceeding that arises out of, or relates to, this Agreement, the Services, and/or the Engagement, and each Party hereby irrevocably waives any objection to such exclusive jurisdiction except for objections based on a failure of service of process. Notwithstanding anything in this Agreement to the contrary, either Party may seek injunctive or other equitable relief in any court of competent jurisdiction to protect any actual or threatened misappropriation or infringement of its Intellectual Property Rights or of PHI or PII or those of its licensors, and each Party, on behalf of itself and its Affiliates, hereby submits to the exclusive jurisdiction of such courts and waives any objection thereto on the basis of improper venue, inconvenience of the forum or any other grounds. The United Nations Convention on Contracts for the International Sale of Goods in its entirety is expressly excluded from this Agreement. Furthermore, this Agreement will not be governed or interpreted in any way by referring to any law based on the Uniform Computer Information Transactions Act ("UCITA") or any other act derived from or related to UCITA.

3.11 Notices. All notices permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, email, or certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five (5) business days after deposit in the mail, or upon confirmation of transmission if sent by email. Notices to each Party will be sent to their respective addresses in the first paragraph of this Agreement, Protenus' email address (legal@protenus.com), and Customer's email address contracts@kernmedical.com, or to such other address as a Party may specify in writing. Each Party hereby consents to receive communications from the other Party electronically at the email address specified in accordance with this Agreement. Each Party agrees that all agreements, notices, disclosures and other communications that the other Party provides to it electronically satisfy any legal requirement that such communications be in writing, to the extent permitted by applicable law.

If to Protenus: Protenus, Inc.
P.O. Box 6198
Baltimore, MD 21231
Attn.: Legal

If to Customer: Kern County Hospital Authority
1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn.: contracts@kernmedical.com

3.12 General.

- a. This Agreement will be binding upon and will inure to the benefit of Customer and Protenus and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other party which will not be unreasonably withheld or delayed, provided that: (a) either party may assign its rights or obligations to a parent corporation or a subsidiary in which the assigning party holds a fifty percent (50%) or greater ownership interest without the consent of the other party; (b) either party may assign its rights and obligations hereunder in connection with any transaction involving the sale or transfer of all or substantially all of its assets without the consent of the other party; and (c) in any such assignment, the assignee must agree in writing to assume the responsibilities and obligations hereunder and the assignee must have at least substantially the same or greater ability to perform the assignor's obligations. Any attempted assignment in violation of this provision will be void.
- b. Protenus may, with written notice to Customer, enter into agreements with Third Parties whereby such Third Parties assist Protenus in the development of the Protenus Solution. If a Third Party will have access to Customer Data in connection with such engagement, then it will execute a Sub-Business Associate Agreement with Protenus substantially in the form attached hereto as **Exhibit B** for Customer's benefit before or simultaneously with such Third Party's engagement by Protenus. Notice is not required when Protenus is using a subcontractor as an alternative to direct employment (e.g. use of subcontractor for staff augmentation or hiring an individual as an independent contractor for a period prior to making the individual an employee).
- c. Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented only by a writing that refers explicitly to this Agreement and that is signed on behalf of both Parties. No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in writing signed on behalf of the Party against which the waiver is asserted.
- d. If any term of this Agreement is found invalid or unenforceable, that term will be enforced to the maximum extent permitted by law, and the remainder of this Agreement will remain in full force.
- e. The Parties are independent contractors, and nothing contained herein shall be construed as creating an agency relationship, partnership or other form of joint enterprise between the Parties.
- f. This Agreement (including the BAA and any SOW or Customer Order issued hereunder) represents the entire agreement between the Parties relating to its subject matter and supersedes all prior and/or contemporaneous representations, discussions, negotiations and agreements, whether written or oral. In the event of any direct conflict or inconsistency between the provisions of the BAA, the non-appended portions this Agreement, and any SOW or Customer Order issued hereunder, the terms of the BAA shall take precedence and control over the terms of the Agreement only to the extent related to treatment of PHI and for no other purpose, and the Agreement shall take precedence and control over the terms of any SOW or Customer Order. Protenus does not agree to any terms and conditions contained on any purchase order, even if it is written that acceptance of said purchase order constitutes agreement with its terms. If Customer employs a vendor credentialing service to obtain credentialing or to achieve compliance with its rules, standards, policies and procedures, Protenus will not be bound by any terms and conditions contained therein unless expressly agreed to in this Agreement.

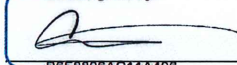
- g. Except for any payment obligations that Customer has hereunder, neither Party shall be liable to the other Party or any Third Party for failure or delay in performing its obligations under this Agreement when such failure or delay is due to any cause beyond the control of the Party concerned, including acts of God, governmental orders or restrictions, fire, or flood (a "**Force Majeure Event**"); *provided* that upon cessation of any such Force Majeure Event, the Party excused from performance shall thereupon promptly perform or complete the performance of its obligations hereunder.
- h. The headings for sections in this Agreement are for convenience only and shall not affect the meaning of the provisions of this Agreement. As used in this Agreement, the terms "includes," "including" and similar terms shall be deemed to be followed by "without limitation."
- i. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. The Parties agree that this Agreement may be signed electronically pursuant to the ESIGN Act. The Parties agree that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
- j. All Customer Data provided to Protenus in connection with this Agreement shall be housed in the U.S.A.; provided, however, Customer agrees that it may allow, on a case by case basis, for Customer Data to be accessed by Protenus' Canadian employees.
- k. All sections of this Agreement will survive termination other than Sections 2.1, 2.6, 3.4 and 3.5.

[Signature page follows]

By their signatures below, the Parties represent and warrant that they have the authority to bind their respective companies to the terms and conditions of this Master Agreement.

PROTENUS:

PROTENUS, INC.

DocuSigned by:

By: _____
Name: Nicholas Culbertson
Title: CEO
Email: nick@protenus.com
Date: 3/6/2023

CUSTOMER:

KERN COUNTY HOSPITAL AUTHORITY

By: _____
Name: Russell Bigler
Title: Chairman, Board of Governors
Email: contracts@kernmedical.com
Date: March 15, 2023

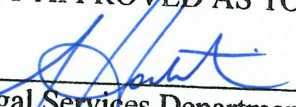
REVIEWED ONLY
NOT APPROVED AS TO FORM
By 
Legal Services Department

EXHIBIT A**SERVICE LEVEL AGREEMENT****1. DEFINITIONS**

1.1. All capitalized terms used but not defined in this **Exhibit A** will have the meanings assigned to them in the Agreement. For purposes of this **Exhibit A**, the following terms will have the following meanings.

1.2. “**Component**” means a component of the Protenus Solution for which a Critical Service Level has been identified in this **Exhibit A**. Components can include, but are not limited to, websites, servers, the application, systems and system footprints.

1.3. “**Component Availability %**” means:

- (a) For any Component measuring uptime, the Scheduled Uptime for a particular Component functionality less any Unscheduled Downtime during a given month, divided by the total aggregate minutes of such Scheduled Uptime for the month, with the result expressed as a percentage. If a Force Majeure event occurs, as defined in the Agreement, that causes such Component to become unavailable, the relevant period of the Force Majeure event will be subtracted from Component Scheduled Uptime.

$$\frac{\text{ScheduledUptime\#} - \text{UnscheduledDowntime\#}}{\text{ScheduledUptime\#}} = \text{ComponentAvailability\%}$$

- (b) For any Component measuring Response Time, the Scheduled Response Time – less average Response Time during a given month, divided by the Scheduled Response Time, with the result expressed as a percentage. If a Force Majeure event occurs that causes such Component to become unavailable, the Response Time will not be measured in calculating the Component Availability.

$$\frac{\text{ScheduledResponseTime\#} - \text{averageResponseTime\#}}{\text{ScheduledResponseTime\#}} = \text{ComponentAvailability\%}$$

1.4. “**Scheduled Uptime %**” means the total time that the Component is scheduled to be available divided by the total amount of Total possible uptime in the month. The Scheduled Uptime for each Component is set forth in the table of Section 3.3 of this **Exhibit A** below. The result is expressed as a percentage.

$$\frac{\text{ScheduledUptime\#}}{\text{Totalpossibleuptime\#}} = \text{ScheduledUptime\%}$$

1.5. “**Unscheduled Downtime %**” means with respect to a Component, any amount of time during the Component Scheduled Uptime in which: (i) any process or component of such Component or the database which serves such Component (if applicable) is not available or is not current; (ii) the hardware or systems software necessary to run such Component is not available; or (iii) two percent (2%) or more of all users are unable to access such Component due to a network component under Protenus's or its subcontractors control. This amount is to be represented as the total amount of time that the Component is down divided by the total Component Scheduled Uptime. This amount is to be expressed as a percentage.

$$\frac{\text{UnscheduledDowntime\#}}{\text{ScheduledUptime\#}} = \text{UnscheduledDowntime\%}$$

- 1.6. **"Critical Service Level"** means any service level for which a Service Credit Percentage is identified in this **Exhibit A**.
- 1.7. **"Exceedance"** means, with respect to any one of the Components, a failure to meet the Critical Service Level(s) designated with respect to that Component.
- 1.8. **"Response Time"** for an HTTP request means, for each calendar month, the average time that elapses between the HTTP request and response as measured from immediately outside the Protenus network. If the Customer reports a response time concern, Protenus will investigate the problem and promptly report the results of such investigation to the Customer, and Protenus will participate in any Customer test of system response time, which may include the Customer systems as well as Protenus systems. Without limiting any other rights or remedies of the Customer, if the Response Time result is greater than the metric guaranteed in this **Exhibit A**, Protenus will take all reasonable efforts to correct the problem.
- 1.9. **"Service Level Credit"** means, with respect to any Exceedance, an amount determined by multiplying the percentage of Unscheduled Downtime (%) by the total fees paid for hosting services the previous month. For uptime Components, during months where Unscheduled Downtime occurs continuously for more than two (2) hours, the Service Level Credit is increased per the tables below.

Uptime Components

	Less than 2 continuous hours	2 - 4 continuous hours	4 - 8 continuous hours	Greater than 8 continuous hours
Credit Multiplier	1	1.25	1.5	2

2. EXCEPTIONS

Generally, Protenus will not be responsible for failures to meet service levels attributable to:

- 2.1. Acts or omissions of Customer, its agents, employees or contractors (including willful misconduct, negligence, breach of contract, or infringements of third party proprietary rights); otherwise caused by factors outside of Protenus' reasonable control, including any Force Majeure event or internet access or related problems beyond the demarcation point of our Services;
- 2.2. Defects in software provided by Customer which Protenus could not have discovered through the exercise of reasonable diligence prior to the failure;
- 2.3. Customer's failure to implement changes in equipment or software reasonably recommended by Protenus in writing as essential to maintain service levels following a Customer directed change in the operating environment or a Customer driven increase in demand for system resources that has not allowed Protenus a reasonable time to accommodate;
- 2.4. Operation under a disaster recovery plan (assuming Protenus has complied with its material obligations with respect thereto), or provision of services after the expiration of the Term of this Agreement;

2.5. A suspension or termination of Customer's right to use our Services in accordance with the terms of the Agreement; and

2.6. A scheduled period of time during which outages may occur for planned maintenance, communicated to Customer in advance where possible.

3. COMPONENT SERVICE LEVELS

3.1. Except as provided in Section 2 (Exceptions) of this **Exhibit A**, Customer will receive a Service Level Credit for each Exceedance. Service Level Credits will be calculated on a monthly basis and paid/credited on the invoice for the following month in accordance with the payment terms outlined in the Agreement.

3.2. In the event that any applicable Component set forth below is replaced during the term of the Agreement by another Component, Protenus will propose for Customer's review and approval Critical Service Levels, Scheduled Uptime and Allowed Downtime for Maintenance with respect to each new Component. CSLs for new Components will, to the extent reasonably practicable, be comparable to the CSLs then in existence for Components that are similar in purpose and function.

3.3. The agreed upon service levels are set forth in the tables below:

Component	Critical Service Level (CSL)	Scheduled Uptime	Allowed Downtime for Maintenance
Server Availability	99.4999%	99.4999%	.5%
Application Availability	99.4999%	99.4999%	.5%

Component	Critical Service Level (CSL)	Scheduled Response Time
HTTP Requests	250 milliseconds	250 milliseconds

4. TECHNICAL SUPPORT

4.1. Protenus will (a) provide telephone support and email support from 7:00 a.m. to 9:00 p.m. (Eastern Time Zone), during normal business days (and excluding government holidays); (b) acknowledge problem reports promptly during such hours; and (c) provide status reports to Customer appropriate to the level of the problem.

4.2. If the Protenus Solution is not functioning at all (a "**Level 1 Problem**"), the target response time is four (4) business hours.

4.3. If the Protenus Solution is partially functional with material exceptions or problems (a "**Level 2 Problem**"), the target response time is eight (8) business hours.

4.4. If the Protenus Solution is functioning with reproducible exceptions or problems that are not material to its core functionality (a "**Level 3 Problem**"), the target response time is the end of the business day following the report of such problem. Protenus will use escalation procedures designed to enable Protenus to meet the foregoing target response times.

- 4.5. Protenus will endeavor to assist Customer with file delivery failures or omissions. Protenus will provide one automated notification per day to the customer for each data feed regarding file delivery failure notifications detected by the Protenus file monitoring system. Any file failures identified after the daily notification has been sent will be included in the following day's notification. The notification email will be sent using the Protenus support database and replying to this email will open a ticket for tracking purposes.
- 4.6. If file delivery failures are corrected within seven (7) calendar days of the original notification, Protenus will rerun the analytics over the days impacted. If file delivery failures are corrected outside of seven (7) calendar days since the original notification, the customer may request a rerun of the analytics on the days affected. Protenus will attempt to accommodate these requests when possible.
- 4.7. If after completion of above steps there still exists a file delivery issue, any impact to the quality or usability of the Protenus Solution is the responsibility of the Customer.

EXHIBIT B

BUSINESS ASSOCIATE AGREEMENT

See attached.

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 Protenus, Inc. ("**Business Associate**") (each a "**Party**" and collectively the "**Parties**"), effective as of date of the underlying Agreement (the "**Effective Date**").

RECITALS

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

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

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

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

AGREEMENT

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

ARTICLE I DEFINITIONS

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

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

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

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

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

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

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

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

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

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

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or SubContractors that is not specifically permitted by this BAA no later than five (5) business 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 non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

2.3.2 Breach of Unsecured PHI. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) 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. 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. Notwithstanding anything to the contrary set forth herein, Business Associate's obligations to pay for, or to reimburse Covered Entity for, provision of credit monitoring or fraud resolution services to Individuals affected by a Breach shall be limited to a period of one (1) year from the date of the official notification letters unless a different time period is directed by a state or federal entity. Additionally, Business Associate's obligations to pay for, or to reimburse Covered Entity for, the cost of a call center, website, or other service provided to Individuals affected by a Breach shall be limited to a period of six (6) months from the date of the official notification letters unless a different time period is directed by a state or federal entity.

2.3.3 Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Sections 2.3.1 and 2.3.2, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused,

disclosed, lost or stolen, Covered Entity believes would trigger an obligation under applicable state security breach notification laws ("State Breach") to notify the individuals who are the subject of the information. Business Associate agrees to: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by a state agency or Attorney General; (iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency to notify individuals impacted or potentially impacted by a State Breach.

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

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

2.6 Access to Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall make the PHI it maintains (or which is maintained by its SubContractors) in Designated Record Sets available to Covered Entity for inspection and copying, or to an Individual to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524. If Business Associate maintains PHI in a Designated Record Set electronically, Business Associate shall provide such information in the electronic form and format requested by the Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524(c)(2). Business Associate shall notify Covered Entity within five (5) days of receipt of a request for access to PHI from an Individual. Notwithstanding anything to the contrary set forth herein, the Parties acknowledge and agree that the Services being provided by Business Associate under any Underlying Agreement do not give rise to the creation or maintenance of a Designated Record Set and thus this provision does not apply to the Parties' business relationship.

2.7 Amendment of Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall amend the PHI it maintains (or which is maintained by its SubContractors) in Designated Record Sets to enable the Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within five (5) days of receipt of a request for amendment of PHI from an Individual. Notwithstanding anything to the contrary set forth herein, the Parties acknowledge and agree that the Services being provided by Business Associate under any Underlying Agreement do not give rise to the creation or maintenance of a Designated Record Set and thus this provision does not apply to the Parties' business relationship.

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. Notwithstanding anything to the contrary set forth herein, the Parties acknowledge and agree that the Services being provided by Business Associate under any Underlying Agreement do not give rise to the creation or maintenance of a Designated Record Set and thus this provision does not apply to the Parties' business relationship.

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

comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

2.10 Availability of Internal Practices, Books, and Records to Government. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity promptly available for inspection and copying to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the HIPAA Rules. In addition, Business Associate agrees that Covered Entity shall have the right to audit and monitor all applicable activities and records of Business Associate to determine Business Associate's compliance with the HIPAA Rules and shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI provided, created, received, maintained or transmitted by Business Associate on behalf of Covered Entity for such purpose. Notwithstanding the foregoing, and as it relates to requests received directly from Covered Entity for its own purposes and not from the Secretary, Covered Entity agrees to accept Business Associate's SOC 2 Type 2 audit report, conducted and certified by an independent third party, in satisfaction of the requirements set forth herein. The Parties acknowledge that requests received from the Secretary will be fully complied with at the direction of and upon the guidance of the Secretary.

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

ARTICLE III OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity's Obligations.

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

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

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

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

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

ARTICLE IV TERM AND TERMINATION

4.1 Term. Subject to the provisions of Section 4.1, the term of this BAA shall be the term of any Underlying Agreement.

4.2 Termination of Underlying Agreement.

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

4.2.2 Covered Entity may terminate the Underlying Agreement, effective immediately, if: (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

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

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

4.3.2 Upon thirty (30) calendar day written notice to Business Associate, immediately terminate this BAA and any Underlying Agreement if Covered Entity determines that such breach cannot be cured.

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

ARTICLE V MISCELLANEOUS

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

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

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

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

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

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

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

5.8 Indemnification. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, but specifically subject to the limitations set forth in Section 2.3.2 of this BAA, 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 actual and documented losses, damages, fines, penalties, claims or causes of action and associated expenses (including, without limitation, costs of judgments, settlements, court costs and reasonable attorney's fees) resulting from Business Associate's (including its employees, directors, officers, agents, or other members of its Workforce, and its SubContractors) breach of PHI or violation of the terms of this BAA, including but not limited to failure

of Business Associate to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.

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

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

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

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or 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; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

Kern County Hospital Authority
1700 Mount Vernon Avenue
Bakersfield, CA 93306
Attn: Chief Executive Officer

Business Associate's Notice Address:

Protenus, Inc.
P.O. Box 6198
Baltimore, MD 21231
Attn.: Privacy Officer and Legal

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

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

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

5.16 Governing Law; Applicable Law and Venue. This BAA shall be construed in accordance with the laws of the State of California applicable to agreements made and to be performed in such state.

Any dispute between the Parties shall be brought before the Superior Court of Kern County, California, which shall have jurisdiction over all such claims.

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

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

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

5.20 Certification. To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or Consultants may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures, and records, as may be necessary for such agents or Consultants to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HIPAA Rules, the HITECH Act, or this BAA. Notwithstanding anything to the contrary set forth herein, Covered Entity agrees to accept Business Associate's SOC 2 Type 2 audit report, conducted and certified by an independent third party, in satisfaction of the requirements set forth herein.

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

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

COVERED ENTITY:

The Kern County Hospital Authority

Title: Chairman, Board of Governors

Date: _____

BUSINESS ASSOCIATE:

Protenus, Inc.

Teresa Burns

Title: Teresa Rongione Burns, Privacy Officer

Date: February 23, 2023

APPROVED AS TO FORM
KCHA Legal Services Department

Jamie A. Mason

Jamie A. Mason

EXHIBIT C
STATEMENT OF WORK
KERN COUNTY HOSPITAL AUTHORITY

Definitions

The Master Agreement to which this Statement of Work ("SOW") is attached is referred to in this SOW as the "**Agreement**." Capitalized terms used but not defined in this SOW have the meanings given them in the Agreement.

License Restrictions

Use of the license set forth in the Agreement is restricted as follows:

- a maximum of 25 supported Users with full access;
- unlimited view-only Users.

Fees

Protenus will invoice Customer for all Fees and any taxes payable under the Agreement according to the amounts and dates defined in the Customer Order, which will be due and payable Net 30.

Reimbursement of Travel Expenses

Customer shall reimburse Protenus for its actual, reasonable out-of-pocket expenses for travel reasonably necessary in connection with work under this Agreement. Protenus shall submit accurate and complete supporting documents for reimbursement of such expenses and shall follow any reasonable policies imposed by Customer in connection with such expenses.

Additional Expenses

If, during the Engagement, Protenus determines in its reasonable discretion that additional or Third Party expenses ("**Additional Expenses**") are necessary to complete the Engagement, Protenus shall provide Customer with a written request and cost estimate in advance for approval. Customer shall promptly approve or decline such requests. If Customer declines, Protenus may terminate the Agreement. As of the Effective Date, Protenus is not aware of the need for Additional Expenses.

Transitional Services upon Termination of the Agreement

Upon termination of the Agreement, Protenus will, at the reasonable request and at the expense of Customer, provide assistance to affect the orderly transition to a successor service provider. In the absence of a different rate or fee agreed to in writing by the Parties, Customer shall pay Protenus \$200 per hour, for the first 8 hours of transitional services, and \$500 per hour for any time spent at Customer's request beyond the first 8 hours of transitional services.

Protenus Services

Protenus provides the following services for the purposes of protecting patient privacy in electronic health records using analytical tools that detect certain instances of potential inappropriate access to electronic health records and/or for the purposes of surveillance and monitoring of automated dispensing cabinets and identification of questionable behaviors indicative of clinical drug diversion

Implementation Services and Activation

Our implementation and training services aim to assist our clients with a seamless implementation and include:

- Dedicated Protenus project manager to help coordinate project plan, timeline, and resource requirements
- Technical assistance with Single Sign-on (SSO) integration if using a SAML 2.0 Identity Provider: Okta, ADFS
- Activation end-user training to ensure successful use of the Protenus Solution
- Technical manual, end-user guide, and other platform documentation
- Assistance with setup and configuration of automated file extraction (e.g., SSIS) and transfer solutions (e.g. SFTP with Movelt, direct S3 upload)

Implementation Essentials Package covers the ingestion, processing, and analysis of data necessary for the core functionality of the Protenus Solution and includes:

- Integration of up to three (3) data feeds sufficient for the functionality of the Protenus Solution (Note: Electronic Medical Record / Health Information System (EHR) and HR Demographics and Job Roles System (HR), Automated Dispensing Cabinet (ADC) data feeds are required for implementation):
 - EHR: Cerner
 - ADC: Pyxis
 - HR (demographic data): UltiPro
- Installation, and fine-tuning of Protenus analytics

Additional Data Feed Add-Ons

At any time after Activation, Customer may request to purchase additional data feed plugins. Additional data sources will be reviewed by Protenus and Customer technical teams and approved before the new data feed is integrated into the Protenus Solution. Protenus will charge Customer a new data feed integration fee at the kick-off of the new data feed integration. Protenus will process one new data feed at a time. This offering includes:

- Dedicated Protenus project manager to help coordinate project, timeline, and resource requirements

- In scope: JbDev time and attendance (phase 2)
- Integration, and fine-tuning of Protenus analytics

Standard Service Tier

The Protenus Standard Service Tier is designed to deliver value as early as possible in Customer's Protenus engagement and grow that value over time, including:

- Dedicated Customer Success Manager (CSM) to provide end user training and feedback sessions
- Help center portal (<https://help.protenus.com>) with call and email support 7 am to 9 pm ET (410-618-1060) (support@protenus.com), and end-user discussion forums
- PANDAS (People and Analytics) community membership with quarterly user group meetings and online end user forum

PROTENUS PLATFORM: DRUG DIVERSION SURVEILLANCE ANALYTICS

Drug Diversion Surveillance Subscription

Protenus provides the following services for the purposes of surveillance and monitoring of automated dispensing cabinets and identification of questionable behaviors indicative of clinical drug diversion.

After the Activation, during the Term of the Agreement, Protenus will provide:

- Access to the Protenus Platform for the purpose of drug diversion monitoring
- Data storage and data retention up to 7 years
- On-going product updates and feature enhancements with associated product documentation and release notes

Customer Responsibilities

During the Term, Customer will, without charge to Protenus:

- Communicate regularly with Protenus via emails with Customer's senior compliance staff
- Provide up to five (5) hours per month for in-person or virtual meetings with senior compliance staff or other designees/product owners for status calls related to the implementation, system enhancements and/or feedback related to of the Protenus Solution
- Provide the following:
 - Approval from all relevant parties regarding data transfer and use by Protenus

- Access to and continued maintenance of retrospective and live feeds for:
 - EMR Access Logs (user, patient, date, time, etc.),
 - ADC Access Logs (medication, order, transaction, etc.),
 - User information (title, department, etc.),
 - Patient information (name, date of birth, sex, MRN, etc.), and
 - Appointment information (time, date, location, clinic, etc.)
- Other necessary HR data required for analysis
- Collected requirements documentation from pharmacy/security/compliance personnel
- Ongoing interaction with pharmacy/security/compliance personnel for user feedback and interface customization
- Hardware and software required to securely transmit data to Protenus Platform
- Technical support from Customer's IT department
- A designated party from IT for each data feed integrated with Protenus and corresponding support contacts for file delivery failure troubleshooting.
- Time and support from Customer's data administrators
- Access to other Customer Data as reasonably requested by Protenus

Equipment and System Requirements (to be provided by Customer)

- SFTP server or agent capable of daily data transfers at a minimum
- Regular server maintenance
- Support from data owners for required data (as required by improvements to the Protenus Platform and Customer's acceptance thereof)

Data Security Addendum

When creating, receiving, maintaining, or transmitting any Customer Data, Protenus represents and warrants that its Protenus Solution(s) and/or Services meet the following administrative, technical, and physical safeguards, to the extent applicable to the type of Protenus Solution(s) and/or Services:

1. Provide access restrictions to all physical locations that store or can access Customer Data.
2. Provide access controls limiting access to Customer Data to only authorized persons that include complex passwords with expiration dates and two-factor authentication.
3. Encrypt Customer Data while at rest and during transmission using current industry accepted encryption technologies.
4. Log and monitor infrastructure and access to Customer Data activities.
5. Protenus will, for the duration of the Agreement and at any time Protenus maintains or stores Customer Data, provide Customer with its SOC 2 Type I or II reports, or other third-party security reviews, as they are prepared or updated and upon request.
6. Protenus will store, transmit, and provide access to Customer Data only on computers and systems located in the continental United States.
7. Provide full redundancy and backup for Protenus Solution(s) and/or Services and Customer Data by replicating in near real time to a mirrored data center in a separate geographic region.
8. Notify Customer as soon as practical in the case of the discovery of an actual or suspected breach of Customer Data.
10. Properly protect/preserve forensic evidence in the case of a data breach.
11. Adhere to NIST SP800-88 for data destruction requirements to destroy Customer Data.
12. All computers and systems used in connection with the Protenus Solution(s) and/or Services shall use a hardened software delivery platform, to which service packs, patches, corrections and fixes are routinely and properly applied.
13. Protenus shall routinely perform internal and external vulnerability scanning any servers and systems used in connection with the Protenus Solution(s) and/or Services to ensure that the host site is secure in accordance with reasonable industry practices and the terms of the Agreement.
14. Protenus shall use intrusion detection facilities and log monitoring in connection with the provision of the Protenus Solution(s) and/or Services.

Customer Order Form for Reseller Sales

A: Customer Order No. 1: This Customer Order ("Customer Order") is entered by and between **Kern County Hospital Authority** ("Customer") and Protenus, Inc. ("Protenus"), pursuant to the Master Agreement between the Parties ("Agreement"). Customer hereby agrees to purchase and pay for the products and services set forth below, and Protenus agrees to furnish such products and Services, pursuant to the terms and conditions of the Agreement. Unless otherwise defined herein, capitalized terms shall have the meaning given in the Agreement.

Customer Information	
Customer Full Legal Name	Kern County Hospital Authority
Customer Street Address	1700 Mount Vernon Ave Bakersfield, CA. 93306
Printed Name of Authorized Signer	
Title of Authorized Signer	
Phone Number of Authorized Signer	
Email Address of Authorized Signer	
Group Purchasing Organization Name (if applicable)	
CAP Credits Inmar Account Number (if applicable)	34937
Inmar BDE	Chad Means
Inmar Referring FAR	Sean Fahy
Customer Profile	
EHR:	Cerner

HR:	UltiPro
ADC:	Pyxis
Time and Attendance:	JbDev
DHC #employees:	1956
Acute Beds:	222

Facility Name and Address	#Employees	#Acute Beds
Kern Medical Center	1956	222

B: The following table details the charges for the products purchased in this Customer Order:

SAAS & SERVICES	TERM	RATE	QTY	TOTAL
Healthcare Compliance Analytics Platform · Diversion Monitoring Analytics	Invoiced upon Activation and Annually thereafter	\$30,000 annually	3	\$90,000
Implementation Essentials Package	Invoiced upon signing	\$10,000	1	\$10,000
Service Package – Standard	Invoiced upon Activation and annually thereafter	Included	3	\$0
Data feed add-on	Invoiced upon project kick off	\$5,000	1	\$5,000
TOTAL for 3-Year Agreement				\$105,000

C: Subscription License Term: The Subscription License term shall be three years from the date of Activation.


D: Payment Terms: Protenus has appointed Inmar Rx Solutions, Inc. ("Inmar") to furnish collection services on behalf of Protenus for the collection of the Fees under this Customer Order. Customer shall pay Inmar the invoiced Fees unless otherwise directed by Protenus. Customer shall pay the Fees specified in this Customer Order. Each Party shall be responsible for all costs and expenses that it incurs in connection with the Engagement and its performance under the Agreement. All invoices will be due and payable by Customer within thirty (30) days of receipt. All Fees are exclusive of any additional costs associated with Customer's chosen method of payment, which costs shall be the responsibility of Customer and will be added to any invoice as applicable.

E: CAP: Customer may elect to enroll in Inmar's Credit Assurance Plus ("CAP") program. Customer hereby consents to allow Inmar to subtract the amount of the Fees from the manufacturer(s) credits received by Customer pursuant to a separately executed returns processing agreement between Customer and Inmar; provided, however, that if Inmar anticipates that Customer will not have enough credit to satisfy payment or Inmar is otherwise unable to deduct credits, Customer shall pay Inmar the Fees pursuant to this Customer Order. By signing its acknowledgement of this Customer Order, Inmar agrees to collect the Fees from the CAP credits and to remit the Fees to Protenus on behalf of Customer.

By their signatures below, the Parties represent and warrant that they have the authority to bind their respective companies to the terms and conditions of this Customer Order.

PROTENUS:

PROTENUS, INC.

DocuSigned by:

By: B6FB806AC11A406
Name: Nicholas Culbertson
Title: CEO
Email: nick@protenus.com
Date: 3/6/2023

CUSTOMER:

KERN County Hospital Authority

By: _____
Name: Russell Bigler
Title: Chairman, Board of Governors
Email: contract@kernmedical.com
Date: _____

ACKNOWLEDGED AND AGREED:

INMAR:

INMAR RX SOLUTIONS, INC.

By: _____

Name: _____

Title: _____

Date: _____



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

March 15, 2023

Subject: Proposed Agreement with James E. Thompson, Inc., doing business as JTS Construction

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

Summary:

Kern Medical requests your Board approve the proposed Agreement with James E. Thompson, Inc., doing business as JTS Construction (JTS Construction), to complete the necessary construction to relocate Nurse Staffing from the D Wing Lobby to room 3455.

The Agreement is effective as of March 15, 2023 and construction is anticipated to be completed within 6 weeks (once construction commences) with a total maximum payable of \$96,800, which includes future change orders of up to 10% of the original contract price of \$88,000.

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 Agreement, authorize Chairman to sign, and authorize the Chief Executive Officer to sign future change orders in an amount not to exceed 10% of the total contract price.

DOCUMENT 00500

AGREEMENT

THIS AGREEMENT, dated this **15th** day of **March 2023**, is by and between James E. Thompson, Inc. dba: JTS Construction whose place of business is located at 7001 McDivitt Drive, Suite B, with a mailing address P.O. Box 41765, Bakersfield, CA 93384 ("Contractor"), and the KERN COUNTY HOSPITAL AUTHORITY, a local unit of government (hereinafter "Owner and/or Authority"), acting under and by virtue of the authority vested in Owner by the laws of the State of California

WHEREAS, in consideration for the promises and payment to be made and performed by Authority, and under the conditions expressed in the incorporated Bid Proposal (Bid), bonds and related papers, Contractor agrees to do all the work and furnish all the materials at the expense of Contractor (except such as the Specifications state will be furnished by Authority) necessary to construct and complete in a good and workmanlike manner to the satisfaction of the Chief Executive Officer for the Kern County Hospital Authority all the work shown and described in the plans and specifications for the project known as:

Nurse Staffing Relocation 10086

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and Owner agree as follows:

ARTICLE 1 - SCOPE OF WORK OF THE CONTRACT

1.01 Work of the Contract

- A. Contractor shall complete all Work specified in the Contract Documents, in accordance with the quotation, and all other terms and conditions of the Contract Documents.

1.02 Price for Completion of the Work

- A. Owner shall pay Contractor the following Contract Sum **eighty-eight thousand dollars (\$88,000.00)** for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto.

ARTICLE 2 - COMMENCEMENT AND COMPLETION OF WORK

2.01 Commencement of Work

- A. Contractor shall commence Work on the date established in the Notice to Proceed (**Commencement Date**).
- B. Owner reserves the right to modify or alter the Commencement Date.

2.02 Completion of Work

- A. Contractor shall achieve Final Completion of the entire Work **twenty-five (25) Working Days** from the Commencement Date.

ARTICLE 3 - LIQUIDATED DAMAGES FOR DELAY IN COMPLETION OF WORK

3.01 Liquidated Damage Amounts

- A. As liquidated damages for delay Contractor shall pay Owner five hundred dollars (\$500.00) for each Calendar Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

3.02 Scope of Liquidated Damages

- A. Measures of liquidated damages shall apply cumulatively.
- B. Limitations and stipulations regarding liquidated damages are set forth in Document 00700 (General Conditions).

ARTICLE 4 - CONTRACT DOCUMENTS

- 4.01** Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Exhibit A	JTS Quotation dated February 7, 2023
Document 00500	Agreement
Document 00601	Construction Performance Bond
Document 00602	Construction Labor and Material Payment Bond
Document 00603	Guaranty
Document 00590	Release of Claims
Document 00700	General Conditions
Document 00738	Apprenticeship Programs
Document 00800	Supplementary Conditions – Insurance

- 4.02** There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700 (General Conditions).

ARTICLE 5 – LIABILITY OF AUTHORITY

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

ARTICLE 6 – MISCELLANEOUS

- 6.01** Terms and abbreviations used in this Agreement are defined in Document 00700 (General Conditions) and Section 01422 (Definitions) and will have the meaning indicated therein.
- 6.02** It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 6.02** In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to Contractor, without further acknowledgment by the parties.
- 6.03** This project is subject to prevailing wage laws. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at Owner's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §§ 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be

required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

- 6.04** This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Kern, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of Kern.

IN WITNESS WHEREOF the parties have executed seven original Agreements on the day and year first above written.

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

KERN COUNTY HOSPITAL AUTHORITY

By 
Shannon Hochstein, Hospital Counsel

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

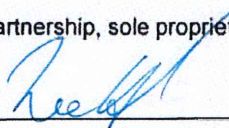
APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

James E. Thompson, Inc., dba JTS Construction
Contractor's Name

CA Corporation

Type of Entity
(corporation, partnership, sole proprietorship)

By _____
Scott Thygerson, Chief Executive Officer

By 
Signature

By _____
Michael Fink, Senior Facility Director

Lee Hawkins
Typed Name

President
Title of Individual Executing
Document on behalf of Firm

"CONTRACTOR"

NOTICE: CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND ARE REGULATED BY CONTRACTORS' STATE LICENSE BOARD. QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THAT BOARD, WHOSE ADDRESS IS: CONTRACTORS' STATE LICENSE BOARD, 1020 "N" STREET, SACRAMENTO, CALIFORNIA 95814.

END OF DOCUMENT

DOCUMENT 00601

CONSTRUCTION PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

- 1.01** THAT WHEREAS, the KERN COUNTY HOSPITAL AUTHORITY (hereinafter "**Owner**"), a local unit of government, which owns and operates Kern Medical Center, has awarded to James E. Thompson, Inc., dba: **JTS Construction** as Principal, a contract dated the 15th day of March 2023 (the "**Contract**"), in the amount of \$88,000.00. The Contract is by this reference made a part hereof, for the work of the following project:

Nurse Staffing Relocation 10086

- 1.02** AND WHEREAS, Principal is required to furnish a bond in connection with the Contract, guaranteeing the faithful performance thereof;

- 1.03** NOW, THEREFORE, we, the undersigned Principal and Travelers Casualty and Surety Company of America, an admitted California surety, as Surety are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT PRICE to be paid to Owner or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

- 1.04** THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, shall promptly and faithfully perform the covenants, conditions, and agreements of the Contract during the original term and any extensions thereof as may be granted by Owner, with or without notice to Surety, and during the period of any guarantees or warranties required under the Contract, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless Owner as stipulated in the Contract, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

- 1.05** No extension of time, change, alteration, modification, or addition to the Contract, or of the work required thereunder, or work or actions by Owner to mitigate the damages resulting from any breach in performance by Contractor, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

- 1.06** Whenever Principal shall be and declared by Owner in default under the Contract, Surety shall promptly remedy the default, or shall promptly, and in no event later than thirty (30) days from notice:

- A. Undertake through its agents or independent contractors (but having qualifications and experience reasonably acceptable to Owner), to complete the Contract in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including without limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or
- B. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and, upon determination by Owner of the lowest responsible bidder, arrange for a contract between

such bidder and Owner and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by Owner to the Principal under the Contract and any amendments thereto, less the amount paid by Owner to Principal.

- 1.07** Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the others. If suit is brought upon this bond the Surety shall pay reasonable costs and attorney's fees to be fixed by the court.
- 1.08** Surety may not use Contractor to complete the Contract absent Owner's Consent. Owner shall have the right in its sole discretion to continue the work of the Contract, as necessary following a default and/or termination, as necessary to prevent risks of personal injury, property damage or delay to the Project.
- 1.09** No right of action shall accrue on this bond to or for the use of any person or corporation other than Owner or its successors or assigns.
- 1.10** Surety shall join in any proceedings brought under the Contract upon Owner's demand, and shall be bound by any judgment.
- 1.11** Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this 16th day of February, 2023.

CONTRACTOR AS PRINCIPAL

(Corp. Seal)
James E. Thompson, Inc. dba JTS Construction
Company

Signature

Lee Hawkins, President
Name & Title

P.O. Box 41765
Address

Bakersfield, CA 93384
City, State, Zip Code

SURETY

(Corp. Seal)
Travelers Casualty and Surety Company of America
Company

Signature

Tammy Bates, Attorney-In-Fact
Name & Title

11090 White Rock Road, Ste. 100
Address

Rancho Cordova, CA 95670
City, State, Zip Code

Phone: 916-859-2600

END OF DOCUMENT

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Kern)

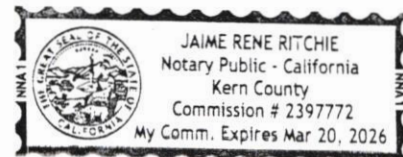
On February 16, 2023 before me, Jaime Rene Ritchie, Notary Public
(insert name and title of the officer)

personally appeared Tammy Bates
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jaime Rene Ritchie (Seal)



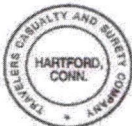


Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Tammy Bates** of **BAKERSFIELD**, **California**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st** day of **April**, **2021**.



State of Connecticut

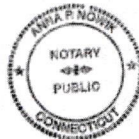
City of Hartford ss.

By: 
 Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, **2021**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, **2026**




 Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

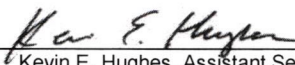
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **16th** day of **February**, **2023**




 Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.

DOCUMENT 00602

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

- 1.01** THAT WHEREAS, the KERN COUNTY HOSPITAL AUTHORITY (hereinafter "**Owner**"), a local unit of government of the State of California, has awarded to James E. Thompson, Inc., dba: JTS Construction, as Principal, a contract dated the 15th day of March 2023 (the "**Contract**"), in the amount of \$88,000.00. The Contract is by this reference made a part hereof, for the work of the following project:

Emergency New Isolation Room 10076

- A. AND WHEREAS, Principal is required to furnish a bond in connection with the Contract to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;
- B. NOW, THEREFORE, we, the undersigned Principal and Travelers Casualty and Surety Company of America, an admitted California surety, as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT PRICE (\$88,000.00), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
- C. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code §9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the State of California Unemployment Insurance Code with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.
- D. This bond shall inure to the benefit of any of the persons named in California Civil Code §9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.
- E. Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder.
- F. Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Contract; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing

Owner's rights against the other. If suit is brought upon this bond the Surety shall pay reasonable costs and attorney's fees to be fixed by the court.

- G. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this 16th day of February, 2023.

CONTRACTOR AS PRINCIPAL

(Corp. Seal)

James E. Thompson, Inc. dba JTS Construction
Company

Signature

Lee Hawkins, President
Name & Title

P.O. Box 41765
Address

Bakersfield, CA 93384
City, State, Zip Code

SURETY

(Corp. Seal)

Travelers Casualty and Surety Company of America
Company

Signature

Tammy Bates, Attorney-In-Fact
Name & Title

11090 White Rock Road, Ste. 100
Address

Rancho Cordova, CA 95670
City, State, Zip Code

Phone: 916-859-2600

END OF DOCUMENT

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Kern

On February 16, 2023 before me, Jaime Rene Ritchie, Notary Public
(insert name and title of the officer)

personally appeared Tammy Bates,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jaime Rene Ritchie (Seal)





Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Tammy Bates** of **BAKERSFIELD, California**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st** day of **April**, **2021**.



State of Connecticut

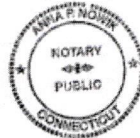
City of Hartford ss.

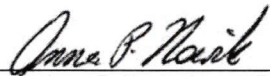
By: 
 Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, **2021**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, **2026**




 Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

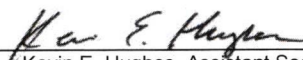
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **16th** day of **February**, **2023**




 Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.

DOCUMENT 00603

GUARANTY

TO: THE KERN COUNTY HOSPITAL AUTHORITY (hereinafter "Owner"), for construction of **Nurse Staffing Relocation (10086), at Kern Medical, 1700 Mt. Vernon Avenue, Bakersfield, CA 93306.**

The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

Contractor hereby grants to Owner for a period of one year following the date of Final Acceptance of the Work completed, or such longer period specified in the Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers in connection with the Work.

Neither final payment nor use nor occupancy of the Work performed by the Contractor shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Contractor of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one year, or longer if specified, from the date of Final Acceptance of the Work completed.

If within one year after the date of Final Acceptance of the Work completed, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be Defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Contractor shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.

Inspection of the Work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.

All abbreviations and definitions of terms used in this Agreement shall have the meanings set forth in the Contract Documents.

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The foregoing Guaranty is in addition to any other warranties of Contractor contained in the Contract Documents, and not in lieu of, any and all other liability imposed on Contractor under the Contract Documents and at law with respect to Contractor's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Guaranty and any warranty or obligation of the Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the Contractor.

Date

Name/Title

Contractor

Signature

For maintenance, repair or replacement service contact:

Name

Telephone

Address

Alt. Telephone

City, State, and Zip

END OF DOCUMENT

DOCUMENT 00590

AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS
[Public Contract Code § 7100]

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS ("Agreement and Release"), made and entered into this **[date]** day of **[Month]**, **[201__]**, by and between the Kern County Hospital Authority (hereinafter "Owner"), and **[Insert name of Contractor]** ("Contractor"), whose place of business is at **[Insert address of Contractor]**.

RECITALS

- A. Owner and Contractor entered into Contract Number **[Insert number]** (the "Contract") for construction of Owner _____ located at _____.
- B. The Work under the Contract has been completed.

AGREEMENT

NOW THEREFORE, it is mutually agreed between Owner and Contractor as follows:

1. Contractor will not be assessed liquidated damages except as detailed below:

Original Contract Sum	\$ _____
Modified Contract Sum	\$ _____
Payment to Date	\$ _____
Liquidated Damages	\$ _____
Payment Due Contractor	\$ _____
2. Subject to the provisions of this Agreement and Release, Owner will forthwith pay to Contractor the sum of [_____ Dollars and _____ Cents (\$_____)] under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with Owner as of the date of such payment.
3. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against Owner arising from the Contract, except for the claims described in Paragraph 4 of this Document 00590. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against Owner, and all if its agents, employees, consultants, inspectors, representatives, assignees and transferees, except for the Disputed Claims set forth in Paragraph 4 of this Document 00590. Nothing in this Agreement and Release shall limit or modify Contractor's continuing obligations described in Paragraph 6 of this Document 00590.
4. The following claims submitted under Document 00700 (General Conditions), Article 12, are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release.

[Insert information in Chart below, affix attachment if necessary]

CLAIM NO.	DATE SUBMITTED	DESCRIPTION OF CLAIM	AMOUNT OF CLAIM

5. Consistent with California Public Contract Code §7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 2 of this Document 00590, Contractor hereby releases and forever discharges Owner, and all of its agents, employees, consultants, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
6. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
7. Contractor shall immediately defend, indemnify and hold harmless Owner, any of the Owner's Representatives, Project Manager, and all of their agents, employees, consultants, inspectors, assignees and transferees, from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Contractor's suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims set forth in Paragraph 4 of this Document 00590.
8. Contractor hereby waives the provisions of California Civil Code §1542, which provide as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling, or regulation, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.
10. Contractor represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connection with this Agreement and Release.
11. All rights of Owner shall survive completion of the Work or termination of the Contract, and execution of this Agreement and Release.

***** CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING *****

[CONTRACTOR]

By: _____
Signature

Name: _____
Print

Its: _____
Title

[CONTRACTOR]

By: _____
Signature

Name: _____
Print

Its: _____
Title

OWNER: KERN COUNTY HOSPITAL AUTHORITY

By: _____
Signature

Name: _____
Print

Its: _____
Title

APPROVED AS TO FORM:
Legal Services Department

Hospital Counsel

END OF DOCUMENT

DOCUMENT 00700

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DOCUMENT 00700

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GENERAL CONDITIONS

ARTICLE 1 - INTERPRETATION OF CONTRACT DOCUMENTS

1.01 Interpretation Of Documents

- A. Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Individual Contract Documents subdivide at first level into Articles, and then into paragraphs.

1.02 Order Of Precedence Of Documents

- A. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
 - 1. Modifications in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;
 - 2. Agreement Forms (Document 00500), and terms and conditions referenced therein;
 - 3. Supplementary General Conditions, if included;
 - 4. General Conditions (Document 00700);
 - 5. Division 1 Specifications, if included;
 - 6. Drawings and Technical Specifications (Division 2 and above);
 - 7. Written numbers over figures, unless obviously incorrect;
 - 8. Figured dimensions over scaled dimensions;
 - 9. Large-scale Drawings over small-scale Drawings.
- B. Any conflict between Drawings and Technical Specifications (Division 2 and above) will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
- C. Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.
- D. All Technical Specifications included in the Project manual shall be included within the Contract Documents unless identified otherwise.

ARTICLE 2 - PRE-BID INVESTIGATIONS

2.01 Pre-Bid Investigations Required

- A. Prior to and as a condition of submitting a Bid and executing Document 00500 (Agreement), Contractor shall investigate fully the Work of the Contract. Contractor shall visit the Site, examine thoroughly and understand fully the nature and extent of the Contract Documents, Work, Site, locality, actual conditions and as-built conditions.
- B. During performance of the Contract, Contractor will be charged with knowledge of all information that it should have learned in performing these pre-bid investigations and other obligations, and shall not be entitled to Change Orders (time or compensation) due to any information, error, inconsistency, omission, or conditions that Contractor should have known as a part of this Work. Contractor shall be responsible for the resultant losses, including, without limitation, the cost of correcting Defective Work.

2.02 Limited Reliance Permitted On Owner's Existing Conditions Data

- A. Regarding aboveground and as-built conditions shown on the Contract Documents or supplied by Owner, such information has been compiled in good faith, however, Owner does not expressly or impliedly warrant or represent that such information is correctly shown or indicated, or otherwise complete for construction purposes. Contractor must independently verify such information as part of its pre-bid investigations, and where conditions are not reasonably verifiable or discrepancies are identified, bring such matters to Owner's attention through written question issued during the bid period. In executing Document 00500 (Agreement), Contractor shall rely on the results of its own independent investigation and shall not rely on Owner-supplied information

regarding aboveground conditions and as-built conditions, and Contractor shall accept full responsibility for its verification work sufficient to complete the Work as intended.

- B. Regarding subsurface conditions other than Underground Facilities shown on the Contract Documents or otherwise supplied by Owner, Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated in the Contract Documents. Owner is not responsible for the completeness of any subsurface condition information, Contractor's conclusions or opinions drawn from any subsurface condition information, or subsurface conditions that are not specifically shown. (For example, Owner is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown.)

2.03 Pre-Bid Investigation Requirements For Excavation And Utilities Relocation Projects

- A. As part of its pre-bid investigations for Projects involving excavation and/or relocation of existing utilities, Contractor shall verify information regarding Underground Facilities, including but not limited to, requesting additional information or verification of information as necessary.
- B. Because of the nature and location of the Project, the existence of Underground Facilities is deemed inherent in the Work of the Contract, as is the fact that Underground Facilities are not always accurately shown or completely shown on as-built records, both as to their depth and location. Contractor shall, therefore, take care to note the existence and potential existence of Underground Facilities, in particular, above and below grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities. Contractor shall carefully consider all supplied information, request additional information Contractor may deem necessary, and visually inspect the Site for above ground indications of Underground Facilities (such as, for example not by way of limitation, the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site). Contractor shall also consider local underground conditions and typical practices for Underground Facilities, either through its own direct knowledge or through its subcontractors, and fully consider this knowledge in assessing the existing information and the reasonableness of its reliance.

ARTICLE 3 - SUBCONTRACTORS

3.01 Subcontractor Listing Law

- A. Contractor shall comply with the Subcontractor Listing law, California Public Contract Code §§4101 et seq. Contractor shall not substitute any other person or firm in place of any Subcontractor listed in the Bid except as may be allowed by law.
- B. Subcontractors shall not assign or transfer their subcontracts or permit them to be performed by any other contractor without Owner's written approval. At Owner's request, Contractor shall provide Owner with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and/or suppliers.

3.02 Subcontracts

- A. Subcontract agreements shall preserve and protect the rights of Owner under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Contractor shall require the Subcontractor's written agreement (1) to be bound to the terms of Contract Documents and (2) to assume all the obligations and responsibilities that Contractor assumes toward Owner under the Contract Documents. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Contractor is subject under the Contract Documents.)
- B. Contractor shall provide for the assignment to Owner of all rights any Subcontractor (of any tier) may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor under the Contract Documents. Subcontracts shall provide and acknowledge Owner as an intended third-party beneficiary of each subcontract and supply contract (of any tier).

ARTICLE 4 - DRAWINGS AND SPECIFICATIONS

4.01 Intent Of Drawings And Specifications

- A. Contractor shall interpret words or phrases used to describe Work (including services), materials, or equipment that have well-known technical or construction industry or trade meaning in accordance with that meaning. Drawings' intent specifically includes the intent to depict construction that complies with all applicable laws, codes and standards.
- B. As part of the "Work," Contractor shall provide all labor, materials, equipment, machinery, tools, facilities, services, employee training and testing, hoisting facilities, Shop Drawings, storage, testing, security, transportation, disposal, the securing of all necessary or required field dimensions, the cutting or patching of existing materials, notices, permits, documents, reports, agreements and any other items required or necessary to timely and fully complete Work described and the results intended by Contract Documents and, in particular, Drawings and Specifications. Divisions and Specification Sections and the identification on any Drawings shall not control Contractor in dividing Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.
- C. Contractor shall perform reasonably implied parts of Work as "incidental work" although absent from Drawings and Specifications. Incidental work includes any work not shown on Drawings or described in Specifications that is necessary or normally or customarily required as a part of the Work shown on Drawings or described in Specifications. Incidental work includes any work necessary or required to make each installation satisfactory, legally operable, functional, and consistent with the intent of Drawings and Specifications or the requirements of Contract Documents. Contractor shall perform incidental work without extra cost to Owner. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and the expense of incidental work shall be included in price Bid and Contract Sum.

4.02 Checking Of Drawings And Specifications

- A. Before undertaking each part of Work, Contractor shall carefully study and compare Contract Documents and check and verify pertinent figures shown in the Contract Documents and all applicable field measurements. Contractor shall be responsible for any errors that might have been avoided by such comparison. Figures shown on Drawings shall be followed; Contractor shall not scale measurements. Contractor shall promptly report to Owner, in writing, any conflict, error, ambiguity or discrepancy that Contractor may discover. Contractor shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby.

4.03 Interpretation Of Drawings And Specifications

- A. A typical or representative detail on Drawings shall constitute the standard for workmanship and material throughout corresponding parts of Work. Where necessary, and where reasonably inferable from Drawings, Contractor shall adapt such representative detail for application to such corresponding parts of Work. The details of such adaptation shall be subject to prior approval by Owner. Repetitive features shown in outline on Drawings shall be in exact accordance with corresponding features completely shown.
- B. Should any discrepancy appear or any misunderstanding arise as to the import of anything contained in Drawings and Specifications, or should Contractor have any questions or requests relating to Drawings or Specifications, Contractor shall refer the matter to Owner, in writing, with a copy to the Architect/Engineer, where applicable. Owner will issue with reasonable promptness written responses, clarifications or interpretations as Owner may determine necessary, which shall be consistent with the intent of and be reasonably inferable from Contract Documents. Such written clarifications or interpretations shall be binding upon Contractor. If Contractor believes that a written response, clarification or interpretation justifies an adjustment in the Contract Sum or Contract Time, Contractor shall give Owner prompt written notice. If the parties are unable to agree to the amount or extent of the adjustment, if any, then Contractor shall perform the Work in conformance with Owner's response, clarification, or interpretation and may make a written claim for the adjustment as provided in Article 12.
- C. The following general specifications shall apply wherever in the Specifications, or in any directions given by Owner in accordance with or supplementing Specifications, it is provided that

Contractor shall furnish materials or manufactured articles or shall do Work for which no detailed specifications are shown. Materials or manufactured articles shall be of the best grade, in quality and workmanship, obtainable in the market from firms of established good reputation. If not ordinarily carried in stock, the materials or manufactured articles shall conform to industry standards for first class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work shall conform to the usual standards or codes, such as those cited herein, for first class work of the kind required. Contractor shall specify in writing to Owner the materials to be used or Work to be performed under this Paragraph ten Working Days prior to furnishing such materials or performing such Work.

4.04 Use Of Drawings And Specifications.

- A. Drawings, Specifications and other Contract Documents were prepared for use for Work of Contract Documents only. No part of Contract Documents shall be used for any other construction or for any other purpose except with the written consent of Owner. Any unauthorized use of Contract Documents is prohibited and at the sole liability of the user.

4.05 Standard Specifications.

- A. Standard Specifications refers to the most recent edition of the Standard Specifications of the State of California, Business and Transportation Agency, Department of Transportation.
- B. In case of conflict between the Standard Specifications and these General Conditions or the Division 1 Specifications, the General Conditions and Division 1 Specifications shall take precedence over and be used in lieu of the conflicting provisions of the Standard Specifications.

ARTICLE 5 - COMMENCEMENT OF THE WORK

5.01 Submission Of Required Schedules

- A. Contractor shall submit to Owner in draft for review and discussion at the Preconstruction Conference, and in final prior to the first payment application, the following schedules:
 - 1. Schedule of Values
 - 2. Critical Path Method Construction Schedule
 - 3. Schedule of Submittals.
- B. No progress payment shall be due or owing to Contractor until such schedules are submitted to and acceptable to Owner and/or Architect/Engineer as meeting the requirements of the Contract Documents. In Owner's sole discretion, Owner may elect to instead withhold a portion of any progress payment for unacceptable compliance with contract requirements for such schedules.
- C. Owner's acceptance of Contractor's schedules will not create any duty of care or impose on Owner any responsibility for the sequencing, scheduling or progress of Work nor will it interfere with or relieve Contractor from Contractor's full responsibility therefore.

5.02 Commencement Date Of Contract Time

- A. The Contract Time will commence ten (10) Working Days following execution of the Agreement by the Board of Supervisors , if a Notice to Proceed is given, on the date indicated in the Notice to Proceed.

ARTICLE 6 - CONTRACTOR'S ORGANIZATION AND EQUIPMENT

6.01 Contractor's Legal Address

- A. Address, facsimile number, and email address given in Contractor's Bid are hereby designated as Contractor's legal address, facsimile number, and email address. Contractor may change its legal address, facsimile number, and email address by notice in writing, delivered to Owner, which in conspicuous language advises Owner of a change in legal address, facsimile number, or email address, and which Owner accepts in writing. Delivery to Contractor's legal address or depositing in any post office or post office box regularly maintained by the United States Postal Service, in a wrapper with postage affixed, directed to Contractor at legal address, or of any

drawings, notice, letter or other communication, shall be deemed legal and sufficient service thereof upon Contractor. Facsimile or email to Contractor's designated facsimile number or email address of any letter, memorandum, or other communication on standard or legal sized paper, with proof of facsimile transmission or email confirmation, shall be deemed legal and sufficient service thereof upon Contractor.

6.02 Contractor's Superintendents Or Forepersons

- A. Contractor shall at all times be represented on Site by one or more superintendents or forepersons authorized and competent to receive and carry out any instructions that Owner may give, and shall be liable for faithful observance of instructions delivered to Contractor or to authorized representative or representatives on Site. The Superintendent shall not be changed except with the consent of the KCHA unless the Superintendent proves to be unsatisfactory to the Contractor and ceases to be in its' employ. If the Superintendent proves to be unsatisfactory to Owner, they shall be replaced within ten (10) Calendar Days after written notice from Owner to Contractor.

6.03 Proficiency In English

- A. Supervisors, security guards, safety personnel and employees who have unescorted access to the Site shall possess proficiency in the English language in order to understand, receive and carry out oral and written communications or instructions relating to their job functions, including safety and security requirements.

6.04 Contractor's And Subcontractors' Employees

- A. Contractor shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do Work. If Owner notifies Contractor that any of its employees, or any of its Subcontractors' employees on Work is incompetent, unfaithful, disorderly or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the Contract Documents, or uses threatening or abusive language to any person on Work representing Owner, or violates sanitary rules, or is otherwise unsatisfactory, and if Owner requests that such person be discharged from Work, then Contractor or its Subcontractor shall immediately discharge such person from Work and the discharged person shall not be re-employed on the Work except with consent of Owner.

6.05 Contractor's Use Of The Site

- A. Contractor shall not make any arrangements with any person to permit occupancy or use of any land, structure or building within the limits of the Work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between Owner and any Owner, former Owner or tenant of such land, structure or buildings. Contractor may not occupy Owner-owned property outside the limit of the Work as indicated on the Drawings unless it obtains prior approval from Owner.

ARTICLE 7 - OWNER'S ADMINISTRATION OF WORK

7.01 Owner's Representative(s)

- A. Owner's Representative(s) will have limited authority to act on behalf of Owner as set forth in the Contract Documents.
- B. Except as otherwise provided in these Contract Documents or subsequently identified in writing by Owner, Owner will issue all communications to Contractor through Owner's Representative, and Contractor shall issue all communications to Owner through Owner's Representative in a written document delivered to Owner.
- C. Should any direct communications between Contractor and Owner's consultants, architects or engineers not identified in Article 2 of Document 00500 (Agreement) occur during field visits or by telephone, Contractor shall immediately confirm them in a written document copied to Owner.

7.02 Owner's Observation Of The Work

- A. Work shall be performed under Owner's general observation and administration. Contractor shall comply with Owner's directions and instructions in accordance with the terms of Contract Documents, but nothing contained in these General Conditions shall be taken to relieve Contractor of any obligations or liabilities under the Contract Documents. Owner's failure to review or, upon review, failure to object to any aspect of Work reviewed, shall not be deemed a waiver or approval of any non-conforming aspect of Work.
- B. Subject to those rights specifically reserved in the Contract Documents, Owner will not supervise, or direct, or have control over, or be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or Contractor's failure to comply with laws and regulations applicable to the furnishing or performance of Work. Owner will not be responsible for Contractor's failure to perform or furnish the Work in accordance with Contract Documents.

7.03 Architect/Engineer's Observation Of Work

- A. Owner may engage an Architect/Engineer, an independent consultant or Project Manager (collectively for purposes of this Paragraph, "Project Manager/Architect") to assist in administering the Work. If so engaged, Project Manager/Architect will advise and consult with Owner, but will have authority to act on behalf of Owner only to the extent provided in the Contract Documents or as set forth in writing by Owner. Project Manager/Architect will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with Work. Project Manager/Architect will not be responsible for or have control over the acts or omissions of Contractor, Subcontractors or their agents or employees, or any other persons performing Work.
- B. Project Manager/Architect may review Contractor's Submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with design concept of Work and with information given in the Contract Documents.
- C. Project Manager/Architect may visit the Site at intervals appropriate to stage of construction to become familiar generally with the progress and quality of Work and to determine in general if Work is proceeding in accordance with Contract Documents. Based on its observations, Project Manager/Architect may recommend to Owner disapproval or rejection of Work that Project Manager/Architect believes to be Defective or will not produce a complete Project that conforms to Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by Contract Documents. Owner will also have authority to require special inspection or testing of Work, whether or not the Work is fabricated, installed or completed.

7.04 Owner's And Architect/Engineer's Exercise Of Contract Responsibilities

- A. Owner, Project Manager, Architect/Engineer and all Owner's representatives, in performing their duties and responsibilities under the Contract Documents, accept no duties, responsibilities or duty of care, nor may the same be implied or inferred, towards Contractor, any Subcontractor, sub-Subcontractor or supplier, except those set forth expressly in the Contract Documents.

7.05 Owner's Right Of Access To The Work

- A. During performance of Work, Owner and its agents, consultants, and employees may at any time enter upon Work, shops or studios where any part of the Work may be in preparation, or factories where any materials for use in Work are being or are to be manufactured, and Contractor shall provide proper and safe access and facilities for this purpose, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as Owner's interests may require. Other contractors performing work for Owner may also enter upon Work for all purposes required by their respective contracts. Subject to the rights reserved in the Contract Documents, Contractor shall have sole care, custody, and control of the Site and its Work areas.

7.06 Owner's Right Of Separate Construction

- A. Owner may perform with its own forces, construction or operations related to the Project, or the Site during Contractor's operations. Owner may also award separate contracts in connection with

other portions of the Project or other construction or operations, on the Site or areas contiguous to the Site, under conditions similar to these Contract Documents, or may have utility Owners perform other work.

- B. Contractor shall adjust its schedule and fully coordinate with and shall afford all other contractors, utility districts and Owner (if Owner is performing work with its own forces), proper and safe access to the Site, and reasonable opportunity for the installation and storage of their materials. Contractor shall ensure that the execution of its Work properly connects and coordinates with others' work, do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work, and shall cooperate with them to facilitate the progress of the Work.
- C. To the extent that any part of Contractor's Work is to interface with work performed or installed by other contractors or utility owners, Contractor shall inspect and measure the in-place work. Contractor shall promptly report to Owner in writing any defect in in-place work that will impede or increase the cost of Contractor's interface unless corrected.

ARTICLE 8 - CONTRACTOR'S PROSECUTION AND PROGRESS OF THE WORK

8.01 Contractor To Supervise The Work

- A. Subject to those rights specifically reserved in the Contract Documents, Contractor shall supervise, direct, have control over, and be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction, safety precautions and programs incident thereto, and compliance with laws and regulations applicable to the furnishing or performance of Work.
- B. Contractor shall keep on the Site at all times during Work progress a competent resident Superintendent, who shall not be replaced without Owner's express written consent. The Superintendent shall be Contractor's representative at the Site and shall have complete authority to act on behalf of Contractor. All communications to and from the Superintendent shall be as binding as if given to or by Contractor.
- C. Contractor shall supervise, inspect, and direct Work competently and efficiently, devoting the attention and applying such personal skills and expertise as may be required and necessary to perform Work in accordance with Contract Documents. Contractor shall be solely responsible for and have control and charge of construction means, methods, techniques, sequences and procedures, safety precautions and programs in connection with the Work. Contractor shall be responsible to see that the completed Work complies accurately with Contract Documents.
- D. Contractor is fully responsible for Contractor's own acts and omissions. Contractor is responsible for all acts and omissions of its Subcontractors, suppliers, and other persons and organizations performing or furnishing any of the Work, labor, materials, or equipment under a direct or indirect contract with Contractor.
- E. Contractor shall conduct monthly Contractor Safety Committee meetings, and weekly toolbox safety talks.

8.02 Contractor To Maintain Cost Data

- A. Contractor shall maintain full and correct information as to the number of workers employed in connection with each subdivision of Work, the classification and rate of pay of each worker in form of certified payrolls, the cost to Contractor of each class of materials, tools and appliances used by Contractor in Work, and the amount of each class of materials used in each subdivision of Work. Contractor shall provide summaries or reports comparing actual Project costs with Bid estimates or budgets, upon Owner's request.
- B. Contractor shall maintain daily job reports recording all significant activity on the job, including the number of workers on Site, Work activities, problems encountered and delays. Contractor shall provide Owner with copies for each Day Contractor works on the Project, to be delivered to Owner either the same Day or the following morning before starting work at the Site. Contractor shall take pre-construction and monthly progress photographs of all areas of the Work. Contractor shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.

- C. Owner shall have the right to audit and copy Contractor's books and records of any type, nature or description relating to the Project (including but not limited to financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including Contractor's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, Owner shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Bid proposal and negotiation documents, cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job progress reports, photographs, and as-built drawings maintained by Contractor. Owner and any other applicable governmental entity shall have the right to inspect all information and documents maintained hereunder at any time during the Project and for a period of five years following Final Completion, in accordance with the provisions of Section 8546.7 of the California Government Code. This right of inspection shall not relieve Contractor of its duties and obligations under the Contract Documents. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.

8.03 Contractor To Supply Sufficient Workers And Materials

- A. Unless otherwise required by Owner under the terms of Contract Documents, Contractor shall at all times keep on the Site materials and employ qualified workers sufficient to prosecute Work at a rate and in a sequence and manner necessary to complete Work within the Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.

8.04 Contractor To Maintain Project Record Documents

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, and written interpretations and clarifications in good order and annotated to show all as-built changes made during construction. These Project Record Documents, together with all approved Samples and a counterpart of all approved Shop Drawings, shall be maintained and available to Owner for reference. Upon completion of the Work, Contractor shall deliver to Owner, the Project Record Documents, Samples and Shop Drawings and as-built drawings.
- B. Throughout Contractor's performance of the Work of the Project, Contractor shall maintain construction records to include: shop drawings; product data/material data sheets; samples; submittal; purchases; materials; equipment; inspections; applicable handbooks; applicable codes and standards; maintenance and operating manuals and instructions; RFI Log; Submittal Log; other related documents and revisions which arise out of the Construction Contracts. Contractor shall maintain records of principal building layout lines, elevations for the bottom of footings, floor levels, and key site elevations (certified by a qualified surveyor or professional engineer). Contractor shall make all records available to Owner. At the completion of the Project, Contractor shall deliver all such records to the Owner to have a complete set of record as-built drawings.

8.05 Contractor To Not Disrupt Owner Operation

- A. Contractor shall schedule and execute all Work in a manner that does not interfere with or disrupt Owner operations, including but not limited to, parking, utilities (electricity, gas, water), noise, access by employees and administration, access by vendors, physicians, patients and any other person or entity using Owner facilities or doing business with Owner. Contractor shall produce and supply coordination plans and requests to Owner, following Owner procedures, for all necessary interference of construction with Owner, which Owner will reasonably cooperate with.

8.06 Contractor To Provide Temporary Facilities And Controls

- A. Unless expressly provided otherwise in the Contract Documents, Contractor shall provide all temporary utilities (including without limitation electricity, water, natural gas), lighting, heating, cooling and ventilating devices, telephone, sanitary facilities, barriers, fences and enclosures, tree and plant protection, fire protection, pollution, erosion, Storm Water Pollution Prevention controls, noise and traffic control, and any other necessary services required for construction, testing or completion of the Work.

ARTICLE 9 - WARRANTY, GUARANTY, AND INSPECTION OF WORK

9.01 Warranty And Guaranty

- A. General Representations and Warranties: Contractor represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and to complete Work in accordance with the terms of Contract Documents. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices and all requirements of the Contract Documents. Contractor warrants that Work, including but not limited to each item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, engineering, materials, construction and workmanship. Contractor warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses, and permits, Drawings and Specifications and all descriptions set forth therein, and all other requirements of Contract Documents. .
- B. Extended Guarantees: Any guarantee exceeding one year provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Contractor shall supply Owner with all warranty and guarantee documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.
- C. Environmental and Toxics Warranty: The covenants, warranties and representations contained in this Paragraph are effective continuously during Contractor's Work on the Project and following cessation of labor for any reason including, but not limited to, Project completion. Contractor covenants, warrants and represents to Owner that:
 - 1. To Contractor's knowledge after due inquiry, no lead or Asbestos-containing materials were installed or discovered in the Project at any time during Contractor's construction thereof. If any lead or Asbestos-containing materials were discovered, Contractor made immediate written disclosure to Owner.
 - 2. To Contractor's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during Contractor's construction thereof. If any such materials were discovered, Contractor made immediate written disclosure to Owner.
 - 3. To Contractor's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during Contractor's construction thereof. If any such materials were discovered, Contractor made immediate written disclosure to Owner.
 - 4. Contractor's operations concerning the Project are and were not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances and no notice from any governmental body has been served upon Contractor claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for any Work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply with any such laws, ordinances, codes, or regulations, with which Contractor has not complied. If there are any such notices with which Contractor has complied, Contractor shall provide Owner with copies thereof.

9.02 Inspection Of Work

- A. Work and materials, and manufacture and preparation of materials, from beginning of construction until Final Completion and acceptance of Work, shall be subject to inspection and rejection by Owner, its agents, representatives or independent contractors retained by Owner to perform inspection services, or governmental agencies with jurisdictional interests. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where specified, Owner shall be afforded access for inspection at the source of supply, manufacture or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.

- B. Contractor shall furnish, in such quantities and sizes as may be required for proper examination and tests, Samples or test specimens of all materials to be used or offered for use in connection with Work, in addition to tests and submittals required in the individual material or equipment specification sections. Contractor shall prepare Samples or test specimens at its expense and furnish them to Owner. Contractor shall submit all Samples in ample time to enable Owner to make any necessary tests, examinations, or analyses before the time it is desired to incorporate the material into the Work.
- C. Contractor shall give Owner no less than 48 hours notice of readiness of Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- D. If applicable laws or regulations of any authority having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish Owner with the required certificates of inspection, or approval. Owner will pay the cost of initial testing and Contractor shall pay all costs in connection with any follow-up or additional testing. Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.
- E. If Contractor covers any Work, or the work of others, prior to any required inspection, test or approval without written approval of Owner, Contractor shall uncover the Work at Owner's request. Contractor shall bear the expense of uncovering Work and replacing Work.
- F. Contractor shall furnish tools, labor and materials necessary to make examination of Work that may be completed or in progress, even to the extent of uncovering or taking down portions of finished Work. Cost of making examination and of reconstruction shall be borne by Contractor.
- G. Inspection of the Work by or on behalf of Owner, or Owner's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Contractor shall have an absolute duty, in the absence of a written Change Order signed by Owner, to perform Work in conformance with the Contract Documents and to immediately correct Defective Work immediately upon Contractor's knowledge.
- H. Any inspection, evaluation, or test performed by or on behalf of Owner relating to the Work is solely for the benefit of Owner, and shall not be relied upon by Contractor. Contractor shall not be relieved of the obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by Owner, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Contractor shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

9.03 Correction Of Defective Work

- A. Owner may direct Contractor to correct any Defective Work or remove it from the Site and replace it with Work that is not Defective and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting from the correction or removal. Contractor shall be responsible for any and all claims, costs, losses and damages caused by or resulting from such correction or removal. Owner's rights under this Paragraph shall be in addition to any other rights it may have under the Contract Documents or by law.
- B. If Contractor fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract Documents, Owner may order Contractor to replace any such Defective Work, or stop any portion of Work to permit Owner (at Contractor's expense) to replace such Defective Work. These Owner rights are entirely discretionary on the part of Owner, and shall not give rise to any duty on the part of Owner to exercise the rights for the benefit of Contractor or any other party.

9.04 Acceptance And Correction Of Defective Work By Owner

- A. Owner may in its sole discretion elect to accept Defective Work. Contractor shall pay all claims, costs, losses and damages attributable to Owner's evaluation of and determination to accept such Defective Work. If Owner accepts any Defective Work prior to final payment, a Change Order may be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Owner may deduct from monies due Contractor, all claims, costs, losses, damages, expenses and liabilities attributable to the Defective Work. If Contractor disagrees with Owner's calculations, Contractor may make a claim as provided in Article 12 of this Document 00700. If Owner accepts any Defective Work after final payment, Contractor shall pay to Owner, an appropriate amount as determined by Owner.
- B. Owner may correct and remedy deficiency if, after five (5) Calendar Days of written notice to Contractor, Contractor fails to correct Defective Work or to remove and replace rejected Work; or provide a plan for correction of Defective Work acceptable to Owner; or perform Work in accordance with Contract Documents. In connection with such corrective and remedial action, Owner may exclude Contractor from all or part of the Site; take possession of all or part of Work and suspend Contractor's Work related thereto; and incorporate in Work any materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, its representatives, agents, employees, and other contractors and Project Manager/Architect's consultants' access to the Site to enable Owner to exercise the rights and remedies under this Paragraph. Contractor shall be responsible for all claims, costs, losses, damages, expenses and liabilities incurred or sustained by Owner in exercising such rights and remedies. A Change Order may be issued incorporating the necessary revisions in the Contract Documents with respect to Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Owner may deduct from monies due Contractor, all claims, costs, losses and damages caused by or resulting from the correction or removal. If Contractor disagrees with Owner's calculations, Contractor may make a claim as provided in Article 12 of this Document 00700.

9.05 Rights Upon Inspection, Correction Or Acceptance

- A. Contractor shall not be allowed an extension of Contract Time because of any delay in the performance of Work attributable to the exercise by Owner of its rights and remedies under this Article. Where Owner exercises its rights under this Article, it retains and may still exercise all other rights it has by law or under the Contract Documents including, but not limited to, the right to terminate Contractor's right to proceed with the Work under the Contract Documents for cause and/or make a claim or back charge where a Change Order cannot be agreed upon.
- B. Inspection by Owner or its authorized agents or representatives shall not relieve Contractor of its obligation to have furnished material and workmanship in accordance with Contract Documents. Payment for Work completed through periodic progress payments, final payment or otherwise shall not operate to waive Owner's right to require full compliance with Contract Documents and shall in no way be deemed as acceptance of any defective Work paid therefor. Contractor's obligation to complete the Work in accordance with Contract Documents shall be absolute, unless Owner agrees otherwise in writing.

9.06 Proof Of Compliance Of Contract Provisions

- A. In order that Owner may determine whether Contractor has complied or is complying with requirements of Contract Documents not readily enforceable through inspection and tests of Work and materials, Contractor shall at any time, when requested, submit to Owner properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.
- B. Before commencing any portion of Work, Contractor shall inform Owner in writing as to time and place at which Contractor wishes to commence Work, and nature of Work to be done, in order that proper provision for inspection of Work may occur, and to assure measurements necessary for record and payment. Information shall be given to Owner a reasonable time in advance of time at which Contractor proposes to begin Work, so that Owner may complete necessary preliminary work without inconvenience or delay to Contractor.

9.07 Correction Period And Project Warranty Period:

- A. If within one year after the Date of Completion as identified on the recorded Notice of Completion, or such longer period of time as may be prescribed by laws, regulations or by the terms of Contract Documents or any extended warranty or guaranty, any Work (completed or incomplete) is found to be Defective, Contractor shall promptly without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Contractor shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct and remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.
- B. In special circumstances where a part of the Work is occupied or a particular item of equipment is placed in continuous service before the date of completion as identified in the recorded Notice of Completion of all the Work, the correction period for that part of Work or that item may start to run from an earlier date if so provided by Change Order.
- C. Where Defective Work or rejected Work (and damage to other Work resulting therefrom) has been corrected, removed, or replaced under this provision after the commencement of the correction period, the correction period hereunder with respect to such Work shall be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

9.08 No Waiver

- A. Neither recordation of the Notice of Completion nor final certificate for payment nor provision of the Contract nor partial or entire use or occupancy of premises by Owner shall constitute acceptance of Work not done in accordance with Contract Documents nor relieve Contractor of liability in respect to express warranties or responsibility for faulty materials or workmanship.
- B. If, after installation, operation, or use of materials or equipment to be provided under Contract proves to be unsatisfactory to Owner, Owner shall have right to operate and use materials or equipment until said materials and equipment can, without damage to Owner, be taken out of service for correction or replacement. Period of use of Defective materials or equipment pending correction or replacement shall in no way decrease guarantee period required for acceptable corrected or replaced items of materials or equipment.
- C. Nothing in the Contract Documents shall be construed to limit, relieve, or release Contractor's, Subcontractors', and equipment suppliers' liability to Owner for damages sustained as result of latent defects in materials or equipment caused by negligence of Contractor, its agents, suppliers, employees, or Subcontractors.

ARTICLE 10 - MODIFICATIONS OF CONTRACT DOCUMENTS

10.01 Owner's Right To Direct Changed Work.

- A. Owner may, without notice to the sureties and without invalidating the Contract, make changes in the Work ("Changed Work"), including without limitation: alterations, deviations, additions to, or deletions from Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, reduce or otherwise change the Contract Time; delete any item or portion of the Work; and require extra Work. Contractor shall perform such Work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered.
- B. If Changed Work is of such a nature as to increase or decrease the time or cost of any part of Work, price fixed in Contract shall be increased or decreased by amount as the Contractor and Owner may agree upon as reasonable and proper allowance for increase or decrease in cost of Work using the cost guidelines set forth in this Article, and absent such agreement, then as Owner may direct (with Contractor retaining its rights under Article 12 herein).

10.02 Required Documentation For Changed Work

- A. Changes affecting the Contract Time or Contract Sum of the Work shall be set forth in a written Change Order that shall specify:
 - 1. The Work performed in connection with the change to be made;
 - 2. The amount of the adjustment of the Contract Sum, if any, and the basis for compensation for the Work ordered; and
 - 3. The extent of the adjustment in the Contract Time, if any.
- B. A Change Order will become effective when signed by Owner, notwithstanding that Contractor has not signed it. A Change Order will become effective without Contractor's signature, provided Owner indicates same thereon (by indicating it as a "unilateral change order").

10.03 Procedures And Pricing Of Changed Work

- A. Procedures for changed work and pricing of changed work, claims and all forms of extra compensation, are set forth in Section 01205 (Modification Procedures).

ARTICLE 11 - TIME ALLOWANCES

11.01 Time Allowances

- A. Time is of the essence. Contract Time may only be changed by Change Order, and all time limits stated in the Contract Documents are to mean that time is of the essence.

11.02 Excusable Delay And Inexcusable Delay Defined.

- A. Excusable Delay. Subject to the provisions on Notice of Delay below, Contract Time may be adjusted in an amount equal to the time lost due to:
 - 1. Changes in the Work ordered by Owner ("**Changes**");
 - 2. Acts or neglect by Owner, Architect, any Owner Representative, utility owners or other contractors performing other work, not permitted or provided for in the Contract Documents, provided that Contractor has performed its responsibilities under the Contract Documents (including but not limited to pre-bid investigations) ("**Acts or Neglect**"); or
 - 3. Fires, floods, epidemics, abnormal weather conditions beyond the parameters otherwise set forth in this Article, earthquakes, civil or labor disturbances, or acts of God (together, "force majeure events"), provided damages resulting therefrom are not the result of Contractor's failure to protect the Work as required by Contract Documents ("**Force Majeure**").
- B. Inexcusable Delay. Contract Time shall not be extended for any period of time where Contractor (and/or any Subcontractor) is delayed or prevented from completing any part of the Work due to a cause that is within Contractor's risk or responsibility under the Contract Documents. Delays attributable to or within the control of a Subcontractor, or its subcontractors, or supplier, are deemed delays within the control of Contractor.
- C. Float. Float shall be treated as a Project resource. Contractor shall not be entitled to a time extension for impacts that consume float, but do not impact the critical path.

11.03 Notice Of Delay

- A. Within five (5) Working Days of the beginning of any delay (excepting adverse weather delays), Contractor shall notify Owner in writing, by submitting a notice of delay that shall describe the anticipated delays resulting from the delay event in question. If Contractor requests an extension of time, Contractor shall submit a TIE within seven (7) WorkingDays of the notice of delay. Owner will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this subparagraph. In cases of substantial compliance with the seven-day notice requirement here (but not to exceed fifteen (15) Working Days from the beginning of the delay event), Owner may in its sole discretion recognize a claim for delay

accompanied with the proper TIE, provided Contractor also shows good faith and a manifest lack of prejudice to Owner from the late notice.

11.04 Compensable Time Extensions

- A. Subject to other applicable provisions of the Contract Documents, Contractor may be entitled to adjustment in Contract Sum in addition to Contract Time for:
 - 1. Excusable delay caused solely by Changes in the Work ordered by Owner, as provided above, and/or
 - 2. Excusable delay caused solely by Acts or Neglect by Owner or other person, as provided above.

11.05 Non-Compensable Time Extensions

- A. Subject to other applicable provisions of the Contract Documents, Contractor may be entitled to adjustment in Contract Time only, without adjustment in Contract Sum, for
 - 1. Periods of excusable delay caused solely by weather or Force Majeure events as provided above in this Article, or
 - 2. Periods of concurrent delay, where delay results from two or more causes, one of which is compensable (resulting from Changes or Acts or Neglect as set forth above in this Article), and the other of which is non-compensable or inexcusable, such as: acts or neglect of Contractor, Subcontractors or others for whom Contractor is responsible; other acts, omissions and conditions which would not entitle Contractor to adjustment in Contract Time; adverse weather; and/or actions of Force Majeure as provided above in this Article.

11.06 Adverse Weather

- A. If the Contractor is delayed in the performance of the Work because of acts of God, fire, strikes, unavailability of materials or similar occurrences beyond his control, the Owner may grant such extension of time to complete the contract as he deems appropriate, providing the contractor has notified the Owner in writing of the causes of the delay within five (5) Working Days of the beginning of the delay.
- B. Requests for extensions of time to complete the contract based on delays in the performance of the work due to inclement weather must be submitted in writing to the KCHA with appropriate justification on the number of days of delay. The Contractor and KCHA will review the inclement weather days weekly. The Contractor will not be entitled to payment for costs incurred as a result of taking such actions.
- C. During unfavorable weather, wet ground, or other unsuitable construction conditions, Contractor shall employ best practices to protect the Work, manage the construction site and rainwater during inclement weather and provide requirements of implemented SWPPP and BMP's. Persons performing the Work shall examine surfaces to receive their Work and shall report in writing to Contractor, with copy to Owner representative and the Architect conditions detrimental to the Work. Failure to examine and report discrepancies makes the Contractor responsible, at no increase in Contract Sum, for corrections Owner may require. Commencement of Work constitutes acceptance of surface.

11.07 Liquidated Damages

- A. Time is of the essence. Execution of Contract Documents by Contractor shall constitute its acknowledgement that Owner will actually sustain damages in the form of Contract administration expenses (such as Project management and consultant expenses) in the amount fixed in the Contract Documents for each and every Day during which completion of Work required is delayed beyond expiration of time fixed for completion plus extensions of time allowed pursuant to provisions hereof.

ARTICLE 12 - CLAIMS BY CONTRACTOR

12.01 Obligation to File Claims for Disputed Work

- A. Should it appear to Contractor that the Work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, or should any dispute arise regarding the true value of any work performed, work omitted, extra work that the Contractor may be required to perform, time extensions, payment to the Contractor during performance of this Contract, performance of the Contract, and/or compliance with Contract procedures, or should Contractor otherwise seek extra time or compensation FOR ANY REASON WHATSOEVER, then Contractor shall first follow procedures set forth in the Contract (including but not limited to other Articles of this Document 00700 and Section 01205.) If a dispute remains, then Contractor shall give written notice to Owner that expressly invokes this Article 12. Owner shall decide the issue in writing within 15 Working Days; and Owner's written decision shall be final and conclusive. If Contractor disagrees with Owner's decision, or if Contractor contends that Owner failed to provide a decision timely, then Contractor's SOLE AND EXCLUSIVE REMEDY is to promptly file a written claim setting forth Contractor's position as required herein.

12.02 Form And Contents Of Claim

- A. Contractor's written claim must identify itself as a "Claim" under Article 12 and must include the following: (1) a narrative of pertinent events; (2) citation to contract provisions; (3) theory of entitlement; (4) complete pricing of all cost impacts; (5) a time impact analysis of all time delays that shows actual time impact on the critical path; (6) documentation supporting items 1 through 5; a verification under penalty of perjury of the claim's accuracy. The Claim shall be submitted to Owner within thirty (30) Calendar Days of receiving Owner's written decision, or the date Contractor contends such decision was due, and shall be priced like a change order according to Section 01205, and must be updated monthly as to cost and entitlement if a continuing claim. Routine contract materials, for example, correspondence, RFI, Change Order requests, or payment requests shall not constitute a claim. Contractor shall bear all costs incurred in the preparation and submission of a claim.

12.03 Administration During/After Claim Submission

- A. Owner may render a final determination based on the Claim or may in its discretion conduct an administrative hearing on Contractor's claim, in which case Contractor shall appear, participate, answer questions and inquiries, and present any further evidence or analysis requested by Owner prior to rendering a final determination. Should Owner take no action on the Claim within 45 Calendar Days of submission, it shall be deemed denied.
- B. Notwithstanding and pending the resolution of any claim or dispute, Contractor shall diligently prosecute the disputed work to final completion in accordance with Owner's determination.
- C. After their submission, claims that total less than \$375,000 in the aggregate at Contract closeout shall also be subject to the Local Agency Disputes Act.

12.04 Compliance

- A. The provisions of this Article 12 constitute a non-judicial claim settlement procedure that, pursuant to Section 930.2 of the California Government Code, shall constitute a condition precedent to submission of a valid Government Code Section 910 Claim under the California Government Code. Contractor shall bear all costs incurred in the preparation, submission and administration of a claim. Any claims presented thereafter in accordance with the Government Code must affirmatively indicate Contractor's prior compliance with the claims procedure herein and the previous dispositions under Paragraph 12.03 above of the claims asserted. Pursuant to Government Code Section 930.2, the one-year period in Government Code section 911.2 shall be reduced to 150 Calendar Days from either accrual of the cause of action, substantial completion or termination of the contract, whichever occurs first; in all other respects, the requirements of the Government Code shall apply unchanged, including, without limitation, Contractor's obligation to file a Government Code Section 910 Claim.
- B. Failure to submit and administer claims as required in Article 12 shall waive Contractor's right to claim on any specific issues not included in a timely submitted claim. Claim(s) or issue(s) not raised in a timely protest and timely claim submitted under this Article 12 may not be asserted in any subsequent litigation, Government Code Section 910 Claim, or legal action.

- C. Owner shall not be deemed to waive any provision under this Article 12, if at Owner's sole discretion, a claim is administered in a manner not in accord with this Article 12. Waivers or modifications of this Article 12 may only be made a signed change order approved as to form by legal counsel for both Owner and Contractor; oral or implied modifications shall be ineffective.

ARTICLE 13 - UNDERGROUND CONDITIONS

13.01 Contractor To Locate Underground Facilities.

- A. During construction, Contractor shall comply with Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 which provides, in part: "Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two (2) Working Days, but no more than ten (10) Working Days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation."
- B. Contractor shall contact Underground Service Alert (USA) or the appropriate regional notification center, and schedule the Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. Contractor is charged with knowledge of all subsurface conditions reflected in underground utility records. Contractor shall advise Owner of any conflict between information provided in Document 00300 (Geotechnical Data and Existing Conditions), the Drawings and that provided by underground utility records. Contractor's excavation shall be subject to and comply with the Contract Documents.
- C. Contractor shall also investigate the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main implied by the presence of visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site, even if not shown or indicated in Document 00300 (Geotechnical Data and Existing Conditions), or the Drawings or that provided by underground utility records. Contractor shall immediately secure all such available information and notify Owner and the utility owner, in writing, of its discovery.

13.02 Contractor To Protect Underground Facilities.

- A. At all times during construction, all operating Underground Facilities shall remain in operation, unless the Contract Documents expressly indicate otherwise. Contractor shall maintain such Underground Facilities in service where appropriate; shall repair any damage to them caused by the Work; and shall incorporate them into the Work, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Contractor shall take immediate action to restore any in service installations damaged by Contractor's operations.
- B. Prior to performing Work at the Site, Contractor shall lay out the locations of Underground Facilities that are to remain in service and other significant known underground installations indicated by the Underground Facilities Data. Contractor shall further locate, by carefully excavating with small equipment, potholing and principally by hand, all such utilities or installations that are to remain and that are subject to damage. If additional utilities whose locations are unknown are discovered, Contractor shall immediately report to Owner for disposition of the same. Additional compensation or extension of time on account of utilities not shown or otherwise brought to Contractor's attention, including reasonable action taken to protect or repair damage, shall be determined as provided in this Document 00700.
- C. If during construction, an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by Owner for bidding or in information on file at USA or otherwise reasonably available to Contractor, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than five (5) Working Days), and prior to performing any Work in connection therewith (except in an emergency), identify the owner of such Underground Facility and give

written notice to Underground Facility owner and Owner. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. The cost of all of the following will be included in the Contract Sum and Contractor shall have full responsibility for (a) reviewing and checking all available information and data including, but not limited to, information made available for bidding and information on file at USA; (b) locating all Underground Facilities shown or indicated in the Contract Documents, available information, or indicated by visual observation including, but not limited to, and by way of example only, engaging qualified locating services and all necessary backhoeing and potholing; (c) coordination of the Work with the owners of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- E. Consistent with California Government Code §4215, as between Owner and Contractor, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or information made available for bidding. Owner will compensate for the cost of locating and repairing damage not due to Contractor's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or information made available for bidding with reasonable accuracy, and equipment on the Project necessarily idled during such Work. Contractor shall not be assessed liquidated damages for delay in completion of the Project, when such delay was caused by the failure of Owner or the utility to provide for removal or relocation of such utility facilities.

13.03 Concealed Or Unknown Conditions

- A. If either of the following conditions is encountered at Site when digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall give a written Notice of Differing Site Conditions to Owner promptly before conditions are disturbed, except in an emergency as set forth in this Document 00700, and in no event later than five (5) Working Days after first observance of:
 - 1. Subsurface or Latent physical conditions which differ materially from those indicated in the Contract Documents; or
 - 2. Unknown physical conditions of an unusual nature or which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- B. In response to Contractor's Notice of Differing Site Conditions under this Paragraph, Owner will investigate the identified conditions, and if they differ materially and cause increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, Owner will negotiate the appropriate change order following the procedures set forth in the Contract Documents. If Owner determines that physical conditions at the Site are not Latent or are not materially different from those indicated in Contract Documents or that no change in terms of the Contract Documents is justified, Owner will so notify Contractor in writing, stating reasons (with Contractor retaining its rights under Article 12 of this Document 00700.)
- C. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed Latent or materially different Site conditions (whether above or below grade) if Contractor knew or should have known of the existence of such conditions at the time Contractor submitted its Bid, failed to give proper notice, or relied upon information, conclusions, opinions or deductions of the kind that the Contract Documents preclude reliance upon.
- D. Regarding Underground Facilities, Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that is owned and was built by Owner only where the Underground Facility:
 - 1. Was not shown or indicated in the Contract Documents or in the information supplied for bidding purposes or in information on file at USA; and
 - 2. Contractor did not know of it; and

3. Contractor could not reasonably have been expected to be aware of it or to have anticipated it from the information available. (For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, then an increase in the Contract Sum or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to Contractor for bidding purposes, in information on file at USA, or otherwise reasonably available to Contractor.)
- E. Contractor shall bear the risk that Underground Facilities not owned or built by Owner may differ in nature or locations shown in information made available by Owner for bidding purposes, in information on file at USA, or otherwise reasonably available to Contractor. Underground Facilities are inherent in construction involving digging of trenches or other excavations on Owner's Project, and Contractor is to apply its skill and industry to verify the information available.
- F. Contractor's compensation for claimed Latent or materially different Site conditions shall be limited to the actual, reasonable, incremental increase in cost of that portion of the Work, resulting from the claimed Latent or materially different Site conditions. Such calculation shall take into account the estimated value of that portion of the Work and the actual value of that portion of the Work, using for guidance Contractor's or its subcontractor's bid amount and actual amounts incurred for that portion of the Work and the reasonable expectation (if any) of differing or difficult site conditions in the Work area based on the available records and locale of the Work. For example, if Contractor excavates in an area unexpected, then such costs would be recoverable entirely; while if Contractor extends an existing excavation, then such costs would be recoverable if the resulting excavation costs in that work area exceeded the reasonable expectations therefore.

13.04 Notice Of Hazardous Waste Or Materials Conditions

- A. Contractor shall give a written Notice of Hazardous Materials Condition to Owner promptly, before any of the following conditions are disturbed (except in an emergency as set forth in this Document 00700), and in no event later than 24 hours after first observance of any:
 1. Material that Contractor believes may be hazardous waste or hazardous material, as defined in Section 25117 of the Health and Safety Code (including, without limitation, Asbestos, lead, PCBs, petroleum and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law ("hazardous material"); or
 2. Other material that may present an imminent substantial danger to persons or property exposed thereto in connection with Work at the Site ("other materials").
- B. Except as otherwise provided in the Contract Documents or as provided by applicable law, Contractor shall not be required to give any notice for the disturbance or observation of any such hazardous materials or other materials where such matter is disturbed or observed as part of the scope of Work under the Contract Documents (such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of Work under the Contract Documents), where Contractor complies with all requirements in the Contract Documents and applicable law respecting such materials.
- C. Contractor's Notice of Hazardous Materials Condition shall indicate whether the hazardous materials or other materials were shown or indicated in the Contract Documents to be within the scope of Work, and whether the hazardous materials or other materials were brought to the Site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible.
- D. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials if:
 1. Contractor knew of the existence of such hazardous materials or other materials at the time Contractor submitted its Bid; or
 2. Contractor should have known of the existence of such hazardous material or other materials as a result of its having the responsibility to obtain additional or supplementary examinations, investigation, explorations, tests, studies, and data concerning the conditions at or contiguous to the Site prior to submitting its Bid; or

3. Contractor failed to give the written notice within the required timeframe set forth below.
- E. If Owner determines that conditions involve hazardous materials or other materials and that a change in Contract Document terms is justified, Owner may issue either a Request for Proposal or Construction Change Order under the procedures described in the Contract Documents. If Owner determines that conditions do not involve hazardous materials or other materials or that no change in Contract Document terms is justified, Owner will notify Contractor in writing, stating the reasons for its determination.
- F. In addition to the parties' other rights under this Document 00700, if Contractor does not agree to resume Work based on a reasonable belief that it is unsafe, or does not agree to resume Work under special conditions, Owner may order the disputed portion of Work deleted from the Work, or performed by others, or Owner may invoke its right to terminate Contractor's right to proceed under the Contract Documents in whole or in part, for convenience or for cause as the facts may warrant.
- G. If Contractor does not agree with any Owner determination of any adjustment in the Contract Sum or Contract Time under this Article, Contractor may make a claim as provided in Article 12 of this Document 00700.

ARTICLE 14 - LEGAL AND MISCELLANEOUS

14.01 Laws And Regulations

- A. Contractor shall keep fully informed of and shall comply with all laws, ordinances, regulations and orders of any properly constituted authority affecting the Contract Documents, Work and persons connected with Work, and shall protect and indemnify Owner and its officers, employees, consultants and agents against any claim or liability, including attorney's fees, arising from or based on violation of law, ordinance, regulation or order, whether by Contractor or by Subcontractors, employees or agents. Authorized persons may at any time enter upon any part of Work to ascertain compliance of all applicable laws, ordinances, regulations and orders.

14.02 Permits And Taxes

- A. Contractor shall procure all permits and licenses applicable to the Work (including environmental matters to the extent applicable); pay all charges and fees, including fees for street opening permits; comply with, implement and acknowledge effectiveness of all permits; initiate and cooperate in securing all required notifications or approvals therefore; and give all notices necessary and incident to due and lawful prosecution of Work, unless otherwise provided herein. Owner will pay applicable building permits, sanitation and water fees for the completed construction, except as otherwise provided in the Contract Documents. Contractor shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into Work, and all other taxes properly assessed against equipment or other property used in connection with Work, without any increase in the Contract Sum. Contractor shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads, and other works in advance of operations, even where Owner may have already obtained permits for the Work.

14.03 Communications And Information Distribution

- A. All communications recognized under the Contract Documents shall be in writing, in the form of a serialized document, by type of communication. For example, RFI's shall be serialized beginning with RFI No. 1; payment applications shall be serialized beginning with Payment Application No. 1, submittals shall be serialized per specification section and transmitted with transmittal sheets beginning with Transmittal No. 1; and correspondence shall be serialized beginning with letter No. 1. Contractor may propose other record management and identification systems or protocols, intended to facilitate orderly transmittal of project information, storage and retrieval of such information, which Owner will review consistent with these stated objectives, and accept or reject in its sole discretion.
- B. Documents Requiring Signatures. All documents requiring signatures for approval prior to implementing action, as stipulated in other portions of Contract Documents, shall require a

manually signed, serialized letter delivered to the other party at its address for notice otherwise specified in the Contract Documents, either personally or by mail.

- C. Electronic data transfer of such correspondence will serve to expedite preliminary concurrence of information, only. Receipt of "hard copy" signature on forms is required prior to implementing action or work as the conditions may require. For example, change orders and authorizations for extra cost, require signatures. A party may acknowledge receipt of portable document file (PDF) copies of required correspondence by e-mail, but in the absence of such acknowledgment, mail or personal delivery is required.
- D. All emails shall be copied to Owner's and Contractor's Project Representative. Owner reserves the right to preclude e-mail communication, in whole or in part, as Project needs may require. Communication between Owner and Contractor shall not be via Twitter, Facebook, or other types of instant text message systems. Any such communications shall be inadmissible for any purpose related to this Contract.

14.04 Suspension Of Work

- A. Owner may, without cause, order Contractor in writing to suspend, delay or interrupt Work in whole or in part for such period of time as Owner may determine. An adjustment shall be made for increases in cost of performance of Work of the Contract Documents caused by any such suspension, delay or interruption, calculated using the measures set forth in Section 01205 (Modification Procedures). No adjustment shall be made to extent that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible.

14.05 Termination Of Contract For Cause

- A. The Contractor shall be in default of the Contract Documents and Owner may terminate the Contractor's right to proceed under the Contract Documents, for cause, in whole or in part, should the Contractor commit a material breach of the Contract Documents and not cure such breach within ten (10) Calendar Days of the date of notice from Owner to the Contractor demanding such cure; or, if such breach is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for the Contractor to avail itself of a time period in excess of ten (10) Calendar Days, the Contractor must provide Owner within the ten (10) day period with a written plan acceptable to Owner that demonstrates actual resources, personnel and a schedule to promptly to cure said breach, and then diligently commence and continue such cure according to the written plan).
- B. In the event of termination by Owner for cause as provided herein, the Contractor shall deliver to Owner possession of the Work in its then condition, including but not limited to, all designs, engineering, Project records, cost data of all types, plans and specifications and contracts with vendors and subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. The Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this Section shall not be interpreted to diminish any right which Owner may have to claim and recover damages for any breach of the Contract Documents or otherwise, but rather, the Contractor shall compensate Owner for all loss, cost, damage, expense, and/or liability suffered by Owner as a result of such termination and/or failure to comply with the Contract Documents.
- C. In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and the Contractor shall have no greater rights than it would have had following a termination for convenience. Any Contractor claim arising out of a termination for cause shall be made in accord with Article 12 herein. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by the Contractor.

14.06 Termination Of Contract For Convenience

- A. Owner may terminate performance of the Work under the Contract Documents in accordance with this clause in whole, or from time to time in part, whenever Owner shall determine that termination is in Owner's best interest. Termination shall be effected by Owner delivering to the Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated, and the effective date of the termination.
- B. Contractor shall comply strictly with Owner's direction regarding the effective date of the termination, the extent of the termination, and shall stop work on the date and to the extent specified.
- C. Contractor shall be entitled to a total payment on account of the Contract work so terminated measured by (i.) the actual cost to Contractor of Work actually performed, up to the date of the termination, with profit and overhead limited to twelve percent (12%) of actual cost of work performed, up to but not exceeding the actual contract value of the work completed as measured by the Schedule of Values and Progress Schedule, (ii.) offset by payments made and other contract credits. In connection with any such calculation, however, Owner shall retain all rights under the Contract Documents, including but not limited to claims, indemnities, or setoffs.
- D. Under no circumstances may Contractor recover legal costs of any nature, nor may Contractor recover costs incurred after the date of the termination or lost profits on terminated Work.

14.07 Remedies

- A. Subject to Contract Documents provisions regarding Contractor claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counter claims, disputes and other matters in question between Owner and Contractor arising out of or relating to Contract Documents, any breach thereof or the Project shall be the applicable court of competent jurisdiction located in the State and County where the Project is located.
- B. All Owner remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances Owner shall have any and all other equitable and legal rights and remedies which it would have according to law.

14.08 Contract Integration and Non-Waiver

- A. The Contract Documents, any Contract Modifications and Change Orders, shall represent the entire and integrated agreement between Owner and Contractor regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written Modifications. Owner and Contractor represent and agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written Modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications; the parties are not and will not rely on any other information, which shall be inadmissible in any proceeding to enforce these documents.
- B. Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.
- C. Neither acceptance of the whole or any part of Work by Owner nor any verbal statements on behalf of Owner or its authorized agents or representatives shall operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to Owner herein nor any right to damages provided in the Contract Documents.

14.9 Interpretation.

- A. Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and

shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).

- B. Contract Documents shall not be construed to create a contractual relationship of any kind between (1) Project Manager or any Owner's representative and Contractor; (2) Owner and/or its Representatives and a Subcontractor, sub-Subcontractor, or supplier of any Project labor, materials, or equipment; or (3) between any persons or entities other than Owner and Contractor.

14.10 Patents

- A. Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall be included in the Bid price for doing the Work. Contractor shall defend, indemnify and hold harmless Owner and each of its officers, employees, consultants and agents, including, but not limited to, the Board and each Owner's Representative, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Contractor agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

14.11 Substitution For Patented And Specified Articles

- A. Except as noted specifically in the instructions to Bidders or in Contract Documents, whenever in Specifications, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or Approved Equal" and Contractor may offer any substitute material or process that Contractor considers "equal" in every respect to that so designated and if material or process offered by Contractor is, in opinion of Owner, Equal in every respect to that so designated, its use will be approved. However, Contractor may utilize this right only by timely submitting Document 01600-A (Substitution Request Form) as provided in Document 00200 (Instructions to Bidders). A substitution will be approved only if it is a true "or equal" item in every aspect of its design and quality, including but not limited to its dimensions, weights, materials of construction, service requirements, durability, functioning, impact on contiguous construction elements, overall schedule and design.

14.12 Interest Of Public Officers

- A. No representative, officer, or employee of Owner no member of the governing body of the locality in which the Project is situated, no member of the locality in which Owner was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

14.13 Limit Of Liability

- A. OWNER, AND EACH OF ITS OFFICERS, BOARD MEMBERS, EMPLOYEES, CONSULTANTS AND AGENTS INCLUDING, BUT NOT LIMITED TO, PROJECT MANAGER AND EACH OTHER OWNER REPRESENTATIVE, SHALL HAVE NO LIABILITY TO CONTRACTOR FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT

THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES
MAY SPECIFY THEIR RECOVERY.

ARTICLE 15 - WORKING CONDITIONS AND PREVAILING WAGES

15.01 Use Of Site/Sanitary Rules

- A. All portions of the Work shall be maintained at all times in neat, clean and sanitary condition. Contractor shall furnish toilets for use of Contractor's and Subcontractors' employees on the Site where needed, and their use shall be strictly enforced. All toilets shall be properly secluded from public observation, and shall be located, constructed and maintained subject to Owner's approval.
- B. Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land areas identified in and permitted by Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by Owner, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, any improvement located thereon, or to Owner or occupant thereof resulting from the performance of Work.
- C. During the progress of the Work, Contractor shall keep the Site and the Project free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor shall clean the site, remove all waste materials, rubbish and debris from and about the Site as well as all tools, appliances, construction equipment and machinery and surplus materials. Contractor shall leave the premises clean and ready for occupancy by Owner at Completion of Work. Contractor shall restore to original condition all property not designated for alteration by Contract Documents.
- D. Contractor shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Contractor subject any part of Work or adjacent property to stresses or pressures that will endanger it. Contractor shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment or structures to accommodate performing the Work.

15.02 Protection Of Work, Persons, And Property

- A. Contractor shall be responsible for initiating, maintaining and supervising all safety and site security precautions and programs in connection with Work, and shall develop and implement a site security and safety plan throughout construction. Contractor shall comply with all safety requirements specified in any safety program established by Owner, or required by state, federal or local laws and ordinances. Contractor shall be responsible for remedying all theft or damage to Work, property or structures, and all injuries to persons, either on the Site or constituting the Work (e.g., materials in transit), arising from the performance of Work of the Contract Documents from a cause.
- B. Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owners of adjacent property and of Underground Facilities and utility Owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.
- C. Contractor shall remedy all damage, injury or loss to any property referred to above in this Article, caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Contractor's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. Owner and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Contractor's Work.

- D. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- E. Owner may, at its option, retain such moneys due under the Contract Documents as Owner deems necessary until any and all suits or claims against Contractor for injury to persons or property shall be settled and Owner receives satisfactory evidence to that effect.
- F. Work within the right-of-way lines of the city and/or Owner and/or State shall be done in accordance with the standards and specifications of the controlling agency. Permit for such work shall be obtained and paid for by the Contractor before executing the work within such right-of-ways.

15.03 Responsibility For Safety And Health

- A. Contractor shall ensure that its and each tier of Subcontractors' employees, agents and invitees comply with applicable health and safety laws while at the Site. These laws include the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and Owner's safety regulations as amended from time to time. Contractor shall comply with all Owner directions regarding protective clothing and gear.
- B. Contractor shall be fully responsible for the safety of its and its Subcontractors' employees, agents and invitees on the Site. Contractor shall notify Owner, in writing, of the existence of hazardous conditions, property or equipment at the Site that are not under Contractor's control. Contractor shall be responsible for taking all the necessary precautions against injury to persons or damage to the property of Contractor, Subcontractors or persons from recognized hazards until the responsible party corrects the hazard.
- C. Contractor shall confine all persons acting on its or its Subcontractors' behalf to that portion of the Site where Work under the Contract Documents is to be performed, Owner-designated routes for ingress and egress thereto, and any other Owner-designated area. Except those routes for ingress and egress over which Contractor has no right of control, within such areas, Contractor shall provide safe means of access to all places at which persons may at any time have occasion to be present.

15.04 Emergencies

- 15.05** In emergencies affecting the safety or protection of persons or Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from Owner, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by Owner. Contractor shall give Owner prompt written notice of actions taken due to emergency.

15.06 Use Of Roadways And Walkways

- A. Contractor shall not unnecessarily interfere with use of any roadway, walkway or other facility for vehicular or pedestrian traffic. Before beginning any interference and only with Owner's prior concurrence, Contractor may provide detour or temporary bridge for traffic to pass around or over the interference, which Contractor shall maintain in satisfactory condition as long as interference continues. Unless otherwise provided in the Contract Documents, Contractor shall bear the cost of these temporary facilities.

15.07 Nondiscrimination

- A. No person or entity shall discriminate in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual preference, or gender of such persons, except as provided in Section 12940 of the California Government Code. Every contractor for public works violating the provisions of Section 1735 of the California Labor Code is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the California Labor Code.

15.08 Prevailing Wages And Working Hours

- A. Contractor shall pay to persons performing labor in and about Work provided for in the Contract Documents an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which the Work is performed and (2) legal holiday and

overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and Owner to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Contract. Contractor shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site. The Director's schedule of prevailing rates is on file and open for inspection at Kern Medical, Engineering Department, 1700 Mt. Vernon Avenue, Bakersfield, California 93305, and is incorporated herein by this reference.

- B. Contractor shall forfeit, as a penalty to Owner, Fifty Dollars (\$50.00) for each laborer, workman, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any Work done under the Contract Documents by him or her or by any Subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the California Labor Code. The sums and amounts which shall be forfeited pursuant to this Paragraph and the terms of the California Labor Code shall be withheld and retained from payments due to Contractor under the Contract Documents, pursuant to this Document 00700 and the California Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by Owner. The Labor Commissioner pursuant to California Labor Code §1775 shall determine the final amount of forfeiture.
- C. Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the California Labor Code.
- D. Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation, California Labor Code §§ 1776 and 1810-1815. Failure to so comply shall constitute a default under this Contract.
- E. Contractor and its Subcontractors shall be responsible for compliance with Labor Code §§ 1810-1815.
 - 1. Eight hours of labor performed in execution of the Contract constitutes a legal day's work. The time of service of any workman employed on the Project is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week.
 - 2. Contractor and its Subcontractors shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the Project. The record shall be kept open at all reasonable hours for inspection by Owner and the Division of Labor Standards Enforcement.
 - 3. Contractor or its Subcontractors shall, as a penalty to Owner, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the Contract Documents by the respective Contractor or Subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Labor Code §§ 1810-1815.
 - 4. Work performed on the Project by employees of Contractor or its Subcontractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.
- F. Contractor and its Subcontractors shall be responsible for compliance with Labor Code Section 1776.
 - 1. Contractor and Subcontractors must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Work

- of the Contract Documents. Each payroll record shall contain or be verified by a written declaration as required by Labor Code Section 1776.
2. The payroll records enumerated above must be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor as required by Labor Code Section 1776.
 - a. Contractor shall inform Owner of the location of records enumerated above, including the street address, city and county, and shall, within five (5) Working Days, provide a notice of a change of location and address.
 - b. Contractor or Subcontractor has ten (10) Working Days in which to comply subsequent to receipt of a written notice requesting the records enumerated above. In the event that the Contractor or Subcontractor fails to comply with the ten-day period, he or she shall, as a penalty to Owner on whose behalf the contract is made or awarded, forfeit \$25.00 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Contractor is not subject to a penalty assessment pursuant to this Paragraph due to the failure of a Subcontractor to comply with this Paragraph.
 3. Contractor shall also deliver certified payrolls to Owner with each Application for Payment as set forth above in this Document 00700 (General Conditions).
 4. This project may be subject to monitoring and enforcement by the Department of Industrial Relations (DIR), including the obligation to submit certified payroll records directly to the DIR Compliance Monitoring Unit (CMU) at least monthly in a format prescribed by the Labor Commissioner. The contractor must post job site notices as prescribed by DIR regulation.

15.09 Environmental Controls

- A. Contractor shall comply with all rules, regulations, ordinances, and statutes that apply to any Work performed under the Contract Documents including, without limitation, any toxic, water, stormwater management and soil pollution controls and air pollution controls specified in California Government Code §11017. Contractor shall be responsible for insuring that Contractor's Employees, Subcontractors, and the public are protected from exposure to airborne hazards or contaminated water, soil, or other toxic materials used during or generated by activities on the Site or associated with the Project.

15.010 Shoring Safety Plan

- A. Any conflict between this Paragraph and Division 2 of the Specifications shall be resolved in favor of the most stringent requirement.
- B. At least five (5) Working Days in advance of any excavation five feet or more in depth, Contractor shall submit to Owner a detailed plan showing the shoring, bracing and sloping design (including calculations) and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by California Labor Code §6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.
- C. During the course of Work, Contractor shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five feet in depth. Contractor will be solely responsible for any damage or injuries that may result from excavating or trenching. Owner's acceptance of any drawings showing the shoring or bracing design or Work schedule shall not relieve Contractor of its responsibilities under this Paragraph.
- D. Appoint a qualified supervisory employee who shall be responsible to determine the sloping or shoring system to be used depending on local soil type, water table, stratification, depth, etc.

15.011 Required Registration with the State of California Department of Industrial Relations

- A. Pursuant to California Labor Code 1725.5, all contractors and subcontractors must be registered with the Department of Industrial Relations (DIR) in order to be qualified to bid on, be listed in a bid proposal, or engage in the performance of any public work contract. Detailed information about contractor's responsibilities and online registration may be obtained on the State of California Department of Industrial Relations, Public Works website, <http://www.dir.ca.gov/Public-Works/PublicWorks.html>

END OF DOCUMENT

DOCUMENT 00738

APPRENTICESHIP PROGRAM

ARTICLE 1 - COMPLIANCE REQUIRED

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

ARTICLE 2 - CERTIFICATION OF APPROVAL

- 2.01** California Labor Code §1777.5, as amended, requires a Contractor or Subcontractor employing tradespersons in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of a public works project and which administers the apprenticeship program in that trade for a certification of approval. The certificate shall also fix the ratio of apprentices to journeypersons that will be used in performance of the Contract. The ratio of work performed by apprentices to journeypersons in such cases shall not be less than one *hour* of apprentices work for every five *hours* of labor performed by journeypersons (the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeypersons), except:
- A. When unemployment for the previous three month period in the area exceeds an average of 15 percent;
 - B. When the number of apprentices in training in the area exceeds a ratio of one to five;
 - C. When a trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally; or
 - D. Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyperson.

ARTICLE 3 - FUND CONTRIBUTIONS

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

ARTICLE 4 - APPRENTICESHIP STANDARDS

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

END OF DOCUMENT

DOCUMENT 00800

SUPPLEMENTARY CONDITIONS – INSURANCE AND INDEMNIFICATION

ARTICLE 1 - INSURANCE

1.01 At or before the date specified in Document 00200 (Instructions to Bidders), Contractor, in order to protect the Kern County Hospital Authority ("Owner") and its board members, officials, agents, officers, employees and volunteers against all claims and liability for death, injury, loss and damage as a result of Contractor's actions in connection with the performance of Contractor's obligations, as required in the Contract Documents, shall secure and maintain insurance as described below. Contractor shall not perform any work under the Contract Documents until Contractor has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with Owner's authorized insurance representative, EBIX. Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Contractor shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. Contractor shall promptly deliver to EBIX a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to EBIX prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Contractor shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Contractor or Owner as an additional insured.

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

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

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

Contractor shall require any sub-contractors to provide workers' compensation for all of the subcontractors' employees, unless the sub-contractors' employees are covered by the insurance afforded by Contractor. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Contractor shall provide and/or require each sub-contractor to provide adequate insurance for the coverage of employees not otherwise covered.

Contractor shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

- B. General Liability Insurance Requirements – Contractor shall maintain in full force and effect, at all times during the term of the Agreement Commercial General Liability Insurance including, but not

limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of the Contract Documents), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Contractor's performance of work under the Agreement. Contractor shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of the Agreement. The amount of said insurance coverage required by the Contract Documents shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

- C. Automobile Liability Insurance Requirements – Contractor shall maintain Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to the Contract Documents with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.
- 1.02** The Commercial General Liability and Automobile liability Insurance required in sub-paragraphs B. and C. above shall include an endorsement naming the Kern County Hospital Authority, and Authority Indemnified Parties as additional insureds for liability arising out of the Agreement and any operations related thereto. Said endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.
- 1.03** Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to Owner and must be approved by the Risk Manager.
- 1.04** If any of the insurance coverages required under the Contract Documents is written on a claims-made basis, Contractor, at Contractor's option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; or (ii) purchase an extended reporting period of not less than three (3) years following the termination of the Agreement.
- 1.05** Cancellation of Insurance – The above stated insurance coverages required to be maintained by Contractor shall be maintained until the completion of all of Contractor's obligations under the Contract Documents except as otherwise indicated herein. Each insurance policy supplied by Contractor shall not be suspended, voided, modified, canceled, or reduced in coverage or in limits except after ten (10) days notice by Contractor in the case of non-payment of premiums, or on thirty (30) days prior written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Contractor shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.
- 1.06** All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII. Any exception to these requirements must be pre-approved by the Risk Manager.
- 1.07** If Contractor is, or becomes during the term of the Agreement, self-insured or a member of a self-insurance pool, Contractor shall provide coverage equivalent to the insurance coverages and endorsements required above. Owner will not accept such coverage unless Owner determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Contractor is equivalent to the above-required coverages.
- 1.08** All insurance afforded by Contractor pursuant to the Contract Documents shall be primary to and not contributing to any other insurance or self-insurance maintained by Owner. An endorsement shall be provided on all policies which shall waive any right of recovery (waiver of subrogation)

against Owner. A waiver of right of recovery (waiver of subrogation) is only required when Contractor's personnel deliver services or perform service for the Authority while on Authority property.

- 1.09** Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Contractor for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude Owner from taking such other actions as are available to it under any other provision of the Contract Documents or otherwise in law.
- 1.10** Failure by Contractor to maintain all such insurance in effect at all times required by the Contract Documents shall be a material breach of the Contract by Contractor. Owner, at its sole option, may terminate the Contract and obtain damages from Contractor resulting from said breach. Alternatively, Owner may purchase such required insurance coverage, and without further notice to Contractor, Owner shall deduct from sums due to Contractor any premiums and associated costs advanced or paid by Owner for such insurance. If the balance of monies obligated to Contractor pursuant to the Contract are insufficient to reimburse Owner for the premiums and any associated costs, Contractor agrees to reimburse Owner for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by Owner to take this alternative action shall not relieve Contractor of its obligation to obtain and maintain the insurance coverages required by the Contract Documents.
- 1.11** If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from Owner under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from Owner, Owner may retain out of sums due Contractor under the Contract Documents, an amount sufficient to cover such compensation, as fixed by the Workers' Compensation Insurance and Safety Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If Owner is compelled to pay compensation, Owner may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse Owner.
- 1.12** Nothing herein shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.
- 1.13** All Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work unless otherwise indicated in the Contract Documents, and Contractor shall cause the Subcontractors to furnish proof thereof to Owner within ten Days of Owner's request.

ARTICLE 2 - RESPONSIBILITY OF CONTRACTOR AND INDEMNIFICATION

- 2.01** Owner and each of its officers, employees, consultants and agents including, but not limited to, the Board, Project Manager and each Owner's Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- 2.02** To the furthest extent permitted by law (including without limitation California Civil Code §2782), Contractor shall assume defense of, and indemnify and hold harmless, Owner and each of its officers, employees, consultants and agents, including but not limited to the Board, Project Manager and each Owner's Representative, from claims, suits, actions, losses and liability of

every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees of County Counsel and counsel retained by Owner, expert fees, costs of staff time, and investigation costs, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, resulting from any cause whatsoever.

- 2.03** With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against Owner and each of its officers, employees, consultants and agents including, but not limited to Owner, the Board, Project Manager and each Owner's Representative. Owner shall provide timely notice to Contractor of any third-party claim relating to the Contract Documents, in accordance with Section 9201 of the California Public Contract Code.
- 2.04** Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
- 2.05** To the furthest extent permitted by law (including, without limitation, Civil Code §2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, Owner may in its discretion back charge Contractor for Owner's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.
- 2.06** The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to Owner or other indemnified party to the extent of its active negligence.

END OF DOCUMENT



Exhibit "A"

CONSTRUCTION

BUILDING A BETTER COMMUNITY

February 7, 2023

CIP 10084

Nanette Crawford
Special Projects Manager
Kern Medical
1700 Mt Vernon Ave
Bakersfield, CA 93305

Re: Kern Medical Hospital
1700 Mt Vernon Ave
Bakersfield, CA 93305
Nurse Staffing 3455
Cost Proposal

Nanette,

I am providing a cost to do the remodel in Nurse Staffing 3455. This work includes removal of wall coverings and sheetrock of the north and east walls, and removing a portion of sheetrock on the east and west walls to allow for power and data. All walls will be finished with a smooth finish and paint. We will provide data and power per the sketch provided to us. They will be hospital grade outlets for each cubical and for the printer. We will replace the 4 lights with LED lights. The flooring will be removed, floor prepped and install new Tarket Optima flooring with 6" RTSB. We will relocate the refrigerator, ice maker, and supplies into room 3412. This will require plumbing alterations to hook up water to the ice maker. We will set the anti-room and then run a duct exposed, hanging from the ceiling into room 3410 and pump it out the window. A final cleaning will be performed once complete.

JTS will use Plaster Worx, Jeffery Lay Painting, Quality Floor, and HCS as subcontractors on this project.

Total

\$88,000.00

Thank you for this opportunity.

Respectfully,

Troy Brookins

Troy Brookins
Project Manager
JTS Construction



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

March 15, 2023

SUBJECT: Proposed Amendment No. 1 to the Professional Services Agreement with Brian Sessions doing business as Skycon Electric to provide electrical service and maintenance repairs for all locations owned and operated by Kern County Hospital Authority.

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Amendment No. 1 to extend the term and increase the maximum to allow Kern Medical to continue using Skycon Electric for its electrician support needs. The Amendment extends the existing term by three (3) years and adds \$645,000 to the maximum payable.

Therefore, it is recommended that your Board approve the Amendment No. 1 to the Agreement for Professional Services with Brian Sessions dba Skycon Electric, extending the terms by three (3) years, effective February 12, 2024, for a total term beginning February 12, 2021 through February 11, 2027, with a maximum payable of \$750,000 for the six (6) year term, and authorize the Chairman to sign.

**AMENDMENT NO. 1
TO
PERSONAL/PROFESSIONAL SERVICES AGREEMENT
(Kern County Hospital Authority – Brian Sessions dba Skycon Electric)**

THIS AMENDMENT TO AGREEMENT, effective March 15, 2023, is between the Kern County Hospital Authority, a local unit of government ("KCHA"), which owns and operates Kern Medical Center ("KMC"), and Brian Sessions dba Skycon Electric ("Consultant") with its principal place of business located at 5419 Standard Street, Bakersfield, California 93308.

WITNESSETH:

WHEREAS, KCHA and Consultant entered into a Personal/Professional Services Agreement dated February 12, 2021 (PPSA# 10021) ("Agreement"), for the period February 12, 2021 through February 11, 2024; and

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

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

- X **Term.** The Agreement shall be extended from February 11, 2024 to February 11, 2027, unless sooner terminated as provided for in the Agreement.
- X **Fees** payable by KCHA under the Agreement shall increase by \$645,000, from \$105,000 to \$750,000.

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

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

KERN COUNTY HOSPITAL AUTHORITY

APPROVED AS TO CONTENT:
Responsible KCHA Department

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

By _____ *mf*
Scott Thygerson, Chief Executive Officer

Date: _____

Date: _____

BRIAN SESSIONS dba SKYCON ELECTRIC

APPROVED AS TO FORM:
Legal Services Department

By Brian Sessions
"Consultant"

By [Signature]
Hospital Counsel

Date: 02/21/2023

Date: 2/21/23



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

March 15, 2023

Subject: Proposed Amendment No. 4 to Engineering Services Agreement (#07816PA) with Paul Dhanens Architect, Inc., to provide design and construction administration for main campus and clinical space

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Boards approve for Amendment No. 4 to Engineering Services Agreement with Paul Dhanens Architect, Inc., to provide design services for budgeted construction projects at the main campus and clinic space. This Amendment No. 4 will extend the contract expiration date from July 1, 2023 to June 30, 2025.

Budgeted construction projects for this Fiscal Year Include, but are not limited to:

New MRI
D Wing Lobby Remodel & Registration Relocation
D Wing Med Air Dryer
NICU Med Air Dryer
Nitrogen Panel at Central Plant
Lab Modifications for New Equipment
Pharmacy USP 797 & 800
MDF & Pulmonary HVAC Upgrades
Hot Room Seam to Central Plant

Payment for Services	Previous Year Agreement	Proposed Agreement	Variance
Original Agreement	\$250,000		
Amendment No. 1	\$450,000		\$200,000
Amendment No. 2	\$250,000		\$250,000
Amendment No. 3	\$250,000		\$250,000
Amendment No. 4	0.00	0.00	0.00

Therefore, it is recommended that your Board approve the Amendment No. 4 to the Engineering Services Agreement with Paul Dhanens Architect, Inc., to extend the term July 1, 2016 – June 30, 2023 by two (2) years from June 30, 2023 to June 30, 2025 and authorize the Chairman to sign.

**AMENDMENT NO. 4
TO
ENGINEERING SERVICES AGREEMENT
(Kern County Hospital Authority – Paul Dhanens Architect, Inc.)**

This Amendment No. to the Agreement for Engineering Services is entered into this 15th day of March 2022 ("Effective Date"), by and between, the Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center, ("KCHA") with its principal location at 1700 Mount Vernon Avenue, Bakersfield, California 93306, and Paul Dhanens Architect, Inc., ("Consultant"), with its principal place of business located at 1330 22nd Street, Suite 100, Bakersfield, California 93301.

RECITALS

A. KCHA and Consultant have entered into an Agreement for Architectural Services (KCHA Agt. # 07816PA, dated July 1, 2016), Amendment No. 1 (KCHA Agt. #084-2018, dated December 12, 2018), Amendment No. 2 (KCHA Agt. #45521, dated August 18, 2021), and Amendment No. 3 (KCHA Agt. #027-2022, dated February 16, 2022) ("Agreement"), to provide Architectural and Engineering Services for various projects; and

B. Consultant requires additional time to complete approved projects and KCHA agrees that the extension of the term is necessary; and

C. The Parties agree to extend the term from July 1, 2023 to June 30, 2025 to allow for the completion of projects; and

D. The Agreement is amended effective March 15, 2023.

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

X **Term.** The Agreement expiration date shall be extended from July 1, 2023 to June 30, 2025, unless sooner terminated as provided for in the Agreement

Except as otherwise defined herein, all capitalized terms used in this Amendment No. 4 have the meaning set forth in the Agreement.

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


[Signatures to Follow]

IN WITNESS WHEREOF, this Amendment No. 4 to the Agreement has been executed as of the Effective Date indicated above.

KERN COUNTY HOSPITAL AUTHORITY

PAUL DHANENS ARCHITECT, INC.

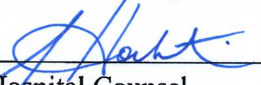
By _____
Russell Bigler
Chairman, Board of Governors

By  _____
Paul Dhanens
Architect/Owner

APPROVED AS TO CONTENT:
Kern Medical Center

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
Legal Services Department

By  _____
Hospital Counsel



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

March 15, 2023

Subject: Proposed retroactive Transfer Agreement with Fresno Community Hospital and Medical Center doing business as Community Medical Centers.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed retroactive Transfer Agreement with Fresno Community Hospital and Medical Center doing business as Community Medical Centers for purposes of expediting patient transfers for services Kern Medical is unable to provide.

Negotiations on the terms of the Transfer Agreement began in October 2022 with no response from Fresno Community Hospital until the last sixty days, which led to this Transfer Agreement being signed after its effective date.

Counsel is unable to approve as to form due to non-standard terms, which includes a liquidated damages clause. Multiple attempts were made to change and/or remove this language to no avail.

Even with these issues, Kern Medical recommends that your Board approve the proposed Transfer Agreement with Fresno Community Hospital and Medical Center doing business as Community Medical Centers, containing non-standard terms and conditions, for a period beginning February 27, 2023 through February 26, 2026, and authorize the Chairman to sign.

FRESNO COMMUNITY HOSPITAL AND MEDICAL CENTER DBA COMMUNITY MEDICAL CENTERS TRANSFER AGREEMENT

This AGREEMENT ("Agreement") is made and entered into by and between **Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center**, (hereinafter referred to as "Facility A") and Fresno Community Hospital and Medical Center dba Community Medical Centers, (any of which individually may be hereinafter referred to as "Facility B"). Facility A and Facility B are sometimes referred to in this Agreement as a "Party" or collectively, as "the Parties."

RECITALS

WHEREAS, Facility A operates a licensed acute care facility located in Bakersfield, California; and

WHEREAS, Facility B operates licensed acute care facilities located in Fresno and Clovis California; and

WHEREAS, Facility A provides certain services (listed in Attachment D) which may be required by, or suited for, patients in Facility B; and because of either a lack of available personnel, facilities, or services in Facility B (or for other compelling reasons), Facility B may from time to time need or desire to transfer patients to Facility A to receive appropriate care; and

WHEREAS, Facility B provides certain services (listed in Attachment C) which may be required by, or suited for, patients in Facility A; and because of either a lack of available personnel, facilities, or services in Facility A (or for other compelling reasons), Facility A may from time to time need or desire to transfer patients to Facility B to receive appropriate care; and

WHEREAS, Facility A and B desire to enter into an agreement to facilitate the transfer of patients between these Facility A and Facility B when appropriate, and to specify the rights and obligations of each of the Parties in this Agreement.

NOW, THEREFORE, the Parties hereto agree as follows:

AGREEMENT

I. DEFINITIONS

A. **"Transferring Facility"** is the hospital, clinic, long-term facility or surgery center from which the patient is being transferred.

B. **"Receiving Facility"** is the hospital, clinic, long-term facility or surgery center to which

the patient is being transferred.

- C. **“Transferring Physician”** is the physician initiating and responsible for the patient’s transfer at Transferring Hospital.
- D. **“Receiving Physician”** is the physician who accepts responsibility for the care of the patient at Receiving Hospital.
- E. **“Stabilize”** and **“Emergency Medical Condition”** have the same meanings these terms are defined in the EMTALA regulations (42 C.F.R. § 489.24) setting forth the responsibilities of hospitals in emergency cases.

II. RESPONSIBILITIES OF THE TRANSFERRING FACILITY. The Transferring Facility or Transferring Physician, as indicated, shall have the following duties and obligations in connection with a patient’s transfer under this Agreement:

- A. Transfer Authorization. The Transferring Physician shall authorize the transfer of the patient to the Receiving Facility, including documenting in the patient medical record the medical necessity or other reason for the transfer of the patient to the Receiving Facility and the medical condition of the patient at the time of transfer. The Transferring Facility and Physician shall determine that the patient is appropriate for transfer in accordance with all applicable Federal or State laws and regulations regarding patient transfers as well as with applicable requirements of the Transferring Facility’s transfer policies and EMS transfer guidelines
- B. Obtaining Consent for the Transfer. The Transferring Facility or Physician shall obtain the consent of the Receiving Facility and a Receiving Physician for the transfer:
 - (1) The consent of the Receiving Facility will be obtained by telephone, facsimile or other electronic means.
 - (2) The Transferring Facility/Physician will use best efforts to provide clear, accurate communication of patient date and clinical status, including assigning clinical personnel, as appropriate and feasible, to provide (or be immediately available provide) information as to a patient who has a complex or un-stabilized condition or requires a higher level of care.
 - (3) At the time of initial contact, the Transferring Facility will provide the following patient information to the Receiving Facility
 - a. The patient’s name and date of birth (gender as applicable);
 - b. Whether patient is an emergency patient or an inpatient;
 - c. The patient’s diagnosis and description of the patient’s clinical condition;
 - d. The patient’s clinical status, including whether patient has an Emergency Medical Condition and if so, whether the condition is Stabilized;

- e. The reason for the transfer (i.e. higher level of care, lack of specialty services, lack of beds or inadequate staffing, patient request, etc.);
 - f. Core clinical information (vital signs, intubation, etc.); and
 - g. The estimated time of arrival of the patient.
- (4) As necessary for the Receiving Facility and Physician to evaluate the clinical needs of the patient and their respective capability and capacity to meet those needs, the Transferring Facility or Physician will provide (orally or electronically) pertinent clinical information to the Receiving Facility and Physician, so long as the Transferring Physician determines that any delay in providing the information will not result in a material deterioration in the patient's medical condition.
 - (5) If the Receiving Facility confirms that it has capacity and capability to accept the patient, the Transferring Facility or Physician will obtain the consent of the Receiving Physician. The Receiving Facility will assist the Transferring Facility or Physician in contacting a qualified Receiving Physician who may be available to accept the patient.
 - (6) The Transferring Facility and Physician will document in the patient record the consent of the Receiving Facility and Physician, including the time and date and the names of the Receiving Physician and Receiving Facility representative who have respectively consented to the transfer.

C. Insurance Information.

- (1) If the transfer is for a patient with an Emergency Medical Condition that is not Stabilized, the Transferring Facility will not provide the Receiving Facility or Physician any insurance or financial information until the Receiving Facility and Physician have accepted the patient.
- (2) If the Transferring Facility/Physician advises the Receiving Facility that the patient is an inpatient or the patient's Emergency Medical Condition is stabilized, the Transferring Facility will provide the Receiving Facility the patient's insurance information (including the name and telephone number of the patient's health plan, patient ID # or member #).

D. Patient Transportation. The Transferring Facility and Physician are responsible to arrange appropriate and safe transportation that is appropriate for the patient's medical condition, including designation of (i) appropriate equipment for the transfer, (ii) treatment orders during transport, and (iii) the level of professional personnel (including physicians and hospital personnel, when appropriate) who accompany the patient during transfer.

- (1) If there is a delay in the transfer process that will result in the patient's arrival at the Receiving Facility by more than one (1) hour beyond the estimated time of arrival, or the ambulance or other patient transport is re-directed on route to

another hospital, the Transferring Facility (if aware of the delay or diversion) will immediately notify the Receiving Facility.

- (2) Except as otherwise agreed by the Parties with respect to a specific transfer, the Transferring Facility shall remain responsible for the patient until he/she arrives at the Receiving Facility, at which time the responsibility for the patient's care will shift to the Receiving Facility.

E. Transfer of Patient Records. The Transferring Facility will forward (with the patient or by electronic means) copies of those portions of the patient's medical record that are relevant to the transfer and continued care of the patient, including copies of records related to the patient's condition, observations of sign or symptoms, preliminary diagnosis, treatment provided and results of test and procedures.

- (1) If a patient has an Emergency Medical Condition that has *not* been Stabilized, the records will include (i) a copy of the patient's informed request for the transfer or the physician's certification that the medical benefits of the transfer outweigh the risks of transfer; and (ii) if an on-call physician at the Transferring Facility failed or refused to examine or treat the patient within a reasonable time, the name and address of the on call physician.
- (2) If all necessary and relevant medical records are not available at the time the patient is transferred, the unavailable records will be forwarded by the Transferring Facility as soon as practicable, but no later than four (4) hours after the transfer.

- F. Patient Notice. The Transferring Facility will comply with patient notice and consent requirements applicable to the transfer. The Transferring Facility will recognize the right of the patient to make an informed refusal of consent to treatment or transfer in accordance with applicable law;
- G. Personal Property. The Transferring Facility will transfer the patient's personal property (such as money and valuables) and information related to these items, or make other appropriate disposition of personal property, in accordance with its policy and procedure for the inventory and safekeeping of patient valuables;
- H. Patient Rights/Preference. If the patient is an emergency patient whose condition is Stabilized or is an inpatient, the Transferring Facility will (i) comply with applicable contractual, statutory and regulatory obligations that might exist between the patient and his/her health plan or designated provider; and (ii) recognize the right of the patient to transfer to the hospital and/or physician of his/her choice.
- I. Transfer Summary Form. Facility A shall complete a Transfer Summary Form for each transfer, which shall be in substantially in the same form as is attached as Attachment E.

III. **RESPONSIBILITIES OF THE RECEIVING FACILITY.** The Receiving Facility shall have the following duties and obligations in connection with a patient transfer under this Agreement:

- A. Transfer Acceptance Process.
 - (1) A list of contacts and telephone numbers for individuals authorized to arrange for patient transfer on behalf of each of the Parties is attached hereto as Attachment A. A list of contacts and telephone numbers for individuals authorized to accept a patient transfer on behalf of each Party is attached hereto as Attachment B.
 - (2) Each Party will establish a transfer acceptance worksheet and/or intake forms in order to record (i) the date and time of requests; (ii) the hospital, department and representative make a transfer request; and (iii) the patient information.
- B. Conditions for Patient Acceptance. The Receiving Facility will accept a patient transferred in accordance with this Agreement and provide or arrange for the provision of medical services to the patient, provided:
 - (1) The Receiving Facility has appropriate beds, equipment, staff and service capacity to meet the expected needs of the patient;
 - (2) A Receiving Physician on the Receiving Facility's Medical Staff has accepted the patient; and
 - (3) The patient meets the Receiving Facility's admission criteria applicable to the patient.

- C. Response Time. If the transfer involves a patient with an Emergency Medical Condition that is not Stabilized, the Receiving Facility will exercise reasonable efforts to respond to the Transferring Facility within thirty (30) minutes after receiving the request to transfer the patient.
- D. Admissions Process. The Receiving Facility will be responsible for the admissions and/or registration process for each patient accepted by the Receiving Physician, as follows:
- (1) The admission requirements of the Receiving Facility will be completed prior to the transfer except if the patient has an Emergency Medical Condition that is not Stabilized at the time of the transfer.
 - (2) Except for the transfer of a patient who has an Emergency Medical Condition that is not Stabilized at the time of the transfer:
 - The admission process will include provision by the Transferring Facility of patient insurance information relating to coverage of medical services (such as Medicare, Medi-Cal HMO, etc.) and pertinent medical and demographic information regarding the patient; and
 - The Transferring Facility will obtain prior authorization from the patient's payor, or other person for the transfer and the admission or other medical care services to be provided by the Receiving Facility if (i) obtaining prior authorization is required by the payor prior to the transfer and/or admission; and (ii) requesting such authorization is otherwise permitted by law.
- E. Transportation. When appropriate and within its capabilities, or upon request by the Transferring Facility, the Receiving Facility or Physician will consult with the Transferring Facility or Physician as to the transport of the patient.
- F. Patient Valuables. The Receiving Facility will maintain policies for the acknowledgement and inventory of any patient valuables transported with the patient.

IV. RETURN TRANSFERS

- A. Transferring Facility shall accept the transfer of the patient back from Receiving Facility once the patient's condition has stabilized and the patient no longer needs the specialized capabilities or facilities at Receiving Facility, as long as the following conditions are met:
- (1) The treating physician at the Receiving Facility deems the patient medically fit and stable to transfer back to the Transferring Facility;
 - (2) The transfer can be carried out safely, and the patient is provided with appropriate medical care throughout the transfer process such that the transfer will not create a medical hazard. The treating physician at the Receiving Facility shall be responsible for determining the applicable mode of transportation and personnel required to safely carry out the transfer;

- (3) The Receiving Facility has obtained appropriate consents from the patient (or if the patient lacks capacity, by an appropriate surrogate decision maker);
- (4) The Receiving Facility will transfer medical records back to Transferring Facility; and
- (5) The transfer is consistent with all applicable requirements under federal and state law.

- B. The Receiving Facility shall notify the Transferring Facility that the patient is appropriate for return transfer. The Transferring Facility shall accept the patient back within a maximum of forty-eight (48) hours from the time the Receiving Facility notifies the Transferring Facility of the patient's readiness for transfer back. In the event the Transferring Facility is unable to accept the transfer back of the patient within forty-eight (48) hours, the Chief Nursing Officers (or designees) of both facilities will promptly confer about the reasons for such inability, and they shall develop a plan to expedite the transfer back of the patient as promptly as possible. Refusal to accept the transfer back of a patient under this Section shall constitute a material breach of this Agreement.
- C. The Receiving Facility shall make arrangements for transportation of the patient back to the Transferring Facility, consistent with the patient's clinical needs. The Receiving Facility shall bill the patient's insurance, if any, for the return transport service. If not authorized by the patient's insurance, or if the patient is uninsured, the Transferring Facility will be responsible for reimbursement of the charges incurred by Receiving Facility associated with the patient's transportation. The Receiving Facility shall submit an invoice to the Transferring Facility for reimbursement of the costs for its transfer back of the patient, if applicable. Payment shall be made by the Transferring Facility within fifteen (15) days of receipt of the invoice. Payments shall be sent to:

Facility A: Kern Medical Center
 Attn: Accounts Payable
 P.O. Box 3519
 Bakersfield, CA 93710

Facility B: Community Medical Centers
 Attn: Accounts Payable
 1560 E. Shaw Avenue
 Fresno, CA 93710

- D. If Transferring Facility breaches its obligations under this Section by failing to accept the transfer back of a patient pursuant to the terms of this Section (the "Transfer Back Breach"), Transferring Facility shall pay to Receiving Facility damages (the "Liquidated Damages") of One Thousand Dollars and Zero Cents (\$1,000.00), for each day the Transfer Back Breach continues. The parties intend that the Liquidated Damages constitute the damages incurred by the Receiving Facility, and not a penalty. The Parties acknowledge and agree that the Receiving Facility's harm caused by the Transfer Back Breach would be impossible or very difficult to accurately estimate as of the Effective Date, and that the Liquidated Damages are

a reasonable estimate of the anticipated or actual harm that might arise from the Transfer Back Breach. The Transferring Facility's payment of the Liquidated Damages is the Transferring Facility's sole liability and entire obligation and the Receiving Facility's exclusive remedy for any Transfer Back Breach.

V. DISPUTES

- A. If a dispute arises between the Parties during the course of pending transfer relating to the clinical status and needs of the patient or the method of transportation, the judgment of the Transferring Physician shall take precedence solely for purposes of facilitating a timely decision on the transfer. If a dispute between the Parties arises or continues after a final decision has been made by the Receiving Facility and Physician on the acceptance of a transfer, the judgment of the Transferring Physician shall not be dispositive in the resolution of the dispute.
- B. To the extent permitted by law, the Parties to the transfer will cooperate in the mutual review of a transfer that the Receiving Facility identifies as implemented in a manner that is a possible violation of State or Federal law, or this Agreement.
- C. All patient transfers will be done on an equitable basis, without regard to financial or diagnostic desirability.

VI. INDEPENDENT CONTRACTOR

- A. The Parties are at all times independent contractors with respect to their relationship with one another, the purpose of which is to promote continuity of patient care consistent with applicable laws and regulations. Nothing in this Agreement shall create nor be construed as creating any agency, partnership, joint venture or other corporate relationship between Parties.
- B. The governing body of each Party shall have the exclusive control over its policies, management, assets and affairs. Neither Party shall assume any liability by virtue of this Agreement for any debts or obligations of either a financial or a legal nature incurred by the other Party to the Agreement. Nothing in this Agreement shall affect or interfere with the (i) bylaws, rules and regulations of a Party as they relate to medical staff membership and the clinical privileges of the members of each Party's medical staff; or (ii) the services and admission policies of each Party.

VII. INSURANCE

- A. Liability Insurance. Each Party shall maintain general and professional liability insurance with coverage limits in amounts which are usual and customary for similar health facilities in California in size, complexity and scope of services. Each Party shall give the other Party at least 30 days prior written notice of any proposed reduction or

cancellation of such insurance coverage, and shall provide to the other Party evidence of the above described insurance policy or policies upon request.

VIII. INDEMNIFICATION

Each Party shall indemnify, defend, and hold the other harmless from and against any and all liability, loss, expense, reasonable attorneys' fees or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying Party, its officer, employees, or agents.

IX. COMPLIANCE WITH LAWS

The Parties shall comply with all applicable Federal, State and local laws, regulations and ordinances, including applicable standards of The Joint Commission and other applicable accrediting bodies, and reasonable policies and procedures of the Parties.

- A. To the extent that any provision of this Agreement conflicts with EMTALA or state licensing laws for the provision of emergency services and care, as such laws may be amended, the provisions of EMTALA or the state licensing laws, as applicable, shall take precedence over and/or automatically supersede any inconsistent provisions of this Agreement.
- B. Each Party shall at all times be licensed by the State Department of Public Health, and certified by the Medicare and Medi-Cal programs.

X. CHARGES FOR SERVICES

- A. Charges for services performed by either Party shall be billed and collected by the Party rendering the services directly from the patient, third party payer or other source legally responsible for payment (including, if applicable, pursuant to Section X(B) below). Except as set forth in Section X(B) below, neither Party shall have any liability to the other for such charges unless mutually agreed to in writing in advance.
- B. If a Party has a legal obligation (whether imposed by statute or by contract) to provide or pay for care for a patient who is to be transferred under this Agreement, the Party having the responsibility shall be liable for the reasonable charges of the other Party for providing medically necessary services and care.

XI. EFFECT OF AGREEMENT

Nothing in this Agreement shall affect or interfere with the rules and regulations of an institution as they relate to medical staff membership privileges or physicians in the institution.

XII. EXCLUSIVITY

Nothing in this Agreement shall be construed as limiting the rights of either Party to contract with any other facility on a limited or general basis.

XIII. TERM

This Agreement shall be effective as of February 27, 2023 and shall remain in effect for three (3) years, unless terminated sooner, as described in XIII(A) and XIII(B).

- A. It is canceled after the material breach of one Party to this Agreement; or
- B. It is canceled by either Party, without cause, by giving the other Party written advance notice of such termination of at least sixty (60) days.

In the event of material breach, the Party desiring to cancel thereupon shall give to the breaching Party written notice of such breach. Such notice shall specify, in specific terms, the actual omissions which constituted said breach, and the date and time that cancellation is to take effect. In such event, cancellation of this Agreement shall take effect upon the date and time as is specified in said notice.

XIV. NOTICES

Any notice required or permitted by this Agreement shall be effective and shall be deemed delivered upon placing in the mail, by certified or registered mail, postage prepaid, or upon personal delivery as follows:

To Facility A: **Kern Medical Center**
1700 Mt. Vernon Ave.
Bakersfield, CA 93306
Attn: Chief Executive Officer

To Facility B: FCHMC dba Community Medical Centers
Attn: Tina Gulbronsen, VP Capacity Management and
Patient Flow
P.O. Box 1232
Fresno CA 93715-1232

Courtesy Copy to:
Chief Legal Officer
P.O. Box 1232
Fresno, CA 93715-1232

XV. MISCELLANEOUS

- A. This Agreement is solely for the purpose of facilitating and expediting the transfer of patients between the Parties. Nothing in this Agreement shall require any Party to transfer any patient or any number or type of patients to any other Party, or require any Party to accept any patient or any number of type of patients other than as may be required by law or other contractual obligations (such as payor agreements).
- B. Invalid Provision. In the event that any portion of this Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement shall be deemed to continue to be binding upon the Parties hereto in the same manner as if the invalid or unenforceable provision were not part of this Agreement.
- C. Name Use. Neither Party shall use the name of the other Party in any promotional or advertising material without the expressed written consent of the other Party. This Agreement shall not constitute an endorsement by either Party of the other Party, and it shall not be so used.
- D. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California.
- E. Assignment and Delegation. Neither Party hereto shall assign or transfer this Agreement, in whole or in part, or any its rights duties, or obligations under this Agreement, without the prior written consent of the other Party hereto.
- F. Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the Parties relating to such subject matter. This Agreement may only be modified in writing only, signed by the parties in interest at the time of the modification.

XVI. GENERAL PRINCIPALS

- A. All exhibits, attachments, annexed instruments, and addenda referred to herein shall be considered a part hereof for and with the same force and effect as if copied at full length herein.
- B. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the provisions hereof, and shall have no effect upon the construction or interpretation of any part thereof.
- C. It is not the intention of either Party that any person or entity be a third party beneficiary of this Agreement.

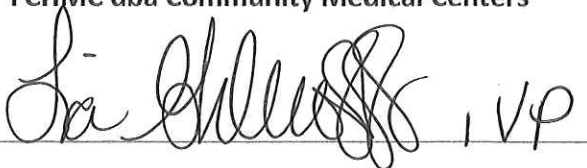
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IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates written below

Kern County Hospital Authority

FCHMC dba Community Medical Centers

By: Russell Bigler
Chairman, Board of Governors

_____
By: Tina Gulbronsen
VP Capacity Management and Patient Flow

Date: _____

Date: 3/6/23

REVIEWED ONLY
NOT APPROVED AS TO FORM

By _____
Legal Services Department

Attachment A

Position or title of personnel authorized to arrange for patient transfer on behalf of the facility:

FROM: FCHMC DBA COMMUNITY MEDICAL CENTERS

CONTACT:	CMC
Emergency Dept. Transfer Liaison	Transfer Center
Telephone Number	559.459.5555
Physician	Attending Physician
Inpatient Transfer Liaison	Transfer Center
Telephone Number	559.459.5555
Adult Psychiatric Liaison	Behavioral Health Coordinator
Telephone Number	559.435.7669

FROM: Type Facility Name

CONTACT:	
Emergency Dept. Transfer Liaison	Charge Nurse
Telephone Number	661-326-2667
Inpatient Transfer Liaison	Transfer Center
Telephone Number	661-706-6702
Outpatient Transfer Liaison	Transfer Center
Telephone Number	661-706-6702
Physician	Attending Physician
Other Information	

Attachment B

Position or title of personnel authorized to accept patient transfers on behalf of the facility:

TO: FCHMC DBA COMMUNITY MEDICAL CENTERS

CONTACT:	CMC
Emergency Dept. Transfer Liaison	Transfer Center
Telephone Number	559.459.5555
Physician	Attending Physician
Inpatient Transfer Liaison	Transfer Center
Telephone Number	559.459.5555
Adult Psychiatric Liaison	Behavioral Health Coordinator
Telephone Number	559.435.7669

TO: Kern Medical Center

CONTACT:	
Emergency Depart. Transfer Liaison	Charge Nurse
Telephone Number	661-326-2667
Inpatient Transfer Liaison	Transfer Center
Telephone Number	661-706-6702
Outpatient Transfer Liaison	Transfer Center
Telephone Number	661-706-6702
Physician Telephone Number	

Attachment C

Services provided by Community Regional Medical Center, Clovis Community Medical Center, or Fresno Heart and Surgical Hospital which may be needed by or requested for patients in **Kern Medical Center**

Specialists On Call To Emergency Depart	CMC
Adult Psychiatric	YES
Burn Care	YES
Cardiology	YES
Dental	YES
ENT	YES
Family Practice	YES
General Surgery	YES
Maxillofacial Surgery	YES
Neurosurgery	YES
OB/GYN	YES
Ophthalmology	YES
Orthopedics	YES
Pediatrics	YES
Plastic Surgery	YES
Proctology	YES
Trauma Surgery	YES
Urology	YES
Intensive Care Service	YES
Specialty Services	
COUNTY	FRESNO
Adolescent Psychiatric	NO
Adult Psychiatric	YES
Burn Center	YES
Child Sexual Abuse Program	YES
EMS Base Hospital	YES
Heliport	YES
Hyperbaric Chamber	YES
Labor & Delivery	YES
Outpatient Psychiatric	NO
Pediatric Hospital	YES
Rehabilitation Center	YES
Substance Abuse Center	NO
Trauma Designation	LEVEL 1

Attachment D

Services provided by **Kern Medical Center** which may be needed by or requested for patients in Community Medical Centers.

Specialists on call to ED	Kern Medical Center
Burn Care	No
Cardiology	Medical, not Interventional
Dental	No
ENT	Yes
Family Practice	Yes
General Surgery	Yes
Maxillofacial Surgery	Yes
Neurosurgery	Yes
OB/GYN	Yes
Ophthalmology	Yes
Orthopedics	Yes
Pediatrics	Yes
Plastic Surgery	Yes
Proctology	No
Trauma Surgery	Yes
Urology	Yes

Intensive Care Service	Kern Medical Center
Number of beds	12
Type of beds	ICU

Specialty Services	Kern Medical Center
COUNTY	Kern County
Burn Center	No
Child Sexual Abuse Program	No
EMS Base Hospital	Yes
Helipad	Yes
Hyperbaric Chamber	No
Labor & Delivery	Yes
Pediatric Hospital	No
Rehabilitation Center	No
Substance Abuse Center	No
Trauma Designation	Level 2

ATTACHMENT E



CMC Transfer Center
2823 Fresno St.
Fresno CA 93721
Phone: (559) 459-5555
Fax: (559) 459-6048

Transfer Summary Form

Transferring Facility _____ Date of Transfer _____

Transferring Physician _____ Phone _____

Contact Person _____ Phone _____ Fax _____

Patient's Name _____

This is to confirm that Community Medical Centers has received a request to accept the above patient as a transfer from your facility for clinical care which your facility is unable to provide to your patient. This transfer is governed by the terms of the Transfer Agreement signed between the parties, in which requires, among other things:

If the Transferring Facility breaches its obligations under the Agreement by failing to accept the transfer back of a patient pursuant to the terms of Section IV of the Agreement (the "Transfer Back Breach"), Transferring Facility shall pay to Receiving Facility damages (the "Liquidated Damages") of One Thousand Dollars and Zero Cents (\$1,000.00), for each day the Transfer Back Breach continues.

Signature of Administrator Authorizing Transfer Back Date/Time

Print Name and Title of Administrator Authorizing Transfer Back Date/Time



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

March 15, 2023

Subject: Proposed Amendment No. 4 to Agreement 873-2015 with Jeffrey G. Nalesnik, M.D., for professional medical and administrative services in the Department of Surgery

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Amendment No. 4 with Jeffrey G. Nalesnik, M.D., a contract employee, for professional medical and administrative services in the Department of Surgery. Dr. Nalesnik, a fellowship trained urologist, has been employed by Kern Medical since January 1, 2016, and serves as the Chair of the Department of Surgery.

The proposed Amendment increases Dr. Nalesnik's maximum vacation accrual from 280 hours to 320 hours, effective March 15, 2023. There are no other changes to the Agreement.

Therefore, it is recommended that your Board approve Amendment No. 4 to Agreement 873-2015 with Jeffrey G. Nalesnik, M.D., for professional medical and administrative services in the Department of Surgery, for the period January 1, 2016 through December 31, 2025, increasing Dr. Nalesnik's maximum vacation accrual from 280 hours to 320 hours, effective March 15, 2023, and authorize the Chairman to sign.

**AMENDMENT NO. 4
TO
AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Jeffrey G. Nalesnik, M.D.)**

This Amendment No. 4 to the Agreement for Professional Services is made and entered into this ____ day of _____, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Jeffrey G. Nalesnik, M.D. (“Physician”).

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Kern County Agt. #873-2015, dated December 8, 2015), Amendment No. 1 (Agt. #045-2021, dated August 18, 2021), Amendment No. 2 (Agt. #076-2022, dated July 20, 2022), and Amendment No. 3 (Agt. #122-2022, dated October 19, 2022) (the “Agreement”), for the period January 1, 2016 through December 31, 2025, whereby Physician provides professional medical and administrative services in the Department of Surgery at KMC; and

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

(c) The Agreement is amended effective March 15, 2023;

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

1. Section 6, Benefits Package, paragraph 6.4, shall be deleted in its entirety and replaced with the following:

“6.4 Vacation. Physician shall be credited with vacation leave of 9.23 hours for each pay period of service, for a maximum accrual of 240 hours per Employment Year. Total unused vacation leave accumulated shall not exceed a maximum of 320 hours. No further vacation leave will accrue as long as Physician has the maximum number of hours credited. The Chief Medical Officer must approve all vacation leave in advance. Physician shall be paid for accrued and unused vacation leave, if any, upon termination or expiration of this Agreement calculated at Physician’s current hourly rate (i.e., current Annual Salary divided by 2080 hours = hourly rate). All payments made by Authority to Physician under this paragraph will be subject to all applicable federal and state taxes and withholding requirements.”

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

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


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

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

[Intentionally left blank]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 4
as of the day and year first written above.

PHYSICIAN

By 
Jeffrey G. Nalesnik, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Amend4.Nalesnik.030123



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

March 15, 2023

Subject: Proposed Independent Contractor Agreement with Omni Family Health

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Independent Contractor Agreement with Omni Family Health, local Federally Qualified Health Center (FQHC) for Kern Medical physicians to provide OB/GYN services to Omni outpatient clinics located within the geographic area of Kern County. The days and times of such services are to be mutually agreed upon by the parties.

The Agreement is effective March 15, 2023 through March 14, 2028. Omni will compensate Kern Medical on a per patient basis for the services performed by our providers at the Omni locations.

Therefore, it is recommended that your Board approve the Independent Contractor Agreement with Omni Family Health, effective March 15, 2023 through March 14, 2028, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Omni Family Health)**

This Agreement is made and entered into this ____ day of _____, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), and Omni Family Health, a California nonprofit public benefit corporation (“Contractor” or “Omni”), with its principal place of business located at 4900 California Avenue, Suite 400-B, Bakersfield, California 93309.

**I.
RECITALS**

(a) Authority owns and operates Kern Medical Center, a general acute care hospital located at 1700 Mount Vernon Avenue, Bakersfield, California 93306 (“KMC”); and

(b) Contractor owns and operates health centers located within metropolitan Bakersfield and throughout Kern County, California (“Clinic” or “Clinics”); and

(c) KMC maintains a number of clinical departments, and employs and contracts with various specially trained physicians (“Physician” or “Physicians”); and

(d) Contractor requires the assistance of Authority to provide Physicians to staff Clinics for the sole purpose of evaluating Clinic patients;

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 March 15 15, 2023 (the “Effective Date”), and shall end March 14, 2028, unless earlier terminated pursuant to other provisions of this Agreement as herein stated. In the event of such notice, the provisions of this Agreement shall continue until the effective date of such termination.

2. **Authority Services.**

2.1 **Physician Assignments.** Authority will assign Physicians credentialed in accordance with Omni’s medical staff bylaws, rules, regulations and policies to staff Clinics according to the clinical specialties requested by Contractor. Authority will provide the services set forth in Exhibit “A,” attached hereto and incorporated herein by this reference, at Omni Clinics located within the geographic area of Kern County. The days and times of such services are to be mutually agreed upon by the parties. Authority will work to increase the number of

days and hours of service that Authority provides to Omni. Physicians will perform such professional services listed on Exhibit "A". A Physician shall not unreasonably refuse to accept consultations and requests for professional services from other professionals or physicians employed by Omni, as well as, from other physicians with whom Omni has contractual relationships. Omni may at any time with or without notice to Authority engage other providers of professional services at the Clinics or such other applicable Omni facilities.

2.2 Professional Qualifications. Each Physician assigned to provide services during the term of this Agreement shall at all times (i) hold an unrestricted license to practice medicine in the state of California and be competent to provide the services required by this Agreement, (ii) be a member in good standing with Omni in accordance with Omni's medical staff bylaws, rules, regulations and policies with applicable unrestricted clinical privileges in the clinical specialty and be subject to all of the attendant responsibilities and conditions of such membership, and (iii) hold a certificate or evidence of eligibility for certification by any applicable certifying board or agency, or be so certified within three (3) years of eligibility.

2.3 Loss or Limitation. Authority shall notify Contractor promptly of any loss, suspension or limitations of any Physician's license, DEA certificate, right to participate in the Medicare or Medicaid programs, professional liability insurance, or specialty qualifications medical staff membership or clinical privileges.

2.4 Compliance with Rules and Laws. Physicians will provide services in accordance with Contractor's standards of quality and efficiency and will comply with all applicable laws, statutes, ordinances, rules, regulations and standards of any governmental authority having either mandatory or voluntary jurisdiction over Contractor, including but not limited to The Joint Commission, and with the medical staff bylaws, rules, regulations and policies of Contractor, and any duly authorized committee thereof. Physicians shall adhere to and comply with Contractor's utilization management, quality assurance, risk management, peer review and credentialing activities, programs, policies and procedures. Notwithstanding anything contained herein to the contrary, the parties understand and agree that all decisions regarding a Physician's medical practice will be based solely upon such Physician's professional medical judgment and will be made in the best interests of such Physician's patients.

2.5 Working Cooperatively with Others. Physicians shall at all times work cooperatively with others toward enhancing the quality of patient care. Physicians shall refrain from engaging in behavior that is professionally inappropriate toward staff or patients, or is otherwise disruptive to Clinic or the workplace setting.

2.6 Removal of Physicians. Authority will immediately remove from Clinic any Physician who (i) is convicted of a crime other than a minor traffic violation, (ii) is adjudicated an incompetent by a court of competent jurisdiction, (iii) becomes disabled so as to be unable to perform the duties required, (iv) fails to be indemnified or remain covered for malpractice by Authority, (v) shall have his/her license(s) or privileges required to perform services either suspended, revoked or otherwise limited in any way whatsoever, or (vi) Contractor reasonably believes poses an immediate threat to the safety or welfare of any patient, staff member or physician of Clinic.

2.7 Obligation to Communicate with Patients. In the performance of these duties, each Physician shall be mindful of the fact that every test, procedure, and/or treatment carries with it physical, emotional, and economic risk to the patient. Each Physician shall discuss and consider the benefits to be gained, alternatives which are available, and the limitations, risks and costs of a recommended procedure or treatment with the patient, as appropriate before formulating a medical or surgical recommendation as to a proposed course of action.

2.8 Credentialing and Privileges. Authority understands and acknowledges that Omni is a federally qualified health center and routinely enters into one or more agreements with the state of California's Medi-Cal program and the federal government's Medicare program, as well as, various private medical and dental insurance carriers, and other state and federal programs (collectively "Third Party Payors"), all of which require credentialing of Authority and any Physician as a condition precedent to providing services to Omni patients. Furthermore, Authority acknowledges and agrees that this Agreement shall be contingent on Authority becoming fully credentialed as described in this paragraph, and shall immediately terminate and be of no further force and effect upon Authority's failure to obtain or renew any required credentials.

2.8.1 Omni Credentialing. Authority, and each Physician (including any supervising physician), shall be required to apply for and obtain privileges with Omni by going through a specified credentialing process as established by the Omni Credentialing Policy and Procedure, which has been made available to Authority, and by signing this Agreement, Authority acknowledges its receipt and agrees to be bound by and shall comply with all terms and conditions stated therein.

2.8.2 Non-Omni Credentialing. Authority agrees and acknowledges that the completion and execution of any credentialing documentation by Authority or its Physicians not required by Omni, but nonetheless required by Third Party Payors, is the sole responsibility of Authority.

2.8.3 Documentation. All required credentialing documentation will be required to be submitted by Authority to Omni's Credentialing Department prior to rendering any services under this Agreement.

2.8.4 Right to Appeal Denial of Credentialing. If Authority or any Physician is denied privileges with Omni for any reason, Authority or such Physician have the right to appeal such denial in accordance with the appellate procedure established by Omni's Credentialing Committee. During such appeal, however, this Agreement shall be deemed null and void with respect to privileges denied to Authority, and Authority or the applicable Physician are prohibited from rendering services under this Agreement. Authority or any Physician can contact Omni's Credentialing Department to obtain a copy of Omni's Credentialing Committee Appeal Procedures.

2.8.5 Re-Credentialing. Authority and each Physician will be required to renew such credentials for privileges every two (2) years.

3. **Contractor Facilities and Services**

3.1 **Space.** Contractor shall furnish for the use of Physicians such space and facilities as may be deemed necessary by Contractor for the proper operation and conduct of Clinic. Contractor shall, in its sole discretion, determine the amount and type of space and facilities to be provided herein. Physicians shall use the space and equipment solely for the performance of the services required under this Agreement. Neither Authority nor Physicians shall use such space or equipment for other business or personal use.

3.2 **Use Limitations on Space.** The use of any part of the space occupied by Clinic for the general or private practice of medicine is prohibited. Physicians 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 any Physician of any portion of Clinic, and insofar as Physicians may use a portion of said Clinic, Physicians do so as licensees only, and Contractor shall, at all times, have full and free access to the same.

3.3 **Equipment.** Contractor shall furnish for the use of Clinic such equipment as is deemed necessary by Contractor for the proper operation and conduct of Clinic consistent with community standards. Contractor 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 Contractor and Clinic budget constraints.

3.4 **Services and Supplies.** Contractor shall provide or arrange for the provision of janitorial services, housekeeping services, laundry and utilities, together with such other clinic services, including medical records, administrative and engineering services, and expendable supplies, as Contractor deems necessary for the proper operation and conduct of Clinic.

3.5 **Interpreters.** Contractor shall provide the services of interpreters as required by law and as necessary for the effective operation of Clinic.

3.6 **Transcription.** Contractor shall provide dictation and transcription services and medical record access.

3.7 **Responsibility for Clinic Patients.** To the extent required by applicable laws and regulations, Authority shall retain professional and administrative responsibility for the services rendered to patients in Clinic.

4. **Payment for Services.**

4.1 **Compensation.** As consideration for the services provided by Authority hereunder, regardless of clinical specialty, Contractor shall pay Authority as follows:

4.1.1 **Physician Services.** For Physician Services, Contractor shall pay Authority the sum of Seventy Dollars and No Cents (\$70.00) per visit for Medicare and Medi-Cal patients and Thirty Dollars and No Cents (\$30.00) per visit on any miscellaneous Commercial Insurance accounts, self-pay and sliding fee scale patient for

each billable encounter that results in collected billings paid to Contractor (the “Encounter Fee”).

4.1.2 Advanced Practice Provider Services. For Advanced Practice Provider services, Contractor shall pay Authority the sum of Fifty Dollars and No Cents (\$50.00) per visit for Medicare and Medi-Cal patients and Thirty Dollars and No Cents (\$30.00) per visit on any miscellaneous Commercial Insurance accounts, self-pay and sliding fee scale patient for each billable encounter that results in collected billings paid to Contractor (the “Encounter Fee”).

4.1.3 Hospital Services. For hospital services, Contractor shall pay Authority one hundred percent (100%) of all hospital collected billings. Authority shall be responsible for all billing, credentialing, collections and expenses related thereto and will provide Contractor with any required hospital activity reports.

4.2 Fair Market Value Compensation. The compensation provided under section 4.1 represents the parties’ good faith determination of the reasonable fair market value compensation for the services to be provided by Authority and Physicians under this Agreement.

4.3 Invoices. During the term of this Agreement, Physicians shall record the actual number of Clinic shifts. On a monthly basis, Authority shall deliver to Contractor completed and signed copies of invoices within 30 days after the end of each calendar month during the term of this Agreement. Each invoice shall contain, at a minimum, the names of Physicians who provided services and the dates each Physician provided coverage during the prior month. All compensation payable to Authority pursuant to this section 4 shall be considered timely paid if received by Authority not later than 30 days after Contractor’s receipt of the invoice.

4.4 Taxpayer Identification. To ensure compensation is reported as paid to the proper party, Authority will complete and execute IRS Form W-9, which identifies the taxpayer identification number for Authority.

4.5 Professional Fee Billing. Contractor shall be responsible for the billing and collection of all professional fees and charges, which result from professional services of Physicians rendered in accordance with this Agreement and will use for that purpose a billing service selected by Contractor.

4.6 Dispute. Contractor shall provide notice of any dispute regarding any invoice stating with specificity the basis for the dispute and may, at its discretion, withhold the disputed amount to be paid pending resolution of such dispute without breaching this Section 4. The parties shall thereafter meet and attempt in good faith to resolve any such dispute with time being of the essence.

5. Insurance. Both parties warrant that they participate in a program of self-insurance, or carry policies of insurance placed with reputable insurance companies licensed to do the business of insurance in the state of California with a Best’s rating of at least “A-; VII,” which insures against the perils of bodily injury, personal injury, medical malpractice, and property damage,

and covers such liabilities and claims as are imposed by law. Both parties shall continue to maintain such insurance or self-insurance in full force and effect during the term of this Agreement with coverage equal to the policy limits, which shall be at least \$1,000,000 each occurrence and \$3,000,000 aggregate. Authority warrants that all Physicians who are assigned to Clinic will be covered by the insurance as described herein.

6. **Indemnification.** Each party (the “Indemnifying Party”) agrees to defend, indemnify, and hold harmless the other party (the “Indemnified Party”) and its directors, trustees, members, shareholders, partners, officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys’ fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, trustees, members, shareholders, partners, officers, employees or agents.

7. **Independent Contractor.** In performing the services described in this Agreement, Authority, KMC, and Physicians are acting as independent contractors, and shall not be considered employees, joint venturers or partners of Contractor or Clinic for any purpose whatsoever. Contractor shall neither have nor exercise any control or direction over the methods by which Physicians shall perform the services required under this Agreement, and Authority shall neither have nor exercise any control or direction over Contractor’s affairs. The sole interest and responsibility of Contractor is to assure that such services are performed in a competent, efficient and satisfactory manner. Neither party shall have any claim against the other party arising under this Agreement or otherwise for workers’ compensation, severance pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Each party shall be solely responsible for, and shall indemnify, defend and hold harmless the other party from and against any claim, liability or expense related to its duties regarding, any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by Contractor to Authority under this Agreement and the compensation payable by each party to its respective employees or independent contractors.

8. **Confidentiality.**

8.1 **Use and Disclosure Restrictions.** Neither party shall, without the written consent of the other, communicate confidential information of the other, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that the receiving party would protect its own confidential information. The foregoing obligations will not restrict either party from disclosing confidential information of the other party: (i) pursuant to applicable law; (ii) pursuant to the order or requirement of a court, administrative agency, or other governmental body, on condition that the party required to make such a disclosure gives reasonable written notice to the other party to contest such order or requirement; and (iii) on a confidential basis to its legal or financial advisors.

8.2 Trade Secrets. The parties acknowledge that each party, in connection with its business, has developed certain operating manuals, symbols, trademarks, trade names, service marks, designs, patient lists, procedures, processes, and other copyrighted, patented, trademarked, or legally protectable information which is confidential and proprietary to the party 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.

8.3 Medical Records. The parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Records Information Act, codified at section 56.1 of the California Civil Code, California Evidence Code sections 1156 and 1157, and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

8.4 HIPAA Compliance. The parties acknowledge that the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations ("HIPAA") permit covered entities to use and disclose protected health information ("PHI") without patient authorization for certain specified purposes, one of which is for treatment. The term "treatment" under HIPAA includes the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care from one health care provider to another. Authority and Contractor are covered entities as defined by HIPAA. Contractor and Authority may disclose such PHI as is necessary for the treatment of Clinic patients consistent with the requirements set forth in HIPAA and in accordance with the Business Associate Agreement attached hereto as Exhibit "B". Contractor and Authority shall safeguard the confidentiality of PHI received from the other party as required by HIPAA.

8.5 Non-disparagement. Each party agrees that it shall not make or cause to be made, any written (including, but not limited to, any emails, internet postings, remarks or statements) or verbal assertions, statements or other communications regarding the other party's business or each other which may be in any manner whatsoever defamatory, detrimental or unfavorable to such other party. Each party agrees that these non-disparagement covenants shall survive the termination of this Agreement.

8.6 Equitable Remedies. Each party acknowledges and agrees that any breach of this Section 8 by a breaching party would cause irreparable harm and significant injury to the other party in an amount that would be difficult to ascertain, and that the other party has the right to obtain injunctive relief to enforce obligations under this Section 8 in addition to any other rights and remedies the other party may have at law and in equity.

9. Records. Contractor will maintain all records pertaining to the provision of services and supplies for patients of Clinic, including records of treatment by Physicians to patients of Clinic. Contractor will, to the extent required by law, maintain all billing and cost records, and make such records available to any interested state or federal agency having lawful access thereto. Authority will furnish any and all information, records and other documents related to the

services performed by Physicians at Clinic, which Contractor reasonably requests in order for Contractor to comply with applicable law or regulations or in connection with standards of The Joint Commission.

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

Notice to Contractor:

Omni Family Health
4900 California Avenue, Suite 400-B
Bakersfield, California 93309
Attn.: Francisco L. Castillon, CEO

Notice to Authority:

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

11. **Nondiscrimination.** Neither Authority, KMC nor any Physician will discriminate against any Clinic patient by refusing to provide any service or privilege offered to or enjoyed by the general public because of race, religion, color, age, creed, ancestry, national or ethnic origin, political opinion, sex, disability, marital status, sexual orientation, citizenship, medical condition, insurance status, economic status, ability to pay for medical services or any other basis protected by law. Authority, KMC and Physicians will treat all patients, including those patients who have no insurance and are deemed by Clinic to be unable to pay for medical services provided.

12. **Governing Law; Venue.** This Agreement, and all transactions contemplated by this Agreement, shall in all respects be governed by, and construed and interpreted in accordance with, the laws of the state of California, without giving effect to any conflicts of law principles of such state that might refer the governance, construction or interpretation of this Agreement to the laws of another jurisdiction. Any dispute between the parties shall be brought before the Superior Court, County of Kern, California, which shall have jurisdiction over all such claims.

13. **Medical Records.** Each Physician will cooperate in the preparation and maintenance of a complete medical record for each patient in whose care the Physician participates, on forms provided by Clinic and in compliance with all state and federal laws and regulations, standards of The Joint Commission, and Omni's medical staff bylaws, rules, regulations and policies. The medical record shall remain the property of Contractor.

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

15. **Anti-referral Laws.** Nothing in this Agreement, nor any other written or oral agreement, or any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business between Contractor or any Physician, Authority and KMC. This Agreement is not intended to influence any Physician's judgment in choosing the medical facility appropriate for

the proper care and treatment of their patients, or restrict any Physician from establishing medical staff membership or clinical privileges at any other healthcare facility.

16. **Disqualified Persons.** The parties mutually represent and warrant to one another that they and their respective representatives are not 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”); 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 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 16. Any breach of this section 16 shall give the non-breaching party the right to terminate this Agreement immediately.

17. **Access to Books and Records.** Until the expiration of four (4) years after the expiration or termination of this Agreement, Authority, KMC and Contractor shall make available, upon written request of the Secretary of the United States Secretary of Health and Human Services (“Secretary”) or the Comptroller General of the United States General Accounting Office (“Comptroller General”), or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of either party as are necessary to certify the nature and extent of costs of the services Authority provided under this Agreement.

18. **Assignment.** Neither party shall voluntarily, nor by operation of law, assign or otherwise transfer this Agreement without the other party’s prior written consent. Any purported assignment in violation of this paragraph shall be void.

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

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

21. **Conflict of Interest.** Contractor covenants that it has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed. It is understood and agreed that if such a financial

interest does exist at the inception of this Agreement, Authority may immediately terminate this Agreement by giving written notice thereof.

22. **Compliance with Law.** The parties shall observe and comply with all applicable 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.

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

24. **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.

25. **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 obligation to Contractor. Contractor will be given 30 days' prior written notice in the event that Authority requires such an action.

26. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither party nor any of their affiliates shall, without the prior written approval of the other (i) employ, retain, offer employment to or offer retention of any person who is or was employed by or under contract with the non-soliciting party during the term of this Agreement, (ii) solicit, advise or otherwise do, or attempt to do, business with any employee or independent contractor of the non-soliciting party who is or was employed by or under contract with the non-soliciting party during the term of this Agreement, or (iii) directly or indirectly, induce or attempt to induce any person who is under contract with the non-soliciting party to terminate his or her contract with such non-soliciting party. In the event either party breaches this section 26, the breaching party agrees to pay to the non-breaching party as liquidated damages, which the parties agree is not a penalty, an amount equal to \$150,000 per instance of breach. The parties agree that the true damages incurred by the non-breaching party in the event of a breach of this section 26 are difficult to estimate, and that the liquidated damages sum provided for herein (i) fairly represents the market cost of recruiting, relocating, and replacing the employee/agent, and for the non-breaching party to provide a *locum tenens* in the interim, and (ii) is reasonably proportionate to the non-breaching party's expected damages from such breach. Notwithstanding the foregoing, this section 26 shall not apply to (i) any Physician who is a member of Authority's Medical Staff prior to the Effective Date of this Agreement or (ii) any Physician that submits a resumé or application for a position with Contractor without solicitation by Contractor or pursuant to an advertisement or notice of a job opening that is not targeted at any employees of Authority, including, but not limited to, advertisements or postings in a newspaper of general circulation or a publicly available web site or bulletin board.

27. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of the party against which waiver is asserted. Forbearance or indulgence by a party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party. A party shall be entitled to invoke any remedy available to that party under this Agreement or by law or in equity despite said forbearance or indulgence.

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

29. **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.

30. **Termination.** Either party may terminate this Agreement, without cause or penalty, upon 90 days' prior written notice to the other party. Either party may terminate this Agreement if the other party commits a material breach of this Agreement and fails to cure such breach within 30 days after written notice of such breach from the other party. Notwithstanding the foregoing to the contrary, Omni may terminate this Agreement with immediate effect upon written notice in the event Authority or any Physician acts or fails to act in a way that Contractor reasonably believes poses an immediate threat to the safety or welfare of any patient, staff member or physician of Clinic, including, but not limited to, engaging in inappropriate or prohibited conduct with patients, staff or physicians of Clinic.

31. **[Reserved].**

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

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

[Signatures follow on next page]

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


OMNI FAMILY HEALTH

DocuSigned by:
By Francisco L. Castillon
Francisco L. Castillon, MPA
Chief Executive Officer

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"
LIST OF CLINICAL SPECIALTIES AND PHYSICIAN SERVICES

Contractor may request the following Physicians to staff the Clinics in the following clinical specialties:

Obstetrics and Gynecology

Juan M. Lopez, M.D.
Yasser S. Ratl Mrad, M.D.
Diego Mendez, M.D.
Antonio L. Garcia, M.D.
Rebecca Rivera, M.D.
Elva Lopez, M.D.
Lola J. Loeb, M.D.
Petre P. Motiu, M.D.
Roger Smith, M.D.
Paola Rosa, D.O.
Marsha F. Granese, M.D.
Brandy L. Drake, NP-C
Anne B. Graham, FNP-C

Additional specialties may be added upon mutual agreement of the parties.

Each of Authority's Physicians shall skillfully perform and document those duties customarily performed by physicians specializing in the provision of professional medical services to patients of Omni, including but not limited to the following:

- i. History taking and appropriate physical examinations;
- ii. Formulation of differential diagnoses;
- iii. Ordering of appropriate diagnostic tests;
- iv. Compliance with contract terms of all third-party payors, including various managed care plans;
- v. Prescription of any medication and/or procedure as are medically or surgically appropriate and are within the scope of Physician's professional services and privileges with Omni;
- vi. Follow-up care as is appropriate;
- vii. Maintenance, timely entry (i.e. within 48 hours from patient encounter), and delivery of complete, properly-coded, appropriately-detailed, and legible medical records utilizing Omni's electronic health/medical records system ("EHR"), and ensuring that such records comply with Omni's EHR system requirements and with Omni's medical staff, billing, and legal standards;

- viii. Completion of properly submitted information requests; and
- ix. Physician shall perform its duties faithfully, diligently, and in a professional manner.

EXHIBIT "B"
OMNI FAMILY HEALTH
BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum ("Addendum") is by and between Omni Family Health, a California nonprofit public benefit corporation ("Omni"), and Kern County Hospital Authority, a local unit of government ("Business Associate"). This Addendum will be deemed effective as of the effective date of the Contract (the "Effective Date").

RECITALS

- A. Concurrently herewith, Omni and Business Associate have entered into that certain Agreement for Professional Services – Independent Contractor (Kern County Hospital Authority – Omni Family Health) (the "Contract") that requires the execution of this Addendum.
- B. Business Associate may create, receive, use, maintain or disclose certain information, some of which may constitute Protected Health Information ("PHI"), which includes electronic Protected Health Information, as defined in Section 1(e) below, on behalf of Omni, but only as authorized by this Addendum.
- C. The parties intend to protect the privacy and provide for the security of PHI disclosed to Business Associate in compliance with the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as the same may be amended from time to time, which include the Standards for the Privacy of Individually Identifiable Health Information (the "Privacy Rules") (45 CFR Parts 160 and 164, Subparts A and E), the Security Standards for the Protection of Electronic PHI (the "Security Rules") (45 CFR Parts 160 and 164, Subparts A and C), and the provisions relating to compliance and investigation (the "Enforcement Rules") (45 CFR Part 160, Subparts C, D, and E)(collectively, "HIPAA"), the Health Information Technology for Economic and Clinical Health Act (Title XIII, Subtitle D) and its implementing regulations ("HITECH Act"), and Cal. Civil Code § 56 et seq., Cal. Civil Code § 1798.82 et seq., Cal. Ins. Code § 791 et seq., and Cal. Health & Safety Code § 1280.15 (collectively, "California Privacy Laws").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Contract, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

Catch-all Definition:

The following terms used in this Addendum shall have the same meaning as those terms in HIPAA:

Breach Notification, Data Aggregation, Designated Record Set, Disclose or Disclosure, Electronic PHI, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Security Incident, Subcontractor, Unsecured PHI, and Use.

Specific Definitions:

(a) "Breach" shall mean the illegal or unauthorized acquisition, access, use, or disclosure of PHI that compromises the security, confidentiality, privacy, or integrity of such information pursuant to the HITECH Act § 13400, any regulations issued thereunder, and as described in Cal. Civ. Code § 1798.82(d).

(b) "Business Associate" shall generally have the same meaning as the term "business associate" at 45 Code of Federal Regulations (CFR) 160.103.

(c) “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this Addendum, and shall have the same meaning as Omni.

(d) “Electronic Health Record” shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

(e) “PHI” referenced in Recital B above, shall have the same meaning as set forth in 45 CFR 160.103, and as defined in Section 13400 of Subtitle D – Privacy of the HITECH Act.

(f) “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services.

2. Obligations and Activities of Business Associate.

Business Associate agrees to:

(a) Not Use or Disclose PHI other than as permitted or required by the Contract, this Addendum, or as Required by Law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent Use or Disclosure of PHI other than as provided for by the Contract and this Addendum;

(c) Report to Omni any Use or Disclosure of PHI not provided for by the Contract or this Addendum of which it becomes aware, including Breaches of Unsecured PHI as required at 45 CFR 164.410, and any Security Incident of which it becomes aware;

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to at least the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

(e) Make PHI available in a Designated Record Set, for as long as the PHI is maintained in a Designated Record Set, to Omni as necessary to satisfy Omni’s obligations under 45 CFR 164.524;

(f) Make any amendment(s) to PHI in a Designated Record Set, for as long as the PHI is maintained in a Designated Record Set, as directed or agreed to by Omni pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Omni’s obligations under 45 CFR 164.526;

(g) Maintain and make available the information required to provide an accounting of Disclosures to Omni as necessary to satisfy Omni’s obligations under 45 CFR 164.528;

(h) To the extent the Business Associate is to carry out one or more of Omni's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Omni in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with HIPAA.

3. Permitted Uses and Disclosures by Business Associate.

(a) Business Associate may only Use or Disclose PHI as necessary to perform the services set forth in the Contract, this Addendum, and as Required by Law, subject to the restrictions set forth in the Contract and this Addendum.

(b) Business Associate agrees to make Uses and Disclosures and requests for PHI consistent with Omni’s Minimum Necessary policies and procedures and as required by HIPAA.

(c) Business Associate shall not Use or Disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Omni, except for the specific use permitted by Section 3(d), below.

(d) Business Associate may Use PHI to the extent required for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(e) Business Associate shall not Use PHI outside the United States of America or one of the United States Territories (American Samoa, Guam, Northern Marianas, Puerto Rico, and Virgin Islands) without prior written consent of Omni.

4. Provisions for Omni to Inform Business Associate of Privacy Practices and Restrictions.

(a) Privacy Practices. Omni shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Omni under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

(b) Notice of Changes in Permission. Omni 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.

(c) Notice of Restrictions. Omni shall notify Business Associate of any restriction on the Use or Disclosure of PHI that Omni has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

5. Breaches and Security Incidents.

(a) Reporting of Improper Access, Use, or Disclosure. Business Associate shall notify Omni in writing of any access, Use or Disclosure of PHI not permitted by the Contract and Addendum, and any Breach of Unsecured PHI or Security Incident of which it becomes aware without unreasonable delay and in no case later than seventy-two (72) hours after discovery.

(b) Notification of Breach. The Breach Notification required under Section 5(a) shall include, to the extent possible, all information required to provide notification to the Individual under 45 CFR 164.404(c) and in accordance with Cal. Health & Safety Code § 1280.15 and Cal. Civ. Code § 1798.82, including, but not limited to, the following:

(1) The name and contact information of the Business Associate.

(2) A list of the types of Unsecured PHI that were involved in the Breach.

(3) If the information is possible to determine at the time the notice is provided, then any of the following: (i) the date of the Breach, (ii) the estimated date of the Breach, or (iii) the date range within which the Breach occurred. The notification shall also include the date of the notice.

(4) [RESERVED.].

(5) A general description of the breach incident, if that information is possible to determine at the time the notice is provided.

(6) [RESERVED.]

(7) [RESERVED.]

(c) Mitigation. In event of a Breach, Business Associate shall undertake (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized Disclosure required by applicable federal and state laws and regulations.

(d) Breach Pattern or Practice by Business Associate. Pursuant to 42 U.S.C. Section 17934(b), if Business Associate knows of a pattern of activity or practice that constitutes a Breach or violation of Business Associate's obligations under this Addendum, the Contract, or other arrangement, Business Associate must take reasonable steps to cure the Breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Addendum and the Contract and other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Omni of any pattern of activity or practice of Business Associate that Business Associate believes constitutes a Breach or violation of its obligations under the Contract or Addendum or other arrangement within five (5) days of discovery and shall meet with Omni to discuss and all attempts to resolve the problem as one of the reasonable steps to cure the Breach or end the violation.

6. Business Associate's Agents.

Business Associate shall ensure that any agents, including Subcontractors, to whom it provides PHI, agree in writing to at least the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by this Addendum. Business Associate shall implement and maintain sanctions against agents and Subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 CFR 164.530(f) and 164.530(e)(1)).

7. Records.

(a) Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to Omni and, when required, to the Secretary for purposes of determining Business Associate's compliance with the Privacy Rule. Business Associate shall provide to Omni a copy of any information or documentation that Business Associate provides to the Secretary concurrently with providing such information or documentation to the Secretary.

(b) Data Ownership. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI unless Required by Law to retain ownership, and, as between Business Associate and Omni, all PHI shall remain the sole property of Omni, including any and all form thereof developed by Business Associate in the course of its fulfillment of its obligations pursuant to the Contract and this Addendum.

(c) Access to PHI. Business Associate shall make PHI maintained by Business Associate or its Subcontractors in Designated Record Sets available to Omni for inspection and copying within five (5) days of a request by Omni to enable Omni to fulfill its obligations under state law and the Privacy Rules, including, but not limited to, 45 CFR 164.524. If Business Associate maintains PHI in electronic format, Business Associate shall provide such information in electronic format as necessary to enable Omni to fulfill its obligations under the HITECH Act and HIPAA.

(d) Amendment to PHI. Within ten (10) days of receipt of a request from Omni for an amendment of PHI or a record about an Individual contained in a Designated Record Set, Business Associate or its Subcontractors shall make such PHI available to Omni for amendment and incorporate any such amendment to enable Omni to fulfill its obligations under the Privacy Rules, including, but not limited to 45 CFR 164.526. If any Individual requests an amendment of PHI directly from Business Associate or its Subcontractors, Business Associate must notify Omni in writing within five (5) days of the request, and any approval or denial of an amendment of PHI maintained by Business Associate or Subcontractors shall be the responsibility of Omni.

(e) Audits, Inspection, and Enforcement. Within ten (10) days of a written request by Omni, Business Associate and its agents or Subcontractors shall allow Omni to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the Use or Disclosure of PHI pursuant to this Addendum for the purpose of determining whether Business Associate has complied with this Addendum; provided, however, that (i) Business Associate and Omni shall mutually

agree in advance upon the scope, timing and location of such an inspection; (ii) Omni shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Omni has access during the course of such inspection; and (iii) Omni shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that Omni inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does Omni's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Omni's enforcement rights under the Contract or this Addendum. Business Associate shall notify Omni within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

(f) Accounting Rights. Within ten (10) days after request by Omni, Business Associate and its Subcontractors shall make available to Omni the information required to provide an accounting of Disclosures to enable Omni to fulfill its obligations under the Privacy Rules, including, but not limited to, 45 CFR 164.528, and the HITECH Act, and as determined by Omni. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and Subcontractors for at least six (6) years prior to the request. However, accounting of Disclosures from an Electronic Health Record for treatment, payment or Health Care Operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Business Associate maintains an Electronic Health Record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of Disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI Disclosed; and (iv) a brief statement of purpose of the Disclosure that reasonably informs Omni or the Individual of the basis for the Disclosure, or a copy of the Individual's authorization, or a copy of the written request for Disclosure. If an Individual submits a request for an accounting directly to the Business Associate or its Subcontractors, Business Associate shall forward it to Omni in writing within five (5) days of such request. Business Associate shall not disclose any PHI except as set forth in Section 2(b) of this Addendum. The provisions of this subparagraph shall survive the termination of the Contract.

8. Certification.

To the extent that Omni determines that an inspection is necessary to comply with Omni's legal obligations pursuant to HIPAA relating to certification of its security practices, Omni or its authorized agents or contractors, may, at Omni's expense, examine Business Associate's or its Subcontractor's facilities, systems, procedures and records as may be necessary to certify to Omni the extent to which Business Associate's security safeguards comply with HIPAA, the HITECH Act, California Privacy Laws, other laws, or this Addendum.

9. Termination.

(a) Breach. A breach by Business Associate of any provision of this Addendum, as determined by Omni in its sole and absolute good faith discretion, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of this Addendum and the Contract, any provision in the Contract to the contrary notwithstanding. However, following Omni's determination that Business Associate has breached a material term of this Addendum, Omni may, at its sole discretion, provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate fails to cure the breach or end the violation to Omni's satisfaction within such time frame as has been designated by Omni, Omni may immediately terminate this Addendum and the Contract.

(b) Judicial or Administrative Proceedings. Omni may terminate the Contract and this Addendum, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, California Privacy Laws, 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, California Privacy Laws, or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

(c) Business Associate's Obligations Upon Termination. Upon termination of the Contract or this Addendum, Business Associate, with respect to PHI received from Omni, or created, maintained, or received by Business Associate on behalf of Omni, shall:

(i) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

(ii) Return to Omni the remaining PHI that the Business Associate still maintains in any form;

(iii) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent Use or Disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;

(iv) Not Use or Disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out in this Addendum above which applied prior to termination; and

(v) Return to Omni or, if agreed to by Omni, destroy 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.

10. General Contract Protections and Remedies.

(a) Compliance with Laws and Regulations. Business Associate shall comply with all applicable state and federal laws pursuant to HIPAA, the HITECH Act, as well as the California Privacy Laws. Any regulations or amendments to applicable laws shall be automatically included in this Addendum such that this Addendum remains in compliance with such regulations or amendments.

(b) Change in Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, California Privacy Laws, and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Omni must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all PHI. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, California Privacy Laws, or other applicable laws. Omni may terminate the Contract and this Addendum upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Contract or Addendum when requested by Omni pursuant to this Section or (ii) Business Associate does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that Omni, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

(c) Equitable Remedies. Business Associate acknowledges and agrees that unauthorized Use or Disclosure of PHI would cause irreparable harm and significant injury to Omni in an amount that would be difficult to ascertain, and that Omni shall have the right to obtain injunctive relief to enforce obligations under this Addendum in addition to any other rights and remedies Omni may have at law and in equity.

(d) Assistance in Litigation and Administrative Proceedings. Business Associate shall make itself, and any Subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Contract or Addendum, available to Omni, at no cost to Omni, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Omni, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, California Privacy Laws, or other laws relating to security and privacy, except where Business Associate or its Subcontractor, employee or agent is a named adverse party.

11. Indemnification.

Business Associate agrees to indemnify, defend and hold harmless Omni and its 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, of whatever kind or nature, which arise out of or are in any way connected with any breach of this Addendum by Business Associate or Business Associate's officers, agents, employees, independent contractors, Subcontractors of any tier, or authorized representatives, including but not limited to the following:

(a) Fees for commercially reasonable costs of forensic investigation, to the extent it is necessary by law to identify the PHI that was subject to a Breach by Business Associate;

(b) The costs of notifying patients of a Breach of their PHI as required by 45 CFR 164.400 et seq., or any state Breach Notification requirements, including, without limitation, the costs of printing, postage, call center and credit monitoring services if not completed by Business Associate;

(c) Fees of outside counsel, selected by the mutual agreement of the parties, used to respond to an investigation of the Breach by any federal or state government agency;

(d) Any civil monetary penalties, fines, or other damages resulting from the action of any state or federal government agency as a result of the Breach; and

(e) The defense of lawsuits by counsel mutually agreed to by the parties brought by patients alleging invasions of privacy, and any liability resulting from such lawsuits (whether in the form of a judgment or settlement).

12. No Limitation or Exclusion of Liability.

Notwithstanding anything in the Contract or this Addendum to the contrary, no limitation or exclusion of liability shall apply to liability arising from Business Associate's breach of its obligations under this Addendum or compliance with HIPAA, the HITECH Act, or California Privacy Laws. In the event there is a conflict between the substance of this Section and any provision in the Contract, the parties acknowledge and agree that this Section shall control.

13. Disclaimer.

Omni makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA, the HITECH Act, or California Privacy Laws will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

14. Miscellaneous.

(a) Notice. Any and all notices or other communications required or permitted to be given under this Addendum shall be in writing and shall be deemed to have been delivered when given in the

manner set forth in this Section 14(a) to the addresses listed on the signature page to this Addendum. Communications shall be deemed to have been given (i) three (3) days after mailing, when mailed by registered or certified postage-paid mail, (ii) on the next business day, when delivered by a same-day or overnight national courier service or the U.S. Post Office Express Mail, or (iii) upon the date of receipt by the addressee when delivered personally. A party must receive a notice of change of address for it to be effective.

(b) Amendment. This Addendum may be amended or modified only by written agreement signed by Omni and Business Associate.

(c) No Third-Party Beneficiaries. Nothing express or implied in the Contract or Addendum is intended to confer, nor shall anything herein confer, upon any person other than Omni, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

(d) [RESERVED.]

(e) Interpretation. The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, and the California Privacy Laws. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, and the California Privacy Laws.

(f) Governing Law/Venue. This Addendum shall be governed by and construed in accordance with the laws of the State of California. The parties agree to jurisdiction and venue for any action brought under this Addendum in the Superior Court in the County of Kern or the federal court for the Eastern District of California.

(g) Severability. Should any part, term, portion or provision of this Addendum 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.

(h) Counterparts. This Addendum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum as of the Effective Date.

OMNI:

OMNI FAMILY HEALTH, a California
nonprofit public benefit corporation

By: _____
Francisco L. Castillon, MPA
Chief Executive Officer

Address:

Omni Family Health
Attn: Francisco L. Castillon
4900 California Avenue, Fourth Floor
Bakersfield, CA 93309

BUSINESS ASSOCIATE:

KERN COUNTY HOSPITAL AUTHORITY, a
local unit of government

By:  _____
Scott Thygerson
Chief Executive Officer

Address:

Kern Medical Center
Attn: Scott Thygerson
1700 Mount Vernon Avenue
Bakersfield, California 93306

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority



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

March 15, 2023

Subject: Proposed Agreement with Matthew M. Malerich, M.D., Incorporated, for Professional Medical Services in the Department of Surgery

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board to approve the proposed Agreement with Matthew M. Malerich, M.D., Incorporated, an independent contractor, for professional medical services in the Department of Surgery and has been providing services since 2021. Dr. Malerich provides coverage for hand-related clinic, surgical, and emergency call services as well as clinical mentoring to and evaluation of residents and medical students assigned to the hand surgery service. The agreement permits Dr. Malerich to bill and collect for professional services for the Stockdale clinic only.

Therefore, it is recommended that your Board approve the agreement with Matthew Malerich, M.D., for professional medical services in the Department of Surgery from April 9, 2023 through April 8, 2025, in an amount not to exceed \$1,200,000.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Matthew M. Malerich, M.D., Incorporated)**

This Agreement is made and entered into this _____ day of _____, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Matthew M. Malerich, M.D., Incorporated, a California professional medical corporation (“Contractor”), with its principal place of business located at 2634 G Street, Bakersfield, California 93301.

**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 and teaching services to resident physicians employed by Authority, 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 has special knowledge, training and experience, and is qualified to render such services;

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

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall be for a period of two (2) years, commencing as of April 9, 2023 (the “Commencement Date”), and shall end April 8, 2025, unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms, but only upon mutual written agreement of the parties.

2. Obligations of Contractor.

2.1 Specified Services. Contractor through Group Physicians agrees to provide orthopedic hand 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 Clinical Responsibilities. Group Physicians shall: (i) provide coverage for hand-related clinic, surgical, and emergency call services; (ii) provide a minimum of six (6) half-day clinics at Stockdale Clinic; (iii) provide a minimum of one (1) full day per week in the operating room at KMC or a KMC-designated surgery center; (iv) in coordination with specialists providing hand-related services, arrange and ensure provision of on-call professional services for hand clinic patients 24/7, including holidays; (v) in coordination with specialists providing hand-related services, arrange and ensure provision of emergency hand call coverage 24/7, including holidays, and respond to KMC for emergency hand-related services when on call; (vi) perform emergency hand-related surgical procedures when on call; (vii) supervise mid-level providers; (viii) supervise residents and medical students assigned to the hand surgery service; (ix) supervise procedures performed by residents and mid-level providers; (x) perform therapeutic and diagnostic procedures within the scope of practice for a hand specialist; and (xi) assist in the evaluation and, if feasible, the development of a fresh fracture clinic at Stockdale Clinic.

2.1.2 Teaching. Group Physicians shall provide didactic lectures as mutually agreed upon between Contractor and the Department residency program director.

2.1.3 Medical Education; Academic Responsibilities. Group Physicians shall: (i) provide clinical mentoring to and evaluation of residents and medical students; (ii) maintain board certification in orthopedic surgery; and (iii) maintain an academic appointment at one or more approved California-based medical schools.

2.1.4 Committee Assignments. 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 Representations. Contractor makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Contractor has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Contractor does not have any actual or potential interests adverse to Authority nor does Contractor represent a person or firm with an interest adverse to Authority with reference to the subject of this Agreement; and (iii) Contractor shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

2.3 Standard of Care. Authority has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees

that all of its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by Authority shall not operate as a waiver or release.

2.4 Performance Standard. Contractor shall perform all 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 Assigned Personnel. 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, Matthew M. Malerich, M.D.

2.6 Qualifications of Group Physicians.

2.6.1 Licensure/Board Certification. 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 Medical Staff Status. 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 TJC and ACGME Compliance. 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 Training/Experience. 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) experience with severe trauma cases, (iv) 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 (v) ongoing acute care hospital experience.

2.7 Rights and Duties. Matthew M. Malerich, 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 Loss or Limitation. 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 Standards of Medical Practice. 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 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 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold Authority harmless from any liability which it may incur to the United States or to the state of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case Authority is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish Authority with proof of payment of taxes on these earnings.

2.13 Medical Supplies; Drugs. 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 Nonexclusive Services. Contractor understands and agrees that Authority will utilize the services of Contractor pursuant to the terms of this Agreement on a non-exclusive basis. Contractor further agrees that Authority shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

3. Obligations of Authority.

3.1 Authority Designee. Authority shall designate a primary contact, who will arrange for KMC staff assistance as may be required.

3.2 Space. KMC shall furnish for the use of Contractor such space and facilities as may be deemed necessary by KMC for the proper operation and conduct of the Department. KMC shall, in its sole discretion, determine the amount and type of space and facilities to be provided herein. Contractor shall use the space and equipment solely for the performance of the services required under this Agreement. Neither Contractor nor Group Physicians shall use such space or equipment for other business or personal use.

3.3 Use Limitations on Space. The use of any part of the space occupied by the Department for the general or private practice of medicine is prohibited. Contractor shall use the items furnished under this Agreement only for the performance of services required by this Agreement. This Agreement shall not be construed to be a lease to Contractor 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 Equipment. 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 Services and Supplies. KMC shall provide or arrange for the provision of janitorial services, housekeeping services, laundry and utilities, together with such other hospital

services, including medical records, administrative and engineering services, and expendable supplies as KMC deems necessary for the proper operation and conduct of the Department.

3.6 Control Retained in KMC. In compliance with title 22, California Code of Regulations, section 70713 KMC will retain professional and administrative responsibility for services rendered under this Agreement. Contractor shall apprise KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by KMC for follow-up action and evaluation of performance.

4. **Payment for Services.**

4.1 Compensation. As consideration for the services provided by Contractor hereunder, Authority 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 Stockdale Location. 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 Emergency Call Coverage. Authority shall pay Contractor a per diem rate in the amount of \$2,000 per day for scheduled emergency hand call coverage (excluding established patients).

4.1.3 KMC Clinic Coverage. Authority shall pay Contractor a per diem rate in the amount of \$2,000 per day for scheduled coverage in the outpatient hand clinic at KMC.

4.1.4 KMC Operating Room Coverage. Authority shall pay Contractor a per diem rate in the amount of \$2,000 per twenty-four (24) hour day for surgical procedures performed in the operating room at KMC.

4.1.5 Maximum Payable. The maximum payable under this Agreement will not exceed \$1,200,000 over the two (2) year term of this Agreement.

4.1.6 Fair Market Value. 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 Limitations on Compensation. 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 Invoices. Invoices for payment shall be submitted in a form approved by KMC and list each service performed. Invoices and receipts shall be sent to KMC for review and processing within 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 Taxpayer Identification. To ensure compensation is reported as paid to the proper party, Contractor will complete and execute IRS Form W-9 (Exhibit "A," attached hereto and incorporated herein by this reference), which identifies the taxpayer identification number for Contractor.

4.5 Billing and Collection.

4.5.1 Group Billing and Charges. 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) Schedule of Charges. 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) Prevailing Charges. 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) Hospital Charges. 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) Billing Generally. 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) Billing Compliance. 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 Reconciliation. 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 and Group Physicians 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 and Group Physicians 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 and Group Physicians 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) Indemnification. 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 and Group Physicians 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 Professional Fee Billing. KMC shall have the exclusive right to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by Contractor to KMC patients 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.

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

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. **Assignment.** Contractor shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement. Contractor shall not assign any money due or which becomes due to Contractor under this Agreement without the prior written approval of Authority.

8. **Audits, Inspection and Retention of Records.** Contractor agrees to maintain and make available to Authority accurate books and records relative to all 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 shall have the same rights conferred upon Authority herein.

9. **Authority to Incur Financial Obligation.** It is understood that neither Contractor nor Group Physicians, in the performance of any and all duties under this Agreement, has no right, power or authority to bind Authority to any agreements or undertakings.

10. **Captions.** The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

11. **Change in Law.** In the event that a change in state or federal law or regulatory requirement (or the application thereof), any of which renders this Agreement illegal, impossible to perform, or commercially impracticable, the parties agree to negotiate immediately, in good

faith, any necessary or appropriate amendments(s) to the terms of this Agreement. If the parties fail to reach a mutually agreeable amendment within thirty (30) days of such negotiation period, this Agreement shall automatically terminate at the end of such thirty (30) day period.

12. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

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

14. **Compliance Program.** Contractor acknowledges that KMC has implemented a compliance program for the purpose of ensuring adherence to applicable federal and state laws, regulations and other standards. Contractor agrees that in the course of performance of its duties described herein that it shall act, and cause its employees to act, in conformance with the policies set forth therein. KMC shall make available such information relating to its compliance program as is appropriate to assist Contractor in adhering to the policies set forth in the compliance program. Contractor and its employees shall participate in compliance training and education as reasonably requested by KMC.

15. **Confidentiality.**

15.1 **Use and Disclosure Restrictions.** Neither party shall, without the written consent of the other, communicate confidential information of the other, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that the receiving party would protect its own confidential information. The foregoing obligations will not restrict either party from disclosing confidential information of the other party: (i) pursuant to applicable law; (ii) pursuant to the order or requirement of a court, administrative agency, or other governmental body, on condition that the party required to make such a disclosure gives reasonable written notice to the other party to contest such order or requirement; and (iii) on a confidential basis to its legal or financial advisors.

15.2 **Trade Secrets.** The parties 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 Patient Information. 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. 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 "C," attached hereto and incorporated herein by this reference.

15.4 Medical Staff and Committee Records. All records, files, proceedings and related information of Group Physicians, 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 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.

15.6 Non-disparagement. Each party agrees that it shall not make or cause to be made, any written (including, but not limited to, any emails, internet postings, remarks or statements) or verbal assertions, statements or other communications regarding the other party's business or each other which may be in any manner whatsoever defamatory, detrimental or unfavorable to such other party. Each party agrees that these non-disparagement covenants shall survive the termination of this Agreement.

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

20. **Disqualified Persons.** The parties mutually represent and warrant to one another that they and their respective representatives are not: (i) currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. section 1320a-7b-(f) (the "Federal health care programs") and/or present on the exclusion database of the Office of the Inspector General ("OIG") or the Government Services Administration ("GSA"); (ii) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits. This shall be an ongoing representation and warranty during the term of this Agreement and a party shall immediately notify the other party of any change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately upon written notice.

21. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to Authority is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or

hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

22. **Immigration Compliance.** Contractor shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified, and shall provide KMC with a copy of such verification required in 8 USCA section 1324a. Contractor agrees to indemnify, defend, and hold harmless Authority, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section 22.

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

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

25. **Informal Dispute Resolution.** Controversies between the parties with respect to this Agreement, or the rights of either party, or with respect to any transaction contemplated by this Agreement, shall be resolved, to the extent possible, by informal meetings and discussions among appropriate representatives of the parties.

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

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

28. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Authority and Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of Authority and Contractor that any such person or entity, other than Authority or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

29. **Non-appropriation.** Authority reserves the right to terminate this Agreement in the event insufficient funds are appropriated or budgeted for this Agreement in any fiscal year. Upon such termination, Authority will be released from any further financial obligation to Contractor, except for services performed prior to the date of termination or any liability due to any default existing at the time this clause is exercised. Contractor will be given 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. **Notices.** Notices to be given by one party to the other under this Agreement shall be given in writing by personal delivery, by certified mail, return receipt requested, or express delivery service at the addresses specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received four (4) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

Notice to Contractor:

Matthew M. Malerich, M.D., Incorporated
P.O. Box 1927
Bakersfield, California 93303
Attn.: Its President

Notice to Authority:

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

34. **Signature Authority.** Each party represents that they have full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

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

36. **Termination.**

36.1 **Termination without Cause.** Either party may terminate this Agreement, without cause, upon one hundred twenty (120) days' prior written notice to the other party.

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

- A) Breach of this Agreement by Contractor where such breach is not cured within thirty (30) calendar days after Authority gives written notice of such breach to Contractor;
- B) Authority ceases operations;
- C) Contractor is unable to obtain or maintain sufficient insurance, as required under this Agreement, for any reason;
- D) Contractor makes an assignment for the benefit of creditors, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, dissolution, liquidation or other similar law of any jurisdiction;
- E) Contractor is rendered unable to comply with the terms of this Agreement for any reason;

- F) Contractor engages in conduct that, in Authority's good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of Authority or KMC;
- G) Within a twelve (12) month period, Contractor has two (2) or more medical malpractice claims filed against him or her, or he or she becomes the subject of two (2) or more adverse proceedings by the Medical Staff regarding the performance of professional medical services;
- H) Any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body, or any notice of a decision, finding, interpretation or action by any governmental, court or other third party which, in the opinion of Authority, if or when implemented, would result in the arrangement between the parties under this Agreement to subject Authority or any of its employees or agents, to civil or criminal prosecution or monetary penalties on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement;
- I) Violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or KMC is subject;
- J) Contractor makes an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC;
- K) Commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; or
- L) The loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of Contractor.

37. **Effect of Termination.**

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

37.2 **Vacate Premises.** Upon expiration or earlier termination of this Agreement, Contractor shall immediately vacate KMC, removing at such time any and all personal property

of Contractor. Authority may remove and store, at Contractor's expense, any personal property that Contractor has not so removed.

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

37.4 No Hearing Rights. Termination of this Agreement by Authority or KMC for any reason shall not provide Contractor or Group Physicians the right to a fair hearing or the other rights more particularly set forth in the KMC medical staff bylaws.

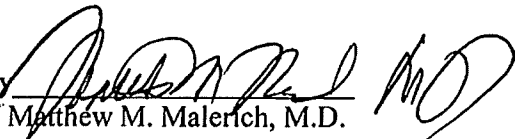
38. Time of Essence. Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

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

[Signatures follow on next page]

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

MATTHEW M. MALERICH, M.D.,
INCORPORATED

By 
Matthew M. Malerich, 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

Agreement.Malerich.030323

EXHIBIT “A”

IRS FORM W-9

[TO BE ATTACHED]

EXHIBIT "B"

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: \$250,000 bodily injury per person; \$500,000 per accident bodily injury; \$100,000 per accident property damage.
- (b) Insurance shall apply to all Owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

4. Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A;VII.

5. Additional Insured Wording: "**Kern County Hospital Authority, its officers, officials, employees and volunteers**" are to be named as Additional Insureds as per each section where noted above.

6. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:

- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
- (b) Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract work*.
- (c) If coverage is canceled or non-renewed, and *not replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, Contractor must purchase “extended reporting” coverage for a minimum of *five (5) years* after completion of the contract work.

7. Documentation:

- (a) The Certificate of Insurance must include the following reference: **“Agreement for Professional Services.”**
- (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with Authority for the entire term of this Agreement and any additional periods if specified in sections 1, 2 or 3 above.
- (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
- (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
- (e) Contractor shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
- (f) Upon written request, certified copies of required insurance policies must be provided to Authority within 30 days.

8. Policy Obligations: Contractor’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

9. Waiver of Subrogation: Contractor hereby grants to Authority a waiver of any right to subrogation, which any insurer of said Contractor may acquire against Authority by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Authority has received a waiver of subrogation endorsement from the insurer.

10. Primary Coverage: For any claims related to this Agreement, Contractor’s insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects Authority, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by Authority, its officers, directors, officials, employees, or volunteers shall be excess of Contractor’s insurance and shall not contribute with it.

11. Material Breach: If Contractor fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. Authority, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Authority may purchase the required insurance, and without further notice to Contractor, Authority may deduct from sums due to Contractor any premium costs advanced by Authority for such insurance. These remedies shall be in addition to any other remedies available to Authority.

[Intentionally left blank]

EXHIBIT “C”
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“**BAA**”) is entered into by and between the Kern County Hospital Authority, a local unit of government, on behalf of Kern Medical Center (“**Covered Entity**”), and Matthew M. Malerich, M.D., Incorporated, a California professional medical corporation (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of April 9, 2023 (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 45 C.F.R. § 164.501.

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

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

1.6 “**Protected Health Information**” and “**PHI**” mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 160.103. Protected Health Information includes e-PHI.

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

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

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

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

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

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

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

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

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or Subcontractors that is not specifically permitted by this BAA no later than twenty-four (24) hours 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 non-

permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity's Obligations

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

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

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

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

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

ARTICLE IV TERM AND TERMINATION

4.1 Term. Subject to the provisions of Section 4.1, the term of this BAA shall be the term of any Underlying Agreement.

4.2 Termination of Underlying Agreement.

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

4.2.2 Covered Entity may terminate the Underlying Agreement, effective immediately, if: (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

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

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

4.3.2 Upon thirty (30) calendar day written notice to Business Associate, immediately terminate this BAA and any Underlying Agreement if Covered Entity determines that such breach cannot be cured.

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

ARTICLE V MISCELLANEOUS

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

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

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

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

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

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

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

5.8 Indemnification. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, 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 Legal Actions. Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

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

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

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

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Matthew M. Malerich, M.D., Incorporated
P.O. Box 1927
Bakersfield, CA 93303
Attn.: Its President

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

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

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

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

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

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

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

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

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

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

COVERED ENTITY:

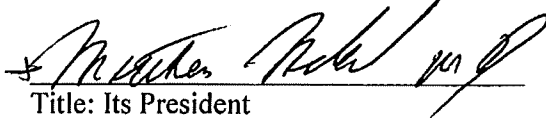
The Kern County Hospital Authority on
behalf of Kern Medical Center

Title: Chairman, Board of Governors

Date: _____

BUSINESS ASSOCIATE:

Matthew M. Malerich, M.D., Incorporated



Title: Its President

Date: _____



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

March 15, 2023

Subject: Proposed Agreement with Desert Hand and Plastic Surgery PC, for Professional Medical Services in the Department of Surgery

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board to approve the proposed Agreement with Desert Hand and Plastic Surgery PC, an independent contractor for professional medical services in the Department of Surgery and has been providing services since 2021. Dr. Bowen provides coverage for hand-related clinic, surgical, and emergency call services as well as clinical mentoring to and evaluation of residents and medical students assigned to the hand surgery service. The agreement permits Dr. Bowen to bill and collect for professional services for the Stockdale clinic only.

Therefore, it is recommended that your Board approve the agreement with Desert Hand and Plastic Surgery PC, for professional medical services in the Department of Surgery from April 9, 2023 through April 8, 2025, in an amount not to exceed \$1,200,000.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Desert Hand and Plastic Surgery PC)**

This Agreement is made and entered into this ____ day of _____, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Desert Hand and Plastic Surgery PC, a California professional medical corporation (“Contractor”), with offices located at 11513 Covent Gardens Drive, Bakersfield, California 93311.

**I.
RECITALS**

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

(b) 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 and teaching services to resident physicians employed by Authority, 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 has special knowledge, training and experience, and is qualified to render such services;

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

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall be for a period of two (2) years, commencing as of April 9, 2023 (the “Commencement Date”), and shall end April 8, 2025, unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms, but only upon mutual written agreement of the parties.

2. **Obligations of Contractor.**

2.1 **Specified Services.** Contractor through Group Physicians agrees to provide orthopedic hand 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 **Clinical Responsibilities.** Group Physicians shall: (i) provide coverage for hand-related clinic, surgical, and emergency call services; (ii) provide a minimum of six (6) half-day clinics at Stockdale Clinic; (iii) provide a minimum of one (1) full day per week in the operating room at KMC or a KMC-designated surgery center; (iv) in coordination with specialists providing hand-related services, arrange and ensure provision of on-call professional services for hand clinic patients 24/7, including holidays; (v) in coordination with specialists providing hand-related services, arrange and ensure provision of emergency hand call coverage 24/7, including holidays, and respond to KMC for emergency hand-related services when on call; (vi) perform emergency hand-related surgical procedures when on call; (vii) supervise mid-level providers; (viii) supervise residents and medical students assigned to the hand surgery service; (ix) supervise procedures performed by residents and mid-level providers; (x) perform therapeutic and diagnostic procedures within the scope of practice for a hand specialist; and (xi) assist in the evaluation and, if feasible, the development of a fresh fracture clinic at Stockdale Clinic.

2.1.2 **Teaching.** Group Physicians shall provide didactic lectures as mutually agreed upon between Contractor and the Department residency program director.

2.1.3 **Medical Education; Academic Responsibilities.** Group Physicians shall: (i) provide clinical mentoring to and evaluation of residents and medical students; (ii) maintain board certification in plastic surgery; and (iii) maintain an academic appointment at one or more approved California-based medical schools.

2.1.4 **Committee Assignments.** 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 **Representations.** Contractor makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Contractor has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Contractor does not have any actual or potential interests adverse to Authority nor does Contractor represent a person or firm with an interest adverse to Authority with reference to the subject of this Agreement; and (iii) Contractor shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

2.3 **Standard of Care.** Authority has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees

that all of its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by Authority shall not operate as a waiver or release.

2.4 Performance Standard. Contractor shall perform all 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 Assigned Personnel. 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, David T. Bowen, M.D.

2.6 Qualifications of Group Physicians.

2.6.1 Licensure/Board Certification. 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 plastic surgery, and certified by the American Board of Plastic Surgery in plastic surgery-general, and maintain such certification at all times during the term of this Agreement.

2.6.2 Medical Staff Status. 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 TJC and ACGME Compliance. 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 Training/Experience. Each Group Physician shall have (i) major trauma experience at a level I or II trauma center, (ii) general plastic and reconstructive surgery experience in trauma, (iii) experience with severe trauma cases, (iv) 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 (v) ongoing acute care hospital experience.

2.7 Rights and Duties. David T. Bowen, 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 Loss or Limitation. 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 Standards of Medical Practice. 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 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 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold Authority harmless from any liability which it may incur to the United States or to the state of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case Authority is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish Authority with proof of payment of taxes on these earnings.

2.13 Medical Supplies; Drugs. 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 Nonexclusive Services. Contractor understands and agrees that Authority will utilize the services of Contractor pursuant to the terms of this Agreement on a non-exclusive basis. Contractor further agrees that Authority shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

3. Obligations of Authority.

3.1 Authority Designee. Authority shall designate a primary contact, who will arrange for KMC staff assistance as may be required.

3.2 Space. KMC shall furnish for the use of Contractor such space and facilities as may be deemed necessary by KMC for the proper operation and conduct of the Department. KMC shall, in its sole discretion, determine the amount and type of space and facilities to be provided herein. Contractor shall use the space and equipment solely for the performance of the services required under this Agreement. Neither Contractor nor Group Physicians shall use such space or equipment for other business or personal use.

3.3 Use Limitations on Space. The use of any part of the space occupied by the Department for the general or private practice of medicine is prohibited. Contractor shall use the items furnished under this Agreement only for the performance of services required by this Agreement. This Agreement shall not be construed to be a lease to Contractor 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 Equipment. 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 Services and Supplies. KMC shall provide or arrange for the provision of janitorial services, housekeeping services, laundry and utilities, together with such other hospital

services, including medical records, administrative and engineering services, and expendable supplies as KMC deems necessary for the proper operation and conduct of the Department.

3.6 Control Retained in KMC. In compliance with title 22, California Code of Regulations, section 70713 KMC will retain professional and administrative responsibility for services rendered under this Agreement. Contractor shall apprise KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by KMC for follow-up action and evaluation of performance.

4. Payment for Services.

4.1 Compensation. As consideration for the services provided by Contractor hereunder, Authority 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 Stockdale Location. 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 Emergency Call Coverage. Authority shall pay Contractor a per diem rate in the amount of \$2,000 per day for scheduled emergency hand call coverage (excluding established patients).

4.1.3 KMC Clinic Coverage. Authority shall pay Contractor a per diem rate in the amount of \$2,000 per day for scheduled coverage in the outpatient hand clinic at KMC.

4.1.4 KMC Operating Room Coverage. Authority shall pay Contractor a per diem rate in the amount of \$2,000 per twenty-four (24) hour day for surgical procedures performed in the operating room at KMC.

4.1.5 Maximum Payable. The maximum payable under this Agreement will not exceed \$1,200,000 over the two (2) year term of this Agreement.

4.1.6 Fair Market Value. 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 Limitations on Compensation. 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 Invoices. Invoices for payment shall be submitted in a form approved by KMC and list each service performed. Invoices and receipts shall be sent to KMC for review and processing within 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 Taxpayer Identification. To ensure compensation is reported as paid to the proper party, Contractor will complete and execute IRS Form W-9 (Exhibit "A," attached hereto and incorporated herein by this reference), which identifies the taxpayer identification number for Contractor.

4.5 Billing and Collection.

4.5.1 Group Billing and Charges. 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) Schedule of Charges. 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) Prevailing Charges. 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) Hospital Charges. 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) Billing Generally. 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) Billing Compliance. 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 Reconciliation. 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 and Group Physicians 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 and Group Physicians 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 and Group Physicians 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) Indemnification. 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 and Group Physicians 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 Professional Fee Billing. KMC shall have the exclusive right to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by Contractor to KMC patients 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.

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

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. **Assignment.** Contractor shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement. Contractor shall not assign any money due or which becomes due to Contractor under this Agreement without the prior written approval of Authority.

8. **Audits, Inspection and Retention of Records.** Contractor agrees to maintain and make available to Authority accurate books and records relative to all 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 shall have the same rights conferred upon Authority herein.

9. **Authority to Incur Financial Obligation.** It is understood that neither Contractor nor Group Physicians, in the performance of any and all duties under this Agreement, has no right, power or authority to bind Authority to any agreements or undertakings.

10. **Captions.** The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

11. **Change in Law.** In the event that a change in state or federal law or regulatory requirement (or the application thereof), any of which renders this Agreement illegal, impossible to perform, or commercially impracticable, the parties agree to negotiate immediately, in good

faith, any necessary or appropriate amendments(s) to the terms of this Agreement. If the parties fail to reach a mutually agreeable amendment within thirty (30) days of such negotiation period, this Agreement shall automatically terminate at the end of such thirty (30) day period.

12. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

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

14. **Compliance Program.** Contractor acknowledges that KMC has implemented a compliance program for the purpose of ensuring adherence to applicable federal and state laws, regulations and other standards. Contractor agrees that in the course of performance of its duties described herein that it shall act, and cause its employees to act, in conformance with the policies set forth therein. KMC shall make available such information relating to its compliance program as is appropriate to assist Contractor in adhering to the policies set forth in the compliance program. Contractor and its employees shall participate in compliance training and education as reasonably requested by KMC.

15. **Confidentiality.**

15.1 **Use and Disclosure Restrictions.** Neither party shall, without the written consent of the other, communicate confidential information of the other, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that the receiving party would protect its own confidential information. The foregoing obligations will not restrict either party from disclosing confidential information of the other party: (i) pursuant to applicable law; (ii) pursuant to the order or requirement of a court, administrative agency, or other governmental body, on condition that the party required to make such a disclosure gives reasonable written notice to the other party to contest such order or requirement; and (iii) on a confidential basis to its legal or financial advisors.

15.2 **Trade Secrets.** The parties 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 Patient Information. 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. 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 "C," attached hereto and incorporated herein by this reference.

15.4 Medical Staff and Committee Records. All records, files, proceedings and related information of Group Physicians, 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 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.

15.6 Non-disparagement. Each party agrees that it shall not make or cause to be made, any written (including, but not limited to, any emails, internet postings, remarks or statements) or verbal assertions, statements or other communications regarding the other party's business or each other which may be in any manner whatsoever defamatory, detrimental or unfavorable to such other party. Each party agrees that these non-disparagement covenants shall survive the termination of this Agreement.

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

20. **Disqualified Persons.** The parties mutually represent and warrant to one another that they and their respective representatives are not: (i) currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. section 1320a-7b-(f) (the "Federal health care programs") and/or present on the exclusion database of the Office of the Inspector General ("OIG") or the Government Services Administration ("GSA"); (ii) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits. This shall be an ongoing representation and warranty during the term of this Agreement and a party shall immediately notify the other party of any change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately upon written notice.

21. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to Authority is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or

hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

22. **Immigration Compliance.** Contractor shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified, and shall provide KMC with a copy of such verification required in 8 USCA section 1324a. Contractor agrees to indemnify, defend, and hold harmless Authority, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section 22.

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

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

25. **Informal Dispute Resolution.** Controversies between the parties with respect to this Agreement, or the rights of either party, or with respect to any transaction contemplated by this Agreement, shall be resolved, to the extent possible, by informal meetings and discussions among appropriate representatives of the parties.

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

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

28. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Authority and Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of Authority and Contractor that any such person or entity, other than Authority or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

29. **Non-appropriation.** Authority reserves the right to terminate this Agreement in the event insufficient funds are appropriated or budgeted for this Agreement in any fiscal year. Upon such termination, Authority will be released from any further financial obligation to Contractor, except for services performed prior to the date of termination or any liability due to any default existing at the time this clause is exercised. Contractor will be given 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. **Notices.** Notices to be given by one party to the other under this Agreement shall be given in writing by personal delivery, by certified mail, return receipt requested, or express delivery service at the addresses specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received four (4) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

Notice to Contractor:

Desert Hand and Plastic Surgery PC
11513 Covent Gardens Drive
Bakersfield, California 93311
Attn.: Its President

Notice to Authority:

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

34. **Signature Authority.** Each party represents that they have full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

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

36. **Termination.**

36.1 **Termination without Cause.** Either party may terminate this Agreement, without cause, upon one hundred twenty (120) days' prior written notice to the other party.

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

- A) Breach of this Agreement by Contractor where such breach is not cured within thirty (30) calendar days after Authority gives written notice of such breach to Contractor;
- B) Authority ceases operations;
- C) Contractor is unable to obtain or maintain sufficient insurance, as required under this Agreement, for any reason;
- D) Contractor makes an assignment for the benefit of creditors, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, dissolution, liquidation or other similar law of any jurisdiction;
- E) Contractor is rendered unable to comply with the terms of this Agreement for any reason;

- F) Contractor engages in conduct that, in Authority's good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of Authority or KMC;
- G) Within a twelve (12) month period, Contractor has two (2) or more medical malpractice claims filed against him or her, or he or she becomes the subject of two (2) or more adverse proceedings by the Medical Staff regarding the performance of professional medical services;
- H) Any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body, or any notice of a decision, finding, interpretation or action by any governmental, court or other third party which, in the opinion of Authority, if or when implemented, would result in the arrangement between the parties under this Agreement to subject Authority or any of its employees or agents, to civil or criminal prosecution or monetary penalties on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement;
- I) Violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or KMC is subject;
- J) Contractor makes an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC;
- K) Commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; or
- L) The loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of Contractor.

37. **Effect of Termination.**

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

37.2 **Vacate Premises.** Upon expiration or earlier termination of this Agreement, Contractor shall immediately vacate KMC, removing at such time any and all personal property

of Contractor. Authority may remove and store, at Contractor's expense, any personal property that Contractor has not so removed.

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

37.4 **No Hearing Rights.** Termination of this Agreement by Authority or KMC for any reason shall not provide Contractor or Group Physicians the right to a fair hearing or the other rights more particularly set forth in the KMC medical staff bylaws.

38. **Time of Essence.** Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

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

[Signatures follow on next page]

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

DESERT HAND AND PLASTIC SURGERY PC

By David Bowen MD
David T. Bowen, 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

Agreement.Bowen.030223

EXHIBIT “A”
IRS FORM W-9
[TO BE ATTACHED]

EXHIBIT "B"

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: \$300,000 each person bodily injury liability; \$500,000 each accident bodily injury liability; \$300,000 each accident property damage liability.
- (b) Insurance shall apply to all Owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 5 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

4. Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A;VII.

5. Additional Insured Wording: "**Kern County Hospital Authority, its officers, officials, employees and volunteers**" are to be named as Additional Insureds as per each section where noted above.

6. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:

- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
- (b) Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract work.*
- (c) If coverage is canceled or non-renewed, and *not replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, Contractor must purchase “extended reporting” coverage for a minimum of *five (5) years* after completion of the contract work.

7. Documentation:

- (a) The Certificate of Insurance must include the following reference: “**Agreement for Professional Services.**”
- (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with Authority for the entire term of this Agreement and any additional periods if specified in sections 1, 2 or 3 above.
- (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
- (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
- (e) Contractor shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
- (f) Upon written request, certified copies of required insurance policies must be provided to Authority within 30 days.

8. Policy Obligations: Contractor’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

9. Waiver of Subrogation: Contractor hereby grants to Authority a waiver of any right to subrogation, which any insurer of said Contractor may acquire against Authority by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Authority has received a waiver of subrogation endorsement from the insurer.

10. Primary Coverage: For any claims related to this Agreement, Contractor’s insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects Authority, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by Authority, its officers, directors, officials, employees, or volunteers shall be excess of Contractor’s insurance and shall not contribute with it.

11. Material Breach: If Contractor fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. Authority, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Authority may purchase the required insurance, and without further notice to Contractor, Authority may deduct from sums due to Contractor any premium costs advanced by Authority for such insurance. These remedies shall be in addition to any other remedies available to Authority.

[Intentionally left blank]

**EXHIBIT “C”
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“**BAA**”) is entered into by and between the Kern County Hospital Authority, a local unit of government, on behalf of Kern Medical Center (“**Covered Entity**”), and Desert Hand and Plastic Surgery PC, a California professional medical corporation (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of April 9, 2023 (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 45 C.F.R. § 164.501.

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

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

1.6 “**Protected Health Information**” and “**PHI**” mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 160.103. Protected Health Information includes e-PHI.

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

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

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

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

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

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

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

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

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or Subcontractors that is not specifically permitted by this BAA no later than twenty-four (24) hours 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 non-

permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity's Obligations

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

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

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

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

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

ARTICLE IV TERM AND TERMINATION

4.1 Term. Subject to the provisions of Section 4.1, the term of this BAA shall be the term of any Underlying Agreement.

4.2 Termination of Underlying Agreement.

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

4.2.2 Covered Entity may terminate the Underlying Agreement, effective immediately, if: (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

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

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

4.3.2 Upon thirty (30) calendar day written notice to Business Associate, immediately terminate this BAA and any Underlying Agreement if Covered Entity determines that such breach cannot be cured.

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

ARTICLE V MISCELLANEOUS

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

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

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

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

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

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

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

5.8 Indemnification. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, 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 Legal Actions. Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

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

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

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

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Desert Hand and Plastic Surgery PC
11513 Covent Gardens Drive
Bakersfield, CA 93311
Attn.: Its President

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

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

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

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

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

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

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

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

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

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

COVERED ENTITY:

The Kern County Hospital Authority on
behalf of Kern Medical Center

Title: Chairman, Board of Governors

Date: _____

BUSINESS ASSOCIATE:

Desert Hand and Plastic Surgery PC

David Bowen MD
Title: Its President

Date: 3/7/23



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

March 15, 2023

Subject: Proposed Agreement for Professional Medical Services with Tarun Rustagi, M.D.

Recommended Action: Approve; Authorize the Chairman to sign

Summary:

Kern Medical requests your Board approve an Agreement with Tarun Rustagi, M.D., for professional medical services in the Department of Medicine, for a term of one year from March 16, 2023 through March 15, 2024, in an amount not to exceed \$1,340,000. Dr. Rustagi is a fellowship trained, board certified gastroenterologist.

Dr. Rustagi's compensation is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents the reasonable fair market value compensation for the services provided. Dr. Rustagi's compensation is comprised of (i) GI Hospitalist services paid in the amount of \$4,120.87 per 24-hour shift and Dr. Rustagi must provide a minimum of 182 shifts per year; (ii) GI Hospitalist Excess Shifts; (iii) GI Hospitalist Excess Worked RVUs; (iv) Non-GI Hospitalist Outpatient Clinics; (v) Non-GI Hospitalist Generated Endoscopy Procedures. Dr. Rustagi will also receive the same complement of benefits offered all employed physicians to include eligibility to participate in the physicians' pension plan, healthcare coverage, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical. The maximum payable under the Agreement will not exceed \$1,340,000 over the one-year term, excluding the cost of benefits.

Therefore, it is recommended that your Board approve the Agreement with Tarun Rustagi, M.D., for professional medical services in the Department of Medicine from March 16, 2023 through March 15, 2024, in an amount not to exceed \$1,340,000, plus applicable benefits, and authorize the Chairman to sign.

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

This Agreement is made and entered into this ____ day of _____, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Tarun Rustagi, M.D. (“Physician”).

**I.
RECITALS**

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

(b) Authority requires the assistance of Physician to provide professional medical services in the Department of 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 has special training, knowledge and experience to provide 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.** The initial term of this Agreement (“Initial Term”) shall be for a period of one (1) year, commencing as of March 16, 2023, or the approved date of Physician’s nonimmigrant H-1B status, which permits work authorization, but no later than ninety (90) days after the approved H-1B visa date (the “Commencement Date”), and shall end March 15, 2024. At the end of the Initial Term and each Renewal Term (as hereinafter defined), if any, this Agreement may be renewed for two (2) additional terms of two (2) years each (“Renewal Term”), but only upon mutual written agreement of the parties. As used herein, the “Term” of this Agreement shall mean the Initial Term and all Renewal Terms. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter if any.

2. **Employment.** Authority hereby employs Physician for the practice of medicine in the care and treatment of patients at KMC, or at such other clinic sites as KMC may designate, including without limitation, hospital and clinic locations owned and operated by Adventist Health (collectively, “Practice Sites”). It is expressly understood and agreed that KMC shall have reasonable discretion to consolidate and relocate clinics operated by Authority and to re-

designate Practice Sites served by Physician from time to time. Physician shall be subject to Authority's employment policies, directives, rules and regulations as promulgated by Authority from time to time, including, but not limited to, those pertaining to employees.

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

4. **Obligations of Physician.**

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

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

4.3 **Qualifications.**

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

4.3.2 **Board Certification.** Physician shall be board certified by the American Board of Internal Medicine in gastroenterology-subspecialty and maintain such certification at all times during the Term of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

5. Compensation Package.

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

5.1.1 Compensation Methodology. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") for specialty and (ii) Physician will maintain a level of worked relative value units ("Worked RVU") at or above the seventy-fifth (75th) percentile 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 GI Hospitalist Shift Rate. Authority shall pay Physician a per diem rate of \$4,120.87 per twenty-four (24) hour day for GI Hospitalist shift coverage, based on the following productivity requirements:

A) Minimum Shifts per Employment Year Required: 182 shifts; and

B) Minimum Worked RVU per Employment Year: 10,568 Worked RVU.

5.1.3 GI Hospitalist Excess Shift Rate. Authority shall pay Physician a per diem rate of \$4,120.87 per twenty-four (24) hour day for shifts that exceed 182 shifts per Employment Year.

5.1.4 GI Hospitalist Excess Worked RVU. Physician shall be compensated for each Worked RVU at the rate of \$73 ("RVU Effort"), less all applicable federal and state taxes and withholdings, for each Worked RVU in excess of 20,435 generated while on service as a GI Hospitalist per Employment Year.

5.1.5 Non-GI Hospitalist Outpatient Clinics. Physician shall be compensated for each Worked RVU at the rate of \$73, less all applicable federal and state taxes and withholdings, for each Worked RVU generated in the performance of scheduled outpatient clinic appointments.

5.1.6 Non-GI Hospitalist Generated Endoscopy Procedures. Physician shall be compensated for each Worked RVU at the rate of \$73, less all applicable federal and state taxes and withholdings, for each Worked RVU generated in the performance of scheduled endoscopy procedures.

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

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

5.2 Director of Endoscopy Stipend. Authority shall pay Physician an annual stipend of \$961.53 biweekly, less all applicable federal and state taxes and withholdings, not to exceed \$25,000 annually for services as Director of Endoscopy. Physician understands and agrees that he must remain in the position of Director of Endoscopy as of each payout date in order to earn and receive the stipend payment.

5.3 Starting Bonus. Physician shall receive a starting bonus in the amount of \$25,000, less all applicable federal and state taxes and withholdings, payable within ten (10) business days of the Commencement Date. Physician shall forfeit the starting bonus if he fails to report to work on the Commencement Date.

5.4 Professional Fee Billing.

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

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

5.5 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$1,340,000 over the one (1) year Initial Term of this Agreement.

6. **Benefits Package.**

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

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

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

6.4 Vacation. Physician shall 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 of \$360.57 per hour. All payments made by Authority to Physician under this paragraph will be subject to all applicable federal and state taxes and withholding requirements.

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

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

6.7 CME Expense Reimbursement. Authority shall reimburse Physician for all approved reasonable and necessary expenditures related to continuing medical education in an

amount not to exceed \$2,500 per Employment Year, payable in arrears, in accordance with Authority policy, as amended from time to time. This amount may not be accumulated or accrued and does not continue to the following Employment Year.

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

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

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

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

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

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

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

6.15 Permanent Resident Card. Authority agrees to initiate the application process for Physician to obtain a Permanent Resident Card after Physician has completed three (3) months of full-time employment with Authority.

6.16 Immigration Expenses. Authority agrees to pay for all reasonable and necessary expenditures related to Physician's H-1B status and Permanent Resident Card in an amount not to exceed \$15,000.

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

7. **Assignment.** Physician shall not assign or transfer this Agreement or his obligations hereunder or any part thereof. Physician shall not assign any money due or which becomes due to Physician under this Agreement without the prior written approval of Authority.
8. **Assistance in Litigation.** Upon request, Physician shall support and assist Authority as a consultant or expert witness in litigation to which Authority is a party.
9. **Authority to Incur Financial Obligation.** It is understood that Physician, in his performance of any and all duties under this Agreement, has no right, power or authority to bind Authority to any agreements or undertakings.
10. **Captions and Interpretation.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.
11. **Choice of Law/Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the state of California, with venue of any action relating to this Agreement in the County of Kern, state of California.
12. **Compliance with Law.** Physician shall observe and comply with all applicable Authority, local, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which is hereby made a part hereof and incorporated herein by reference.
13. **Confidentiality.** Physician shall maintain confidentiality with respect to information that he receives in the course of his employment and not use or permit the use of or disclose any such information in connection with any activity or business to any person, firm or corporation whatsoever, unless such disclosure is required in response to a validly issued subpoena or other process of law or as required by Government Code section 6250 et seq. Upon completion of the Agreement, the provisions of this paragraph shall continue to survive.
14. **Conflict of Interest.** Physician covenants that he has no interest and that he will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law (Gov. Code, § 81000 et seq.) or that would otherwise conflict in any manner or degree with the performance of his services hereunder. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, Authority may immediately terminate this Agreement by giving written notice thereof.
15. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
16. **[Reserved]**

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

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

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

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

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

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

23. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of Authority. Forbearance or indulgence by Authority in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Physician.

Authority shall be entitled to invoke any remedy available to Authority under this Agreement or by law or in equity despite said forbearance or indulgence.

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

Notice to Physician:

Tarun Rustagi, M.D.
88 King Street, Unit 111
San Francisco, California 94107

Notice to Authority:

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

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

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

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

28. **Termination.**

28.1 **Termination without Cause.** Either party shall have the right to terminate this Agreement, without penalty or cause, by giving not less than sixty (60) days' prior written notice to the other party.

28.2 **Immediate Termination.** Notwithstanding the foregoing, Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events ("Event of Default"): (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; (xvi) Physician breaches any covenant set forth in paragraph 4.11; or (xvii) failure to comply at all times with the requirements of the H-1B visa waiver or subsequent visa status.

29. **Effect of Termination.**

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

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

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

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


29.5 Liquidated Damages. In the event that Physician terminates this Agreement during the Initial Term or this Agreement is terminated by Authority prior to the expiration of the Initial Term due to an Event of Default as defined in paragraph 28.2, the parties agree that Authority will suffer a substantial injury for which it is impracticable or extremely difficult to ascertain or fix actual damages with any degree of certainty. If Physician terminates this Agreement during the Initial Term or this Agreement is terminated by Authority prior to the expiration of the Initial Term due to an Event of Default, Physician agrees to pay liquidated damages to Authority according to the following schedule: \$15,000 if Physician terminates this Agreement before the end of the first Employment Year. The parties intend that Physician's payment of the liquidated damages amount would serve to compensate Authority for the early termination of this Agreement, and they do not intend for it to serve as punishment for such termination.

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

[Signatures follow on next page]

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

PHYSICIAN

By 
Tarun Rustagi, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

EXHIBIT “A”
JOB DESCRIPTION
Tarun Rustagi, M.D.

Position Description: Reports to Chair, Department of Medicine and Chief, Division of Gastroenterology; serves as a full-time faculty member in the Department.

Essential Functions:

1. Clinical Responsibilities

- Serves as attending physician in the Division of Gastroenterology
- Supervises residents and medical students assigned to the gastroenterology service
- Performs general AND advanced gastroenterology procedures
- Provides scheduled clinics at designated Practice Sites, including without limitation, KMC and Adventist Health, or at such other clinic sites as KMC may designate in its sole discretion
- Supervises Advance Practice Providers (APP) assigned to the gastroenterology service and ensures competence
- Provides daily inpatient rounds while on GI Hospitalist service
- GI Hospitalist shifts – minimum of 12 hours per day on-site while on service as a GI Hospitalist
- GI Hospitalist 24-hour call coverage – one in two (1:2) minimum while on service as a GI Hospitalist
- Ensures continuity of patient care by signing out to oncoming GI Hospitalist
- Works with administration to schedule outpatient clinics and endoscopy procedures for approved cases exclusive of patients presenting during GI Hospitalist shifts (applicable to follow-up services for this subset of patients only)
- Provides services to all patients regardless of their payer status (e.g., health insurance), physical or mental disability, medical condition, or designated Practice Sites
- Provides services to correctional medicine patients at designated Practice Sites, including without limitation, KMC and Adventist Health, or at such other clinic sites as KMC may designate in its sole discretion

2. Administrative Responsibilities.

- Serves as Director of Endoscopy
- Determines equipment needs for the gastroenterology laboratory
- Trains ancillary personnel assigned to the gastroenterology laboratory
- Attends and actively participates in assigned medical staff and hospital committees

3. Teaching Responsibilities.

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

Employment Standards:

Three (3) years of post-residency experience in gastroenterology

AND

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

AND

Certification by the American Board of Internal Medicine in gastroenterology-subspecialty

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

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

[Intentionally left blank]

EXHIBIT “B”

AUTHORIZATION TO RELEASE INFORMATION

[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.



Physician

03/10/2023

Date



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

March 15, 2023

Subject: Proposed Second Amendment to Agreement 074-2021 with Adventist Health Physicians Network for professional services

Recommended Action: Approve; Authorize the Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Second Amendment to Agreement 074-2021 with Adventist Health Physicians Network (AHPN) for professional services. The underlying Agreement was approved by your Board on December 15, 2021, as the first step in the process of bringing together Kern Medical and Adventist Health Bakersfield to partner in the development of a sought-after, powerful network of physicians for patients in Kern County.

The underlying Agreement with AHPN is for a term of 10 years from January 1, 2022 through December 31, 2031. During the term of the Agreement, Kern Medical will provide the professional medical services of certain Kern Medical physicians who specialize in various clinical specialties. The Amendment adds the specialties of endocrinology and gastroenterology services to the list of partnered specialties. Kern Medical employed physicians will provide clinic coverage at AHPN Clinics and call coverage at Adventist Health Bakersfield. Additional clinical specialties, as mutually agreed upon by the parties, may be added in the future by way of an amendment to the Agreement.

AHPN will compensate Kern Medical monthly on a pass-through basis for the services provided by Kern Medical physicians in accordance with the fee schedule set forth in Exhibit 2.1 of the Amendment. Specifically, AHPN will pay Kern Medical various negotiated rates for endocrinologists and gastroenterologists. Estimated compensation to be paid to Kern Medical totals \$1,871,297 annually. AHPN will have the exclusive right to bill and collect all professional fees for services provided by the Kern Medical physicians in the AHPN Clinics and at Adventist Health Bakersfield.

Therefore, it is recommended that your Board approve the Second Amendment to the Agreement 074-2021 with Adventist Health Physicians Network for professional services, adding the specialties of endocrinology and gastroenterology and compensation for the professional services provided by Kern Medical physicians, effective March 16, 2023, and authorize the Chief Executive Officer to sign.

SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

THIS SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (the “**Amendment**”) is made and entered into, effective as of March 16, 2023 (“**Amendment Effective Date**”), by and between ADVENTIST HEALTH PHYSICIANS NETWORK, a California nonprofit religious corporation (“**AHPN**”), and KERN COUNTY HOSPITAL AUTHORITY, a public agency that is a local unit of government (“**Kern Medical**”) with respect to the following:

RECITALS

A. AHPN and Kern Medical have entered into that certain Professional Services Agreement, effective January 1, 2022, as amended effective September 21, 2022 (collectively, the “**Agreement**”) pursuant to which Kern Medical provides the services of certain Kern Medical Physicians to provide professional services in certain specialties at AHPN Clinics.

B. AHPN and Kern Medical desire to amend the Agreement.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and the mutual promises and covenants contained herein, Hospital and Contractor agree as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.
2. **Exhibit 1.1.** Exhibit 1.1 to the Agreement is hereby amended and restated to read in its entirety as **Exhibit 1.1.**
3. **Exhibit 2.1.** Exhibit 2.1 to the Agreement is hereby amended and restated to read in its entirety as attached **Exhibit 2.1.**
4. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
5. **Continuing Effect of Agreement.** Except as herein provided, all of the terms and conditions of the Agreement remain in full force and effect from the Effective Date of the Agreement.
6. **Reference.** After the date of this Amendment, any reference to the Agreement shall mean the Agreement as amended by this Amendment.

[signature page follows]

IN WITNESS WHEREOF, AHPN and Kern Medical have executed this Amendment as of the day and year first written above.

AHPN

ADVENTIST HEALTH PHYSICIANS
NETWORK, a California nonprofit religious
corporation

Arby Nahapetian

By: Arby Nahapetian
Its President

KERN MEDICAL

KERN COUNTY HOSPITAL AUTHORITY

By: Scott Thygerson
Its Chief Executive Officer

APPROVED AS TO FORM:

By: Karen S. Barnes
Its Vice President and General Counsel

Exhibit 1.1

SPECIALTIES

1. Urology
2. Plastic Surgery
3. Gastroenterology
4. Endocrinology

Exhibit 2.1

COMPENSATION

1. **Professional Compensation.** AHPN shall pay to Kern Medical the following amounts for the Services provided by Kern Medical Physician (the “**Monthly Compensation**”):

A. **Urology.** For Services in the specialty of urology, AHPN shall pay Kern Medical on a pass-through basis in accordance with the following:

- i. **Professional Services:** Eight Hundred Ninety-Two Thousand Seven Hundred Eleven Dollars and Eighty-Five Cents (\$892,711.85) per FTE Kern Physician per year (“**Urology PSA Compensation**”), subject to the terms and conditions set forth below in Section 1.A.iii of this Exhibit 2.1. An “**FTE**” is defined as a Kern Medical Physician who provides a minimum of two thousand eight hundred hours (2,080) of Services per year.
- ii. **Call Coverage:** Compensation for AHPN Clinic Coverage and Hospital Call Coverage shall be in accordance with the following, depending on the number of Panel Members in the specialty of urology (“**Urology Panel Members**”):

# Panel Members	Weekday Rate (Monday - Friday)	Weekend Rate (Saturday/Sunday)
4 (1:4 call ratio) 5 (1:5 call ratio)	\$1,600/day	\$1,600/day
6 (1:6 call ratio)	\$1,000/day	\$1,200/day
7 (1:7 call ratio)	\$500/day	\$600/day

In the event that there are eight (8) or more Urology Panel Members, there shall be no additional compensation paid to Kern Medical by AHPN for call coverage.

- iii. The Parties shall conduct an annual reconciliation against the actual costs incurred by Kern Medical for the employment costs associated with Kern Medical Physicians providing Services in the specialty of urology under this Agreement; provided, however, that the aggregate compensation paid to Kern Medical for Services under Sections 1.A.i and ii in the specialty of urology (“**Urology Aggregate Compensation**”) shall not exceed Three Million Two Hundred Eight-Three Thousand Six Hundred Twenty-Eight Dollars (\$3,283,628) per year (“**Urology PSA Cap**”) even if Kern Medical’s costs exceed such amount. In the event that Kern Medical’s costs are less than the Urology Aggregate Compensation, then Kern Medical shall remit the different to AHPN within thirty (30) days of each anniversary date of this Agreement.

- iv. Starting Bonus: Fifty percent (50%) of the actual starting bonus paid by Kern Medical, the amount paid by AHPN shall not exceed Thirty Thousand Dollars (\$30,000) (“**Urologist Starting Bonus**”).
1. AHPN shall pay the Urologist Starting Bonus within thirty (30) days of the Kern Medical Physician commencing the provision of Services under this Agreement (“**Urologist Starting Bonus Payment Date**”).
 2. The gross amount of the Urologist Starting Bonus shall be amortized over the term of this Agreement. If the Agreement is terminated for any reason (other than by AHPN under Section 5.2 or by Kern Medical under Section 5.4 of the Agreement) prior to one (1) year from the Urologist Starting Bonus Payment Date (the “**Urology One-Year Retention Period**”), Kern Medical agrees to immediately, upon demand, pay to AHPN the unamortized gross amount of the Urologist Starting Bonus paid to Kern Medical. The unamortized amount shall be calculated by multiplying the total gross Urologist Starting Bonus paid by the sum of the whole and partial calendar months measured from the date the Agreement is terminated through the last calendar day of the Urology One-Year Retention Period, *divided by* twelve (12).
 3. If the Agreement is terminated by AHPN under Section 5.2 or by Kern Medical under Section 5.4 of the Agreement prior to the end of the Urology One-Year Retention Period, Kern Medical is not required to repay any amount of the Urologist Starting Bonus as long as the total compensation paid to the Kern Medical Physician(s) in the specialty of urology, including the Urologist Starting Bonus, during the time such Kern Medical Physician(s) provided Services under this Agreement does not exceed the median annual compensation in the applicable specialty, based on the weighted average of the then-current Medical Group Management Association (MGMA) Physician Compensation and Production Survey, Western Region, AMGA Medical Group Compensation and Productivity Survey Report and SCA Physician Compensation and Production Survey (the “**FMV Benchmark**”). If the Kern Medical Physician’s total compensation, including the full amount of the Urologist Starting Bonus exceeds the FMV Benchmark, Kern Medical agrees to promptly pay to AHPN the difference between the total compensation the Kern Medical Physician(s) received and FMV Benchmark, prorated to reflect the actual time such Kern Medical Physician(s) spent providing Services under this Agreement if less than Urology One-Year Retention Period, plus the then-current Prime Rate per annum that begins to accrue thirty (30) days after the termination date; provided, however,

that interest shall never accrue at an annual rate greater than the maximum rate permitted to be charged under applicable law on commercial loans between unrelated persons.

B. Plastic Surgery. For Services in the specialty of plastic surgery, AHPN shall pay Kern Medical on a pass-through basis in accordance with the following:

- i. Professional Services and 24/7/365 Call Coverage: Five Hundred Twenty Thousand Four Hundred Ninety Dollars (\$520,490) for a 0.75 FTE Kern Medical Physician.

C. Gastroenterology. For Services in the specialty of gastroenterology, AHPN shall pay Kern Medical on a pass-through basis in accordance with the following:

- i. Professional Services: Four Thousand Five Hundred Eighty-One Dollars and Thirty-Seven Cents (\$4,581.37) per 24-hour shift ("**GI Shift**") for the first One Hundred Eighty-Two (182) GI Shifts for a 1.0 FTE Kern Medical Physician not to exceed Eight Hundred Thirty-Three Thousand Eight Hundred Nine Dollars (\$833,809) per year. For each subsequent GI Shift in excess of One Hundred Eighty-Two (182), AHPN shall pay Kern Medical Four Thousand Two Hundred Twenty-Four Dollars (\$4,224) per GI Shift not to exceed Four Hundred Forty-Seven Thousand Seven Hundred Forty-Four Dollars (\$447,744) per year. Each GI Shift shall include twelve (12) hours of restricted, on-site call coverage and twelve (12) hours of unrestricted call coverage.
- ii. Inpatient GI hospitalist services: Seventy-Three Dollars (\$73) for each wRVU in excess of Twenty Thousand Four Hundred Thirty-Five (20,435) wRVUs per year.
- iii. Non-GI Hospitalist Outpatient Clinic and Generated Endoscopy Procedures: Seventy-Three Dollars (\$73) per wRVU not to exceed Four Thousand (4,000) wRVUs per year.
- iv. Director of Endoscopy Services: Twenty-Five Thousand Dollars (\$25,000) per year for a minimum of One Hundred Eleven (111) hours per year. In the event that the Kern Medical Physician provides less than One Hundred Eleven (111) hours per year, AHPN shall pay Kern Medical Physician an amount equal to Two Hundred Twenty-Five Dollars (\$225) per hour.
- v. **Starting Bonus:** Twenty-Five Thousand Dollars (\$25,000) ("**GI Starting Bonus**").
 1. AHPN shall pay the GI Starting Bonus within thirty (30) days of the Kern Medical Physician commencing the provision of Services under this Agreement ("**GI Starting Bonus Payment Date**").

2. The gross amount of the GI Starting Bonus shall be amortized over the term of this Agreement. If the Agreement is terminated for any reason (other than by AHPN under Section 5.2 or by Kern Medical under Section 5.4 of the Agreement) prior to one (1) year from the GI Starting Bonus Payment Date (the “**GI One-Year Retention Period**”), Kern Medical agrees to immediately, upon demand, pay to AHPN the unamortized gross amount of the GI Starting Bonus paid to Kern Medical. The unamortized amount shall be calculated by multiplying the total gross GI Starting Bonus paid by the sum of the whole and partial calendar months measured from the date the Agreement is terminated through the last calendar day of the GI One-Year Retention Period, *divided by* twelve (12).
3. If the Agreement is terminated by AHPN under Section 5.2 or by Kern Medical under Section 5.4 of the Agreement prior to the end of the GI One-Year Retention Period, Kern Medical is not required to repay any amount of the GI Starting Bonus as long as the total compensation paid to the Kern Medical Physician(s) in the specialty of gastroenterology, including the GI Starting Bonus, during the time such Kern Medical Physician(s) provided Services under this Agreement does not exceed the FMV Benchmark. If the Kern Medical Physician’s total compensation, including the full amount of the GI Starting Bonus exceeds the FMV Benchmark, Kern Medical agrees to promptly pay to AHPN the difference between the total compensation the Kern Medical Physician(s) received and FMV Benchmark, prorated to reflect the actual time such Kern Medical Physician(s) spent providing Services under this Agreement if less than GI One-Year Retention Period, plus the then-current Prime Rate per annum that begins to accrue thirty (30) days after the termination date; provided, however, that interest shall never accrue at an annual rate greater than the maximum rate permitted to be charged under applicable law on commercial loans between unrelated persons.

D. Endocrinology. For Services in the specialty of endocrinology, AHPN shall pay Kern Medical on a pass-through basis in accordance with the following:

- i. Professional Services: Two Hundred Seventeen Thousand Seven Hundred Forty-Four Dollars (\$217,744) for a 0.6 FTE Kern Medical Physician.
- ii. Starting Bonus: Fifty percent (50%) of the actual starting bonus paid by Kern Medical, the amount paid by AHPN shall not exceed Thirty Thousand Dollars (\$30,000) (“**Endocrinologist Starting Bonus**”).

1. AHPN shall pay the Endocrinologist Starting Bonus within thirty (30) days of the Kern Medical Physician commencing the provision of Services under this Agreement (“**Endocrinologist Starting Bonus Payment Date**”).
2. The gross amount of the Endocrinologist Starting Bonus shall be amortized over the term of this Agreement. If the Agreement is terminated for any reason (other than by AHPN under Section 5.2 or by Kern Medical under Section 5.4 of the Agreement) prior to one (1) year from the Endocrinologist Starting Bonus Payment Date (the “**Endocrinologist One-Year Retention Period**”), Kern Medical agrees to immediately, upon demand, pay to AHPN the unamortized gross amount of the Endocrinologist Starting Bonus paid to Kern Medical. The unamortized amount shall be calculated by multiplying the total gross Endocrinologist Starting Bonus paid by the sum of the whole and partial calendar months measured from the date the Agreement is terminated through the last calendar day of the Endocrinologist One-Year Retention Period, *divided by* twelve (12).
3. If the Agreement is terminated by AHPN under Section 5.2 or by Kern Medical under Section 5.4 of the Agreement prior to the end of the Endocrinologist One-Year Retention Period, Kern Medical is not required to repay any amount of the Endocrinologist Starting Bonus as long as the total compensation paid to the Kern Medical Physician(s) in the specialty of endocrinology, including the Endocrinologist Starting Bonus, during the time such Kern Medical Physician(s) provided Services under this Agreement does not exceed the FMV Benchmark. If the Kern Medical Physician’s total compensation, including the full amount of the Endocrinologist Starting Bonus exceeds the FMV Benchmark, Kern Medical agrees to promptly pay to AHPN the difference between the total compensation the Kern Medical Physician(s) received and FMV Benchmark, prorated to reflect the actual time such Kern Medical Physician(s) spent providing Services under this Agreement if less than Endocrinologist One-Year Retention Period, plus the then-current Prime Rate per annum that begins to accrue thirty (30) days after the termination date; provided, however, that interest shall never accrue at an annual rate greater than the maximum rate permitted to be charged under applicable law on commercial loans between unrelated persons.

2. **Specialist Recruitment Expenses.** Upon mutual agreement by the Parties, the Parties shall equally split the costs incurred by either Party in the recruitment of certain specialist physicians to provide professional services in the communities served by the Parties, including,

but not limited to the specialties of urology and gastroenterology. Upon successful recruitment of such specialist physician, the Parties shall amend this Agreement to reflect the Parties' agreement relating to compensation for the Services such recruited physician would provide to AHPN and its affiliates hereunder.

3. **Timing.** AHPN shall pay the Compensation due for Services performed by Kern Medical in the immediately preceding month within ten (10) business days after Kern Medical's submission of the monthly time report in accordance with this Agreement, as applicable.



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

March 15, 2023

Subject: Proposed Asset Purchase and Sale Agreement with Pinnacle Women's Health Group, Inc.

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the Asset Purchase and Sale Agreement ("Agreement") with Pinnacle Women's Health Group, Inc. ("Pinnacle"). Pinnacle provides obstetrics and gynecology medical services.

Kern Medical engaged the services of the national valuation firm, VMG Health, to conduct a valuation and fair market value analysis of Pinnacle. The purchase price is based on the fair market value opinion and analysis of the practice provided by VMG Health. The purchase of Pinnacle further enhances access to care for patients in the area and supports the graduate medical education training program.

As part of the conditions of the agreement, the Authority will use commercially reasonable efforts to employ or enter into independent contractor agreements with the physicians and any advanced practice providers employed by Pinnacle on the effective date of the transaction.

Pinnacle represents it has complied with and is not in material violation of any applicable laws affecting the practice or purchased assets; that no litigation, legal, or governmental actions are pending; that the purchased assets are free and clear of all claims; that the representations and warranties in the Agreement shall be correct and accurate as of the Closing and shall not contain any untrue statements of a material factor or omit any material fact that would be misleading.

As a condition of the purchase, Dr. Juan Lopez, who owns Pinnacle, will not, at any time within the five-year period immediately following the closing of the purchase, directly or indirectly engage in, or have an interest in any entity that engages in any activity in Kern County that is the same as, or similar to, or competitive with any activity now engaged by the Authority.

The Agreement is effective March 15, 2023, with a maximum payable not to exceed \$1,339,000, payable over two equal installments. The first installment of \$669,500 is to be paid within 15 days of closing, and the second installment is to be paid within 15 days of June 30, 2024. Pinnacle shall retain its accounts receivables generated prior to the closing from its practice locations.

Therefore, it is recommended that your Board approve the Asset Purchase and Sale Agreement with Pinnacle Women's Health Group, Inc., effective March 15, 2023, with a maximum payable not to exceed \$1,339,000, and authorize the Chairman to sign.

ASSET PURCHASE AND SALE AGREEMENT

This ASSET PURCHASE AND SALE AGREEMENT (this “Agreement”) is dated and effective as of March 15, 2023 (the “Effective Date”), by and between **PINNACLE WOMEN’S HEALTH GROUP, INC.**, a California professional medical corporation (“Seller”); and **JUAN M. LOPEZ, M.D.**, an individual (“Dr. Lopez”); and **KERN COUNTY HOSPITAL AUTHORITY**, a California public agency (“Buyer”), in Bakersfield, California, as described below. Seller, Dr. Lopez, and Buyer are referred to singularly as a “party” on a generic basis and collectively as the “parties.”

Recitals

This Agreement is made and entered into in reliance on the accuracy of the following facts and circumstances, which are acknowledged by the parties to be accurate, complete and true:

A. Seller is the owner and operator of a medical practice providing obstetrics and gynecology healthcare services (the “Practice”). Seller also is the owner of various assets used in the Practice, including, without limitation, goodwill, contracts, and other intangible property (collectively the “Business Assets”). Exhibit A contains a comprehensive list of the Business Assets;

B. Seller desires to sell the Practice and Business Assets (collectively the “Purchased Assets”) to Buyer, and Buyer desires to purchase the Purchased Assets from Seller, pursuant to the conditions, covenants, provisions and terms of this Agreement;

C. Seller’s principal, Dr. Lopez, and Buyer agreed that Buyer will extend Dr. Lopez’s employment by Buyer pursuant to the terms of an “Employment Agreement”; and

D. Seller believes it is in its best interest to sell the Purchased Assets to Buyer pursuant to this Agreement. In turn, Buyer believes that it would be in its best interests to purchase the Purchased Assets from Seller pursuant to this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and of other valuable consideration, the sufficiency of which they expressly acknowledge the parties agree and contract as follows:

Agreement

ARTICLE I. PURCHASE AND SALE OF PURCHASED ASSETS

1.1. Purchased Assets. Subject to the conditions, provisions and terms of this Agreement and at the Closing (as defined in Section 6.1.1), Seller shall assign, convey, deliver, sell and otherwise transfer to Buyer, and Buyer shall purchase from Seller, all rights and title to and interests in the Purchased Assets free and clear of all encumbrances:

1.2. Excluded Assets and Liabilities. The parties acknowledge and agree that except as specifically identified in Exhibit A of this Agreement, all other assets, interests and rights of Seller, including, without limitation, Seller’s accounts receivable, cash, vehicles, cell phones (and related cellular phone numbers), corporate books and records, rights to tax refunds and insurance proceeds, as well as, all

debts, liabilities and obligations of Seller, including, without limitation, claims, demands or damages suffered or allegedly suffered by patients related to or arising from Seller's or Dr. Lopez's acts or omissions in or for the Practice, are excluded from the scope of this Agreement and the transactions contemplated herein (the "Excluded Assets and Liabilities"). The foregoing exclusion of liabilities related to Dr. Lopez's acts or omissions shall have no bearing on Buyer's obligations to indemnify Dr. Lopez pursuant to the existing Employment Agreement between Buyer and Dr. Lopez.

1.3. The Purchase Price; Payment of the Purchase Price. As good and valuable consideration for the Purchased Assets, the purchase price (the "Purchase Price") shall be One Million Three Hundred Thirty-Nine Thousand Dollars and No Cents (\$1,339,000.00). Buyer shall pay the Purchase Price to Seller in two equal installments as follows:

- (a) Within fifteen (15) days after the Closing Date, Buyer shall pay to Seller Six Hundred Sixty-Nine Thousand Five Hundred Dollars and No Cents (\$669,500.00) in cash or cashier's check, or by wire transfer to Seller (the "First Installment"); and
- (b) Within fifteen (15) days after June 30, 2024, Buyer shall pay to Seller Six Hundred Sixty-Nine Thousand Five Hundred Dollars and No Cents (\$669,500.00) in cash or cashier's check, or by wire transfer to Seller (the "Second Installment").

Buyer shall not be required to pay interest or finance charges related to the second installment.

Upon the satisfaction of the closing conditions set forth in Article V below and the Closing, Buyer's obligation to pay Seller the Purchase Price shall be deemed absolute with no further conditions or obligations of Seller. Without limiting the generality of the foregoing, and by way of example only, the Purchase Price shall be paid to Seller, or Seller's successors and assigns as the case may be, by Buyer regardless of whether: (i) Dr. Lopez dies or becomes disabled before the Second Installment becomes due; and/or (ii) the Buyer enters the Omni Agreement (as defined in Section 1.4) or the Omni Agreement is cancelled or terminated before the Second Installment becomes due.

1.4. Omni Family Health Agreement. Among the assets of Seller is an agreement with **OMNI FAMILY HEALTH**, a California non-profit public benefit corporation ("Omni"), whereby Seller agreed to provide obstetrics and gynecology healthcare services to the patients of Omni (the "Seller Omni Agreement"). Seller shall cease providing services to Omni under the Seller Omni Agreement or any similar agreement effective as of the Closing Date. Buyer shall use commercially reasonable efforts to enter into an agreement with Omni whereby Buyer will agree to provide obstetrics and gynecology healthcare services to Omni patients commencing on the Closing Date (the "Omni Agreement"). Buyer shall use commercially reasonable efforts to do the following as part of its commercially reasonable efforts to enter into the Omni Agreement:

- (a) Employ or enter into independent contractor agreements with **YASSER MRAD, M.D.**, and **DIEGO MENDEZ, M.D.**;
- (b) Employ or enter into independent contractor agreements with any advanced practice providers that are employed by Seller on the Effective Date; and
- (c) Actively recruit qualified medical staff to ensure adequate staffing of Buyer's Department of Obstetrics and Gynecology as necessary to fulfill any obligations under the Omni Agreement.

Each of the foregoing employment or independent contractor agreements shall be based on Buyer's standard employment or independent contractor terms and conditions, including, without limitation, fair market value compensation and benefits for similarly situated employees or contractors of Buyer, background checks, preemployment physical examinations, and qualifications for medical staff membership.

1.5. Asset Sale. The parties specifically represent to each other that this Agreement is for the purchase and sale of assets. Buyer is not assuming any of the debts, liabilities, obligations or responsibilities of Seller, including without limitation, claims, demands or damages suffered or allegedly suffered by patients related to or arising from Seller's or Dr. Lopez's acts or omissions.

ARTICLE II. SELLER'S REPRESENTATIONS AND WARRANTIES

Except as otherwise provided herein, Seller represents and warrants to Buyer as described in this Article II. For the sole and exclusive purpose of this Article II, the phrase "to the best of Seller's knowledge" means the actual knowledge of Seller without duty of inquiry or investigation, or review of the public record.

2.1. Corporate Status. Seller is a professional medical corporation duly organized, validly existing and in good standing under and by virtue of the Laws (as defined in Section 9.14) of the State of California. Seller possesses all necessary powers to transact business in the State of California.

2.2. Title to and Condition of the Purchased Assets. Seller possesses good and marketable title to all its interests in the Purchased Assets. Upon the Closing, except as set forth immediately below, the Purchased Assets are, or will be at the time of the Closing, free and clear of liens or encumbrances.

2.3. Tax Returns and Audits. Seller has filed, or has otherwise filed timely and valid extensions for, all federal, California and local income, excise and franchise tax returns, personal property tax returns, sales and use tax returns, employee withholding tax returns and other tax returns required to be filed by Seller and has paid all taxes owing by it except taxes which have not yet accrued or otherwise become due, owing and payable.

2.4. Insurance Policies. Seller has maintained and now maintains the following:

- (a) Insurance on the Purchased Assets and the Practice of a type customarily insured, covering property damage and loss of income by casualty; and
- (b) Customary insurance protection against all claims, liabilities and risks against which it is customary to insure.

2.5. Other Contracts. Seller is not a party to any other agreements or contracts, whether written or oral, relating to or affecting the Purchased Assets or any interest therein which shall affect in any manner whatsoever Buyer's free and unfettered use and enjoyment of the Purchased Assets, nor has Seller received notice of any modification or termination of any agreement or contract which will materially affect the Practice or the Purchased Assets. There is no default or event that, with notice or lapse of time or both, would constitute a default by any third party to any of such other agreements or contracts.

2.6. Compliance with Laws. To the best of Seller's knowledge, Seller has complied with and is not in material violation of any applicable Laws affecting the Practice or the Purchased Assets.

2.7. Litigation. No litigation, actions, arbitrations or proceedings, whether legal, equitable, administrative or governmental investigations of any type are pending or, to the knowledge of Seller, threatened against or affecting Seller, the Practice, the Purchased Assets, or the consummation of this Agreement, including without limitation, condemnation proceedings against the leasehold estates created by the Leases. Seller also is not in default with respect to any order, writ, injunction or decree of any federal, state, local or foreign court, department, agency or instrumentality.

2.8. No Liens or Encumbrances; No Lease. To the best of Seller's knowledge, the Purchased Assets are free and clear of all claims, liens, security interests, and any other form of encumbrance. Furthermore, none of the Purchased Assets are leased by Seller (as either lessor or lessee).

2.9. Accuracy and Duration of Representations and Warranties. The representations and warranties made in this Agreement shall be correct and accurate in all respects on and as of the Closing, and shall not contain any untrue statements of a material fact or omit any material fact the omission of which would be misleading. The representations and warranties made in this Agreement shall survive the Closing for a period of six months (6 mos.) after the Closing.

2.10. Independent Legal Advice. Seller has received independent legal advice from its attorneys with respect to the advisability of both entering into this Agreement and consummating this transaction, and has carefully reviewed and considered the conditions, covenants, provisions and terms of this Agreement and this transaction.

ARTICLE III. BUYER'S REPRESENTATIONS AND WARRANTIES

Except as otherwise provided herein, Buyer represents and warrants as described in this Article III. For the sole and exclusive purpose of this Article III, the phrase "to the best of its knowledge" means the actual knowledge of Buyer without duty of inquiry or investigation, or review of the public record.

3.1. Public Agency Status. Buyer is a public agency validly existing under and by virtue of the Laws of the State of California. Buyer possesses all necessary powers to transact business in the State of California.

3.2. Litigation. To the best of Buyer's knowledge, no litigation, actions, arbitrations or proceedings, whether legal, equitable, administrative or governmental investigations of any type are pending or threatened which might affect the consummation of this Agreement by Buyer.

3.3. Authorization. Subject only to the approval of this Agreement by Buyer's Board of Governors, Buyer has full power and authority to execute and deliver this Agreement and all applicable exhibits to which it is a party, and perform its obligations hereunder and thereunder. The execution and delivery by Buyer of this Agreement and all applicable exhibits to which it is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all necessary approvals and actions. Subject only to the approval of this Agreement by Buyer's Board of Governors, this Agreement constitutes a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, and all applicable exhibits to which Buyer is a party, when executed and delivered by Buyer, will constitute valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms.

3.4. No Conflict. Neither the execution and delivery by Buyer of this Agreement or all applicable exhibits to which Buyer is a party, the performance by Buyer of its obligations hereunder or thereunder, nor the consummation of the transactions contemplated hereby or thereby will: (i) violate, conflict with or result in any breach of any provision of Buyer's authorizing statute or ordinance; (ii) violate, conflict with, result in any breach of, or constitute a default (or an event that, with notice or lapse of time or both, would constitute a default) under any contract, agreement, obligation (contingent or otherwise) judicial judgment or order, or any other arrangement to which Buyer is party or by which it is bound; or (iii) violate any applicable Laws.

3.5. Accuracy and Duration of Representations and Warranties. The representations and warranties made in this Agreement shall be correct and accurate in all respects on and as of the Closing, and shall not contain any untrue statements of a material fact or omit any material fact the omission of which would be misleading. These representations and warranties shall survive the Closing for a period of six months (6 mos.) after the Closing.

ARTICLE IV. OBLIGATIONS BEFORE CLOSE

4.1. Generally. Each party shall use its reasonable efforts to take all action and to do all things necessary, proper, or advisable to consummate and make effective the transactions contemplated by this Agreement (including, without limitation, satisfying the closing conditions set forth in Article V).

4.2. Access to Purchased Assets. Upon the request of Buyer and its counsel, accountants and other representatives, Seller shall furnish or cause to be furnished to Buyer and its counsel, accountants and other representatives all data and information and access to the Purchased Assets that may be reasonably requested by Buyer.

4.3. Operation of the Practice Prior to the Closing. Except as otherwise provided in this Agreement, Seller shall use its reasonable commercial efforts to ensure that the Practice does not engage in any practice, take any action, embark on any course of inaction, or enter into any transaction outside the ordinary course of business, or that would impair the licenses or permits of the Practice.

4.4. Preservation of the Practice. Except as otherwise provided in this Agreement and through and until the Closing, Seller shall use its reasonable commercial efforts to keep the Practice substantially intact, including, without limitation, the Purchased Assets, Seller's present operations, physical facilities, working conditions, and relationships with patients, lessors, licensors, suppliers and others having business relationships with Seller.

4.5. Maintenance of Insurance. Prior to the Closing, Seller agrees to continue to carry its existing insurance, subject to variations in amounts required by the ordinary operations of the Practice.

4.6. Risk of Loss. Prior to the Closing, Seller shall bear all risks of loss or diminution of value of the Purchased Assets. If Seller shall fail to restore the value of the Purchased Assets that are lost or suffered a diminution of value after the execution of this Agreement by all the parties and prior to the Closing, Buyer shall possess the option to either cancel this Agreement, in which case, the Employment Agreement (as defined in Section 5.1(b)(i)) will also be terminated, or the parties may agree to an appropriate reduction to the Purchase Price based on the loss or diminution of value of the Business Assets.

4.7. Notice of Developments. Seller shall give forty-eight (48) hours written notice to Buyer of any development affecting the Practice, the Purchased Assets or that reasonably could have a material adverse effect on the Practice or the Purchased Assets. No disclosure by any party pursuant to this Section 4.7 shall be deemed to amend or supplement, or to prevent or cure any breach of covenant, misrepresentation or breach of warranty.

4.8. Cooperation Obtaining Consent. The parties agree to use their commercially reasonable efforts to assist each other in obtaining any and all necessary consent to consummate the transactions contemplated by this Agreement.

4.9. Exclusivity. Unless this Agreement is terminated pursuant to Section 8.1, Seller shall not solicit, initiate, or encourage the submission of any proposal or offer from any person relating to any similar transaction or business combination involving Seller for the Practice on the Purchased Assets.

ARTICLE V. CONDITIONS PRECEDENT TO CLOSE

5.1. Conditions to Buyer's Performance. Buyer's obligation to purchase the Purchased Assets described in this Agreement is subject to the satisfaction, on or before the Closing, of the following conditions:

- (a) Except as otherwise permitted by this Agreement, all representations and warranties by Seller in this Agreement or in any written statement that should be delivered to Buyer at any time under this Agreement, shall be true in all material respects as if such representations and warranties were made on and as of the Effective Date;
- (b) Seller shall have executed and then delivered the following documents to the Buyer where indicated:
 - (i) Duplicate originals of the "Agreement for Professional Services Contract Employee" between Buyer, as the employer, and Dr. Lopez, as employee, for the employment of Dr. Lopez by Buyer in the form attached hereto as Exhibit B (the "Employment Agreement") to Buyer on or before February 18, 2023; and
 - (ii) Duplicate originals of the "Assignment of Intangible Personal Property" between Seller, as the assignor, and Buyer, as the assignee, for the assignment, assumption and transfer of the Intangible Personal Property in the form attached hereto as Exhibit C (the "Assignment");
- (c) Conditional Certificate of Release from **THE CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT**, a California public agency (the "EDD"), stating that, as of the date not more than forty-five (45) days before the Closing, no contributions, interest or penalties are due to the EDD from Seller;
- (d) A conditional clearance certificate from the **CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION**, a California public agency ("CDTFA"), and any related certificates that Buyer may reasonably request as evidence that all sales and use tax liability of Seller accruing before the Closing have been fully

satisfied or provided for;

- (e) All necessary agreements and consents of any parties to the consummation of this transaction pursuant to this Agreement, or otherwise pertaining to the matter covered by it shall have been obtained by Buyer, Seller or both;
- (f) Each of the following shall be true and complete as of the Closing:
 - (i) There has been no material adverse change in the condition of the Purchased Assets during the period of the effective date of this Agreement through the Closing, inclusive;
 - (ii) All debts, liabilities, obligations or responsibilities collateralized by attachments, charges, claims, conditions, covenants, encumbrances, equities, liens, pledges or restrictions relating to the Purchased Assets shall be paid in full or otherwise satisfied in full prior to or at the Closing shall have been fully released or otherwise terminated of record to the reasonable satisfaction of Buyer; and
 - (iii) No unsatisfied liens for the failure to pay taxes of any nature whatsoever shall exist against Seller, or against or in any way affecting any of the Purchased Assets;
- (g) Buyer shall be satisfied in its reasonable discretion with the results of its continuing legal, financial and business due diligence investigations of Seller, the Practice and the Purchased Assets;
- (h) Buyer's duty, obligation and responsibility to purchase the Purchased Assets or otherwise to perform any duty, obligation or responsibility under this Agreement shall be expressly conditioned upon Buyer's approval, in its sole and absolute discretion, of its due diligence upon the Practice and all business, economic, engineering, environmental, and legal aspects of the Purchased Assets and to make all inspections and investigations of the Practice and the Purchased Assets which Buyer deems necessary or desirable to protect its interests in acquiring the Purchased Assets on or before Closing. Should Buyer disapprove anything concerning the Practice and/or the Purchased Assets, Buyer shall have the power, exercisable in its sole discretion by giving of written notice to Seller, of either of the following:
 - (i) To terminate this Agreement, in which event the parties shall be relieved and released of any further obligations hereunder; or
 - (ii) To waive such condition and proceed with the Closing; and
- (i) Dr. Lopez's employment by Buyer shall have commenced under the Employment Agreement.

5.2. Conditions to Seller's Performance. Seller's obligation to sell the Purchased Assets is subject to the satisfaction, on or before the Closing, of the following conditions:

- (a) Except as otherwise permitted by this Agreement, all representations and warranties by Buyer contained in this Agreement or in any written statement that should be delivered to Seller at any time under this Agreement, shall be true in all material respects as if such representations and warranties were made as of the effective date of this Agreement;
- (b) Buyer shall have executed and then delivered the following documents to Seller:
 - (i) Duplicate originals of the Employment Agreement; and
 - (ii) Duplicate originals of the Assignment; and
- (c) By cashier's check or by wire transfer for the benefit of Buyer or other designated third parties funds in an amount necessary to pay the amount specified under Sections 6.2.2 if any.

5.3. Bulk Sales Act. The parties agree that the Bulk Sales Act does not apply to this transaction because Seller's principal business is not the sale of inventory from stock.

ARTICLE VI. THE CLOSE

6.1. Closing. At such time as the conditions precedent set forth in Article V have either been satisfied or waived by the party for whose benefit the condition precedent would have been satisfied, the transaction contemplated by this Agreement shall close on or before **Friday, March 15, 2023** (the "Closing").

6.2. Documents to Be Delivered by the Parties at Closing.

6.2.1. Documents to Be Delivered by Seller. At the Closing, Seller shall deliver to Buyer the following documents executed where required by Seller:

- (a) Duplicate originals of Assignment;
- (b) An original Conditional Certificate of Release from the EDD; and
- (c) An original conditional clearance certificate from the CDTFA.

6.2.2. Documents to Be Delivered by Buyer at Closing. At the Closing, Buyer shall deliver to Seller the following documents executed where required by Buyer:

- (a) Duplicate originals of the Assignment; and
- (b) A cashier's check or by wire transfer in the sum of the First Installment and Buyer's portion of the costs and expenses under Sections 6.4.

6.3. Delivery of the Documents Between the Parties and Other Actions Post Closing. Immediately after the Closing, the parties shall deliver to each other the following collated, fully executed originals or copies, as specified, of the Assignment to Seller and to Buyer.

6.4. Taxes; Prorations. Buyer shall be responsible for all sales, transfer and/or use taxes, including without limitation, sales, use, excise, stamp, documentary, filing, recording, permit, license, authorization or other similar taxes and filing fees and similar charges on the Purchased Assets that may become due, owing and payable upon the Closing. Buyer also shall comply with the provisions of the tax Laws of the State of California.

6.5. Possession. If any, Seller shall transfer to Buyer on the Closing the originals of all permits and other documents to be transferred to Buyer under this Agreement which have not yet been delivered to Buyer, provided that Seller may retain copies of all or any of the foregoing documents.

ARTICLE VII. OBLIGATIONS DURING AND AFTER CLOSE

7.1. Seller's Indemnification. Seller shall defend, indemnify and hold Buyer, including, without limitation, its accountants, administrators, agents, assignees, attorneys, beneficiaries, conservators, directors, employees, executors, guardians, heirs, joint venturers, independent contractors, members, managers, officers, partners, representatives, servants, stockholders, successors, and all others acting for, under, or in concert with it, present and future (collectively the "Buyer Indemnified Parties"), harmless of and from any and all past, present and future accounts, actions, agreements, causes of action, claims, costs or expenses (including, without limitation, attorneys' fees and disbursements), damages, debts, demands, liabilities, losses, obligations, reckonings or taxes of any kind or nature whatsoever, for compensatory or exemplary and punitive damages, or declaratory, equitable or injunctive relief, whether based on contract, tort, or other theories of recovery provided for by the common or statutory Law, ascertained or unascertained, known or unknown, patent or latent, suspected or claimed, arising out of, concerning or related in any way to the following:

- (a) Any breach by Seller of this Agreement;
- (b) The breach of any of the covenants, representations or warranties made by Seller herein;
- (c) From and in connection with the Purchased Assets prior to the Closing, including, without limitation, the management and operation of the Practice and/or management or maintenance of patient records; or
- (d) Any liability or obligation of Seller which Buyer is not required to assume hereunder or accruing prior to such assumption, including, without limitation, any claims, demands, or damages suffered or allegedly suffered by patients related to or arising from the acts or omissions of Seller or Dr. Lopez and personal injury or property damage suffered in, on or about the Purchased Assets or taxes incurred and owing by Seller occurring prior to the Closing or any personal injury or property damage to the Excluded Assets and Liabilities.

7.2. Buyer's Indemnification. Buyer shall defend, indemnify and hold Seller, including, without limitation, its accountants, administrators, agents, assignees, attorneys, beneficiaries, conservators, directors, employees, executors, guardians, heirs, joint venturers, independent contractors, members, officers, partners, representatives, servants, stockholders, successors, and all others acting for, under, or in concert with it, present and future (collectively the "Seller Indemnified Parties"), harmless of and from any and all past, present and future accounts, actions, agreements, causes of action, claims, costs or expenses (including, without limitation, attorneys' fees and disbursements), damages, debts, demands, liabilities,

losses, obligations, or reckonings of any kind or nature whatsoever, for compensatory or exemplary and punitive damages, or declaratory, equitable or injunctive relief, whether based on contract, tort, or other theories of recovery provided for by the common or statutory Law, ascertained or unascertained, known or unknown, patent or latent, suspected or claimed, arising out of, concerning or related in any way to the following:

- (a) Any breach by Buyer of this Agreement;
- (b) The breach of any of the covenants, representations or warranties made by Buyer herein; or
- (c) From and in connection with the Purchased Assets after the Closing, including, without limitation, the management and operation of the Practice.

7.3. Employee Matters.

7.3.1. Generally. Except as provided in Section 1.4 and Buyer employment of Dr. Lopez pursuant to the Employment Agreement, Buyer shall have no duty, obligation or responsibility to any employees of Seller (collectively the “Employees”) with respect to the continuation of employment of or benefit for any employees. Upon the Closing and in its discretion, Seller may terminate all or some of the Employees, and also pay such terminated Employees any and all accrued compensation, including, without limitation, compensation for accrued vacation time. Seller also shall provide the Employees with any and all employee benefit plans or arrangements, health benefits and other benefits to which they are entitled under applicable Laws. Seller additionally shall satisfy its continuing duties, obligations and responsibilities under COBRA.

7.3.2. Buyer Right to Interview; No Right to Employment with Buyer. Except as provided in Section 1.4 and the employment of Dr. Lopez pursuant to the Employment Agreement, Buyer shall have the right, but not the obligation to interview some or all the Employees concerning future employment with Buyer after the Closing. Nothing expressed or implied in this Agreement shall confer upon any of Seller’s officers and employees, whether current or former, any rights or remedies, including, without limitation, any right to employment whether directly or as a third-party beneficiary, or continued employment for any specified period, of any nature or kind whatsoever.

7.3.3. Indemnification by Seller. To the extent provided in Section 7.1, Seller shall indemnify, hold harmless and defend Buyer: (i) from all claims by any of Seller’s officers or employees, whether current or former, or by any spouse, dependent, estate or other beneficiary or representative of such officer or employee; and (ii) from any claims or charges by, or relating to, any such officer or employee concerning wrongful termination, discrimination or harassment or violation of any Law, including, without limitation: [A] the Fair Labor Standards Act; [B] the Labor Management Relations Act; [C] the Worker Adjustment and Retraining Notification Act; [D] the Americans With Disabilities Act; [E] ERISA; [F] COBRA; [G] the National Labor Relations Act; [H] the Family and Medical Leave Act; and [I] Title VII of the Civil Rights Act of 1964, all as attributable to the conduct of Seller or any of its officers and employees, current and former with respect to such officer or employee relating to the period prior to the Closing.

7.4. Litigation Support. In the event and for so long as any party actively is contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand relating either to (i) this Agreement, the Practice or the Purchased Assets; or (ii) any action, activity, circumstance, condition, event, fact situation, failure to act, incident, occurrence, plan, practice, status or

transaction on or prior to the Closing involving either Seller, the Practice or the Purchased Assets, the other party shall cooperate with the contesting or defending party and its counsel in the contest or defense, make available its personnel, and provide such testimony and access to its books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending party (unless the contesting or defending party is entitled to indemnification therefore under either Section 7.1 or 7.2, as applicable).

7.5. Tax Matters. Buyer, as applicable, shall pay all transfer taxes, including without limitation, sales, use, excise, stamp, documentary, filing, recording, permit, license, authorization or other similar taxes and filing fees and similar charges resulting from this Agreement, or any other written agreements between the parties, or the transactions contemplated hereby or thereby, regardless of upon whom such transfer tax is levied or imposed by Law. However, Seller shall be liable for any and all taxes relating to the Practice, including, without limitation, the Purchased Assets, for taxable periods ending on or before the Closing. Seller also shall be liable for any and all taxes imposed with respect to the Practice (including, without limitation, the Excluded Assets and Liabilities) other than the Purchased Assets for taxable periods after the Closing. Buyer shall be liable for any and all taxes other than any transfer taxes imposed with respect to Seller that are attributable to the Purchase Assets for any taxable periods after the Closing.

7.6. Non-Competition; Non-Solicitation.

7.6.1. Non-Competition. In consideration for the payment by Buyer of the Purchase Price and other terms conditions and covenants in this Agreement and other consideration paid to Dr. Lopez under and through the Employment Agreement, Seller and Dr. Lopez shall not, at any time within the five (5)-year period immediately following the Closing, directly or indirectly engage in, or have any interest in any entity (whether as an employee, officer, director, agent, security holder, creditor, consultant, or otherwise) that engages in any activity in the County of Kern, California (the "County") that is the same as, similar to, or competitive with any activity now engaged in by Buyer (or any successor or successors of Buyer) in the County as long as Buyer (or any successor) engages in the activity in the County.

7.6.2. Non-Solicitation – Employees and Contractors. Seller and Dr. Lopez agree that at any time within the five (5)-year period immediately following the Closing, Seller and Dr. Lopez will not attempt, directly or indirectly, for themselves or others, to recruit, solicit, or refer and will not hire or contract with, as an independent contractor or otherwise, any person who is or was known by Seller and Dr. Lopez to be employed by or under contract as an independent contractor with Buyer, or was introduced to Seller or Dr. Lopez through Buyer.

7.6.3. Non-Solicitation – Patients. Seller and Dr. Lopez agree that at any time within the five (5)-year period immediately following the Closing, Seller and Dr. Lopez will not attempt, directly or indirectly, for themselves or others, to recruit, solicit, any of Buyer's patients, whether said patients are included on the Seller's patient list transferred to Buyer hereunder.

7.7. Change Corporate Name. After the Closing Date, Corporation shall not use or employ in any manner directly or indirectly "Pinnacle Women's Health Group, Inc.," or any variation thereof, and it shall take and cause to be taken all necessary action by its board of directors, shareholders, and any other Persons to make this change in Corporation's name on or before the Closing.

7.8. Collections. Consistent with Section 1.2, Seller shall retain its accounts receivable generated from the Practice at locations other than Buyer's facilities. Seller may collect or sell its accounts receivable and retain or otherwise use at its sole discretion any and all accounts receivable or proceeds therefrom until Closing. Seller covenants that it will not generate new billings or accounts receivable for

its own account on or after the Closing Date, except for such billings generated by Dr. Lopez for the benefit of Buyer pursuant to the Employment Agreement.

7.9. Tail Insurance Coverage. Seller and Dr. Lopez shall each maintain medical malpractice tail insurance coverage or continuous claims made liability coverage, provided that the effective date of the continuous claims made coverage is on or before the effective date of this Agreement, for (i) a minimum of Forty-Eight (48) months following the Closing for Seller, and (ii) in perpetuity for Dr. Lopez (collectively, the “Tail Coverage”). Upon the presentation of written evidence of the Tail Coverage premiums, Buyer shall reimburse Seller and Dr. Lopez a combined total amount of up to One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00) of the premiums of the Tail Coverage.

VIII. TERMINATION OF THIS AGREEMENT; DEFAULT BY A PARTY

8.1. Termination of Agreement. This Agreement may or shall, as applicable, terminate as follows:

- (a) Buyer may terminate this Agreement by giving written notice to Seller either (i) if the results of its due diligence was unsatisfactory at any time prior to the expiration of the Due Diligence Period, or (ii) if Seller is in breach of any condition, provision, representation, term or warranty contained in this Agreement at any time prior to the Closing;
- (b) Seller may terminate this Agreement by giving written notice to Buyer if Buyer is in breach of any condition, provision, representation, term or warranty contained in this Agreement at any time prior to the Closing; or
- (c) This Agreement shall terminate upon mutual agreement of the parties.

8.2. Effect of Termination. If either party terminates this Agreement pursuant to Section 8.1, all duties, obligations and responsibilities of the parties hereunder shall terminate without any duty, obligation or responsibility of a party to the other party.

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1. Limitation of Liability. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY’S PARENT, SUBSIDIARY OR AFFILIATED ORGANIZATIONS, ADMINISTRATORS, AGENTS, ATTORNEYS, BENEFICIARIES, CONSERVATORS, CUSTODIANS, DIRECTORS, EMPLOYEES, EXECUTORS, GUARDIANS, HEIRS, INDEPENDENT CONTRACTORS, JOINT VENTURERS, MANAGERS, MEMBERS, OFFICERS, PARTNERS, PREDECESSORS, REPRESENTATIVES, SERVANTS, STOCKHOLDERS, SUCCESSORS, TRUSTEES AND ALL OTHERS ACTING FOR, UNDER, OR IN CONCERT WITH IT, INCLUDING ASSOCIATIONS, CORPORATIONS, LIMITED LIABILITY COMPANIES, AND GENERAL OR LIMITED PARTNERSHIPS, AS APPLICABLE, HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE. THE FOREGOING LIMITATION ON LIABILITY SHALL SURVIVE THE CLOSING OR ANY EARLIER TERMINATION OF THIS AGREEMENT, AND SHALL NOT DIMINISH OR

OTHERWISE AFFECT THE PARTY'S WAIVERS AND RELEASES IN ANY OTHER CONDITION, PROVISION OR TERM OF THIS AGREEMENT.

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JML

Seller's Initials

Buyer's Initials

9.2. Remedies Exclusive; Exercise of Remedies. The remedies specified herein for the enforcement of this Agreement are exclusive; provided, however, nothing contained herein is intended to abrogate, modify or affect either party's right to be indemnified, held harmless and defended except as expressly set forth in this Agreement, it being understood that such obligations of the parties shall survive termination of this Agreement and if applicable, the Closing. The exercise of any right or remedy by either party pursuant to this Agreement shall not in any way constitute a cure or waiver of any default hereunder, invalidate any act done pursuant to any notice of default, or prejudice either party in the exercise of any of their respective rights pursuant to this Agreement.

9.3. Attorneys' Fees and Disbursements. In the event of any arbitration, litigation or other dispute between the parties in connection with the interpretation, performance or enforcement of this Agreement, the prevailing party in such arbitration, litigation or other dispute shall be entitled, in addition to equitable relief or damages or both or other relief, to be reimbursed by the non-prevailing party for all reasonable costs and expenses of the arbitration, litigation, or other dispute including, without limitation, arbitration costs, arbitrator's fees court costs, expert witness fees, investigation costs and such reasonable attorneys' fees and disbursements, incurred therein by such prevailing party or parties and if such prevailing party or parties shall recover judgment in any such action or proceedings, such costs, expenses and attorneys' fees may be included in and as a part of such judgment. The prevailing party or parties shall be the party who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgment. If no costs of suit are awarded, the arbitrator(s) or court, as applicable, shall determine the prevailing party. Notwithstanding the foregoing, in the event the parties agree to mediate a dispute, each party shall pay its own costs and expenses, including, without limitation, attorney's fees and disbursements, of mediation.

9.4. Notices. All notices, demands, or other communications that either party desires or is required or permitted to give or make to the other party under or pursuant to this Agreement (collectively referred to as "notices") shall be made or given in writing and shall either be: (i) personally served; (ii) sent by registered or certified mail, postage prepaid; (iii) sent by e-mail; or (iv) sent by a nationally recognized overnight delivery service or courier (such as Federal Express). All notices shall be addressed or e-mailed to or personally served on the parties as set forth in the signature blocks below. Counsel for a party may give notice on behalf of that party. Notices given by a party pursuant to the alternative methods described in this Section 9.4 shall be deemed to have been delivered to and received by the other party at the following times: (a) for notices personally served, on the date of hand delivery to the other party or its duly authorized employee, representative, or agent; (b) for notices given by registered or certified mail, on the date shown on the return receipt as having been delivered to and received by the other party or parties; (c) for notices given by e-mail, on the date the notice is e-mailed to the other party or parties; provided, however, any notice given by e-mail shall be deemed received on the next business day if such notice is received after 5:00 p.m. (recipient's time) or on a nonbusiness day; or (d) for notices delivered by overnight courier, on the next business day after same has been deposited with the courier as evidenced by the receipt provided by such courier to the party giving notice. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this Section 9.4, and that any person to be given notice actually receives such notice. A party may change or supplement its designated agent, address, or e-mail address given below, or designate additional agents, addresses, or e-mail address for notice purposes, by giving notice to the other party in the manner set forth in this Section 9.4, provided that any such address change shall not be effective until five (5) days after the notice is delivered or received by

the other party.

9.5. Further Assurances. The parties shall in good faith cooperate with each other in satisfying all conditions contained in this Agreement. Each party shall execute and deliver any and all additional papers, documents or other assurances and shall perform any further acts that may be reasonably necessary to carry out the intent of the parties and the provisions of this Agreement.

9.6. Binding Effect. Subject to Section 9.7, this Agreement shall inure to and for the benefit of and be binding upon each party's respective parent, subsidiary or affiliated organizations, administrators, agents, attorneys, beneficiaries, conservators, custodians, directors, employees, executors, guardians, heirs, independent contractors, joint venturers, managers, members, officers, partners, predecessors, representatives, servants, stockholders, successors, trustees and all others acting for, under, or in concert with it, including associations, corporations, limited liability companies, and general or limited partnerships, present and future.

9.7. Assignability. Notwithstanding Section 9.6, neither party shall have the right to assign this Agreement and all its rights, and duties, obligations and responsibilities without the prior written consent of the other party as exercised in its sole and absolute discretion.

9.8. No Third-Party Beneficiary. This Agreement is made for the sole benefit of the parties and their respective successors and permitted assigns and no other person or persons shall have any right of action hereon.

9.9. No Partnership or Joint Venture Created. The parties' relationship is that of seller and buyer and this Agreement is not intended to nor does create a partnership or joint venture or relationship between the parties.

9.10. Entire Agreement; Modification. This Agreement, including the attached exhibits (all of which are incorporated by this reference), supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to such matter, and each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement, including the attached exhibits, shall be valid or binding. The exhibits are an integral part of this Agreement. This Agreement may be modified only by a written document signed by the parties.

9.11. Partial Invalidity. If any condition, covenant, provision or term 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, and each remaining condition, covenant, provision or term of this Agreement shall be valid and shall be enforced to the fullest extent permitted by Law, it being the intent of the parties each to receive the material benefit of their bargain.

9.12. Waiver. Notwithstanding any agreement between the parties, the waiver by any party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or waiver of any subsequent breach whether of the same or another provision thereof.

9.13. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the internal Laws, and not the Law of conflicts, of the State of California, where it is to be executed, delivered and performed. This Agreement is entered into and is to be performed in Kern County, California, and accordingly the only appropriate venue for a dispute under this Agreement is in the Kern County Superior Court. The parties hereby expressly consent to the jurisdiction by the Kern County Superior Court.

9.14. Construction; Computation of Time. This Agreement shall not be construed against the party drafting it but shall be construed fairly and equitably as though it was the joint product of the parties. In this Agreement, the masculine, feminine or neuter gender, the singular or plural number shall be deemed to include the other whenever the context so requires, and "shall" and "agrees" are mandatory, and "may" is permissive. The captions appearing at the commencement of the provisions of this Agreement are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the provision at the head of which it appears, the provision, and not the caption, shall control and govern in the construction of this Agreement. The parties acknowledge, understand and agree that their respective agents and representatives executing this Agreement on behalf of each of the parties are learned and conversant in the English language, and that the English language shall control the construction, enforcement, governance, interpretation and performance of this Agreement.

"Laws" collectively shall mean any and all acts, administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority or entity charged with the enforcement, interpretation or administration thereof, agreements with, approvals, authorizations, awards, codes, consents, declarations, decrees, directed duties, directives, guideline documents, guidelines, edicts, exemptions, injunctions, judgments, laws, licenses, non-contractual restriction, orders, ordinances, permits, process, regulations, requests, requirements, rules, rulings, sanctions, standards, statutes, treatises, waivers and/or writs, now in force or as may be enacted or amended, changed, modified, promulgated, revised, or supplemented, of any and all Governmental Agencies. "Law" is the singular version of Laws.

The time in which any act under this Agreement is to be done shall be computed by excluding the first and including the last day. If the last day of any time period shall fall on a Saturday, Sunday, or legal holiday, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For the purposes of this Agreement, the word "day" shall mean "calendar" day and the phrase "business day" shall mean those days on which the Kern County Superior Court is open for business.

9.15. Time of the Essence. Time is of the essence under this Agreement.

9.16. Separate Counterparts; Facsimile & Electronic Signatures. This Agreement may be executed in two (2) or more separate counterparts, each of which, when so executed, shall be deemed to be an original and to constitute the one (1) and the same agreement or contract. This Agreement may be signed and signatures transmitted by facsimile, and any such facsimile copy shall be equivalent to a binding signed original for all purposes, and the party transmitting facsimile signatures shall transmit original "hard copies" of the signature pages as provided in Section 9.4 within twenty-four hours (24 hrs.) after transmission of such facsimile copy. This Agreement may also be executed and delivered via email in a portable document format (.PDF) or DocuSign, each of which, when so executed, shall be deemed to be an original and to constitute the one (1) and the same agreement or contract, provided the parties have provided each other with email addresses to accomplish such delivery and the party sending this Agreement via email or DocuSign receives an electronic delivery receipt from the party to whom this Agreement was sent.

9.17. Warranties of the Parties. Each party understands, acknowledges, agrees, represents and warrants to the other party that it has received independent legal advice from its attorneys with respect to the advisability of entering into this Agreement or has intentionally elected not to seek the advice of counsel and has carefully reviewed and considered the terms and conditions of this Agreement, that it is empowered

to execute this Agreement, and that its execution of this Agreement is free and voluntary.

9.18. Authority of the Parties. Where required in this Agreement, the parties shall deliver documentation that authorizes the transactions contemplated herein and also evidences the authority of the individuals or officers who are empowered to execute and carry out the terms of this Agreement.

9.19. Broker's Commissions. Each party represents that it has not dealt with any broker, finder, intermediary or salesperson in connection with the transactions contemplated by this Agreement, on its behalf. In the event of any such claims for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Agreement, the party through whom said broker, salesman or other person makes its claim shall indemnify and hold harmless the other party from said claim and all liabilities, costs and expenses related thereto, including reasonable attorneys' fees, that may be incurred by such other party in connection with such claim.

9.20. No Shop. During the pendency of this Agreement, Seller shall not negotiate with any party other than Buyer or make or accept any offers for the purchase or sale of the Practice. The obligations of the parties that are contained in this Section 9.20 shall terminate upon the Closing or earlier termination of this Agreement.

9.21. Effectiveness. This Agreement shall become effective as of the Effective Date upon its execution and delivery by the parties.

9.22. Press Releases and Announcements. No party shall issue any press release or public announcement relating to the subject matter of this Agreement prior to, at, after or about the Closing without the prior written approval of the other parties, which written approval shall not be unreasonably withheld.

[SIGNATURES ON THE NEXT PAGE; REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

9.24. Effectiveness. This Agreement shall become effective upon the date first (1st) written above immediately after its execution by all the parties.

SELLER	BUYER
<p>PINNACLE WOMEN'S HEALTH GROUP, INC., a California professional medical corporation</p> <p>By: <u>JUAN M. LOPEZ, MD</u> <u>JUAN M. LOPEZ, MD (Mar 10, 2023 16:36 PST)</u> JUAN M. LOPEZ, M.D. Its: Chief Executive Officer and Secretary</p>	<p>KERN COUNTY HOSPITAL AUTHORITY, a California public agency</p> <p>By: _____ RUSSELL E. BIGLER Its: Chairman</p> <p>APPROVED AS TO CONTENT:</p>
<p>Juan M. Lopez, M.D. Chief Executive Officer PINNACLE WOMEN'S HEALTH GROUP, INC. P.O. Box 6686 Bakersfield, California 93386 Telephone No. (____) ____-_____ E-Mail: _____</p>	<p>By: _____ SCOTT THYGERSON Its: Chief Executive Officer</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ KAREN S. BARNES Its: Vice President & General Counsel</p>
<p>DR. LOPEZ</p>	<p>Mr. Scott Thygerson Chief Executive Officer KERN COUNTY HOSPITAL AUTHORITY 1700 Mount Vernon Avenue Bakersfield, California 93306 Telephone No. (661) 326-2102 E-Mail: scott.thygerson@kernmedical.com</p>
<p>JUAN M. LOPEZ, M.D., an individual</p> <p><u>JUAN M. LOPEZ, MD</u> <u>JUAN M. LOPEZ, MD (Mar 10, 2023 16:36 PST)</u> JUAN M. LOPEZ, M.D.</p>	
<p>Juan M. Lopez, M.D. P.O. Box 6686 Bakersfield, California 93386 Telephone No. (____) ____-_____ E-Mail: _____</p>	

EXHIBIT A

The Purchased Assets

The following is a list of the Purchased Assets:

- A. The Practice; and
- B. The following list of Intangible Personal Property:
 - 1. Business license(s) for the Practice, if any, to the extent assignable (collectively the "Business Licenses");
 - 2. Any confidential or proprietary documentation or information, including, without limitation, trade secrets (as defined in Civil Code Section 3426.1(d)), arising out of, concerning or related to the Practice, to the extent they exist;
 - 3. Goodwill of the Practice;
 - 4. Prepaid expenses (excluding prepaid state or federal income taxes) of the Practice; and
 - 5. The following telecommunication numbers of the Practice:
 - a. Telefax numbers for the Practice, if any, to the extent assignable; and
 - b. Telephone numbers for the Practice (excluding cellular phone numbers), if any, to the extent assignable; and
 - 6. The computer lines, domain names and/or websites of the Practice, if any, to the extent assignable.

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EXHIBIT B

The Form of Employment Agreement

[ATTACHED]

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

This Agreement is made and entered into this ____ day of _____, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Juan M. Lopez, M.D. (“Physician”).

**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 Obstetrics and Gynecology at KMC (the “Department”), as such services are unavailable from Authority resources, and Physician desires to accept employment on the terms and conditions set forth in this Agreement; and

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

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical and administrative services in the Department and teaching services to resident physicians employed by Authority (Agt. #20119, dated May 30, 2019), for the period July 1, 2019 through January 31, 2023; and

(e) Each party expressly understands and agrees that Agt. #20119 is superseded by this Agreement as of the Commencement Date;

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

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall be for a period of five (5) years, commencing as of March 15, 2023 (the “Commencement Date”), and shall end March 14, 2028 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms of two (2) years each, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

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

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

4. **Obligations of Physician.**

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

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

4.3 **Qualifications.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Compensation Package.

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

5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary of \$17,307.69 biweekly not to exceed \$450,000 annually. The Annual Salary shall be comprised of (i) a base salary for teaching and administrative services in the amount of \$50,000 and (ii) payment for care of KMC patients in the amount of \$400,000. 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 75th percentile of worked relative value units ("Worked RVU") based on the current MGMA Survey and fulfill all the duties set forth in Exhibit "A" during the Term of this Agreement.

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

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

5.2 Chair Stipend. Authority shall pay Physician an annual stipend of \$961.53 biweekly, less all applicable federal and state taxes and withholdings, not to exceed \$25,000 annually for services as Chair, Department of Obstetrics and Gynecology. Physician understands and agrees that he must remain in the position of Chair, Department of Obstetrics and Gynecology as of each payout date in order to earn and receive the stipend payment.

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

5.4 Call Coverage. Authority shall pay Physician for call coverage at KMC as follows: (i) Physician shall be paid a per diem in the amount of \$2,400 per twenty-four (24) hour day for weekend and holiday call coverage assigned (Saturday and Sunday; designated Authority holidays only); (ii) Physician shall be paid a fixed fee in the amount of \$1,200 for every weekday night of call coverage assigned (Monday through Friday); and (iii) Physician shall be paid a fixed fee in the amount of \$500 for backup coverage if called to come to the hospital. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.5 Excess Clinic Coverage at KMC. Authority shall pay Physician an hourly rate of \$150 per hour, less all applicable federal and state taxes and withholdings, for clinic coverage in the KMC outpatient clinics in excess of three (3) half-day clinics per week.

5.6 Coverage at Non-KMC Practice Sites. Authority shall pay Physician for coverage at non-KMC Practice Sites as follows: (i) Physician shall be paid an hourly rate of \$150 per hour for coverage at non-KMC Practice Sites in excess of six (6) half-day KMC shifts per week, which may include outpatient clinics, OR time, labor and delivery coverage, teaching and/or administrative services; and (ii) Physician shall be paid an hourly rate of \$200 per hour for clinic coverage at non-KMC Practice Sites that are located beyond a twenty-five (25) mile radius of 1700 Mount Vernon Avenue, Bakersfield, California 93306. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.7 Mileage Reimbursement. Authority shall reimburse Physician, on a per mile basis, for personal vehicle use at the current privately-owned vehicle (POV) mileage reimbursement rate established by the U.S. General Services Administration, when using his private vehicle to conduct hospital business within the geographic area, defined as the County of Kern, for mileage that is greater than or equal to twenty-five (25) miles in a single day.

5.8 Incentive Compensation. Within thirty (30) days following the end of each Employment Year, beginning from the Commencement Date, KMC will calculate the professional fee net collections (defined as actual cash received) for all professional services provided by Physician. Physician shall receive twenty-five percent (25%) of the professional fee net collections in excess of \$400,000, less all applicable federal and state taxes and withholdings, per Employment Year.

5.9 Retention Bonus.

5.9.1 Bonus. Physician shall be paid an annual retention bonus in the amount of \$20,000, less all applicable federal and state taxes and withholdings, payable within ten (10) days of March 15, 2023, for the previous Employment Year, and each March 15

thereafter during the Term if the conditions for Physician to receive the retention bonus are met.

5.9.2 Repayment. In the event that Physician voluntarily terminates his employment with Authority for any reason whatsoever during an Employment Year in which a retention bonus is paid, Physician will repay to Authority an amount equal to \$20,000 multiplied by the fraction, the numerator of which is 365 less the number of days during which Physician was employed by Authority, and the denominator of which is 365. Such repayment shall be made by Physician in full within thirty (30) days of the effective date of his termination of employment with Authority.

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

5.10 Professional Fee Billing.

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

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

5.11 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$3,250,000 over the five (5) year Term of this Agreement.

6. Benefits Package.

6.1 Retirement. Physician shall continue to participate in the Kern County Hospital Authority Defined Contribution Plan for Physician Employees (the "Plan"), a qualified defined contribution pension plan, pursuant to the terms of the instrument under which the Plan has been established, as from time to time amended. Physician is not eligible to participate in any other

retirement plan established by Authority for its employees, including but not limited to the Kern County Employees' Retirement Association, and this Agreement does not confer upon Physician any right to claim entitlement to benefits under any such retirement plan(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. **[Reserved]**

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

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

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

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

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

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

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

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

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

Notice to Physician:

Notice to Authority:

Juan M. Lopez, M.D.
17564 Harvest Grove Court
Bakersfield, California 93314

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

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

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

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

28. **Termination.**

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

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

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

29. **Effect of Termination.**

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

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

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

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

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

[Signatures follow on next page]

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

PHYSICIAN

By JUAN M. LOPEZ, MD
JUAN M. LOPEZ, MD (Mar 10, 2023 16:38 PST)
Juan M. Lopez, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygersen
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Lopez.030923

EXHIBIT “A”
JOB DESCRIPTION
Juan M. Lopez, M.D.

Position Description: Reports to Chief Medical Officer; serves as Chair, Department of Obstetrics and Gynecology; serves as a full-time faculty member in the Department; provides no fewer than 2,500 hours of service per Employment Year; day-to-day work activities and clinical workload shall include coverage within the Department; provides comprehensive and safe clinical coverage for day-to-day operations, timely completion of care, direct patient care, scholarly research, and resident education. The Chair is a working clinical position that models exemplary clinical outcomes and professional leadership behaviors. Physician shall work collaboratively with Department faculty, staff and administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience.

Essential Functions:

A. Leadership and Administrative Responsibilities

- Leadership as Department Chair, including mentoring and professional development of all Department faculty, residents, and medical students
- Leadership as Medical Director, Rural Clinics and Outreach
 - Work with rural clinic partners to meet patient needs by providing adequate coverage for such clinic sites
 - Provide oversight of strategic plan to increase capacity of rural clinics through provider recruitment and expansion of clinic services
 - Ensure supervision of providers servicing rural clinics
 - Act as a liaison to ensure cohesive care delivery
- Maintain and enhance excellence of the obstetrics and gynecology residency program and accreditation by the RRC and ACGME
- Appoint and provide oversight of the obstetrics and gynecology residency Program Director and program curriculum
- Develop a Department culture that ensures prompt recognition of medical adverse events, prompt corrective action, and transparency with the organization as well as a culture that consistently focuses on patient care and patient safety
- Develop a Department culture that does not allow disruptive behavior
- Monitor individual physician clinical performance by tracking and trending outcomes, utilization of resources, adherence to established protocols, and document and counsel as appropriate
- Develop mechanisms to conduct patient care reviews objectively for the purpose of analyzing and evaluating the quality and appropriateness of patient care and treatment
- Oversight of Department meetings, morbidity and mortality conferences, and ensuring leadership, structure and function of Department committees, including assigning faculty to appropriate committees and facilitating their involvement in hospital-wide quality and performance improvement programs

- Responsibility for preparing or delegating staff schedules and clinical assignments at KMC and non-KMC Practice Sites, including but not limited to schedules and assignments for the outpatient clinics and operating room with priority given to KMC Practice Sites, to maximize productivity and quality care as well as ensuring that all faculty are present at KMC and non-KMC Practice Sites performing their assigned and scheduled clinical, teaching, and administrative duties
- Ensure faculty assignments do not conflict
- Conduct annual performance evaluations of faculty
- Pursue further alignment with the University of California, Los Angeles (UCLA) in conjunction with all other KMC initiatives as well as specific alignment for Obstetrics and Gynecology with UCLA or another appropriate academic medical institution
- Membership on the Medical Executive Committee and participate on Medical Staff and other hospital committees
- Participation in quality and system improvement initiatives, including improving patient satisfaction and enhancing timely access to care as well as peer review within the Medical Staff and Department
- Collaboration with all other KMC Department Chairs
- Collaboration with KMC administration to enhance engagement with area health plans, community physicians, and members of the Medical Staff to improve patient care and overall volume growth
- Lead the clinical preparation monitoring, review, and performance of clinical activity in the Department
- Develop a faculty succession and recruitment plan. In consultation with Department faculty, recruit and recommend to the Chief Executive Officer and Chief Medical Officer new faculty, after appropriate vetting, for faculty appointments in the Department
- Work collaboratively with other clinical departments to develop a cohesive and collaborative environment across clinical departments with a focus of enhancing access to patient care for inpatient and outpatient services
- Support the development of the Simulation Laboratory and related education programs and curriculum
- Follow and comply with the Medical Staff Bylaws, Rules, Regulations, and policies, and Authority and KMC policies and procedures
- Participate in clinical and administrative integration efforts across the hospital as appropriate for the Department ensuring proper program planning, resource allocation, analysis, communication, and assessment

B. Clinical Responsibilities

- Serve as an attending physician in the Department performing appropriate therapeutic and diagnostic care and procedures within the scope of practice for an obstetrics and gynecology physician while on service
- Scheduled clinic time at KMC shall consist of a minimum of three (3) half-day clinics at KMC
- Scheduled operating room time at KMC shall consist of a minimum of eight (8) hours of operating room time per week

- Supervise residents and medical students
- Supervise Advance Practice Providers (APP) in the Department and ensure competence
- Supervise procedures performed by residents and mid-levels while on service

C. Medical Education, Teaching, and Academic Responsibilities

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

Employment Standards:

Completion of an accredited residency program in obstetrics and gynecology

AND

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

AND

Certification by the American Board of Obstetrics and Gynecology in obstetrics and gynecology-general

Knowledge of: The principles and practices of modern medicine; current techniques, procedures, and equipment applicable to obstetrics and gynecology; 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.

JUAN M. LOPEZ, MD

JUAN M. LOPEZ, MD (Mar 10, 2023 16:38 PST)

Physician

Mar 10, 2023

Date

EXHIBIT C

The Form of the Assignment

[ATTACHED]

ASSIGNMENT OF INTANGIBLE PERSONAL PROPERTY

This ASSIGNMENT OF INTANGIBLE PERSONAL PROPERTY (this “Assignment”) is dated and effective as of March 15, 2023 (the “Effective Date”), by and between **PINNACLE WOMEN’S HEALTH GROUP, INC.**, a California professional medical corporation, a California professional medical corporation (“Assignor”), and **KERN COUNTY HOSPITAL AUTHORITY**, a California public agency (“Assignee”), in Bakersfield, California, who agree and contract as described below. Assignor and Assignee are referred to singularly as a “party” on a generic basis and collectively as the “parties.”

Recitals

This Assignment is made and entered into in reliance on the accuracy of the following facts and circumstances, which are acknowledged by the parties to be accurate, complete and true:

A. Seller is the owner and operator of a medical practice providing obstetrics and gynecology healthcare services (the “Practice”). Seller also is the owner of various assets used in the Practice, including, without limitation, goodwill, contracts, and other intangible property (collectively the “Business Assets”). Exhibit A contains a comprehensive list of the Business Assets;

B. On March 15, 2023, the parties entered into the “Asset Purchase and Sale Agreement” for Assignor’s sale the Practice and substantially all of the assets of the Practice to Assignee, (the “Agreement”), which includes, without limitation, the assignment by Assignor to Assignee, and the assumption by Assignee from Assignor, of certain intangible personal property described in Exhibit A attached hereto and incorporated herein by reference as if fully set forth at length (the “Intangible Personal Property”). Any capitalized terms shall have the definition set forth in the Agreement unless otherwise specified; and

C. Assignor believes it is in Assignor’s best interests to assign, convey and otherwise transfer the Intangible Personal Property to Assignee. In turn, Assignee believes that it would be in its best interests, and thus desires, to accept the Intangible Personal Property;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby expressly agree and contract as follows:

Assignment

1. Assignment of the Intangible Personal Property. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Assignor, Assignor assigns all of its interest, right and title in the Intangible Personal Property to Assignee. Assignee accepts the assignment of the Intangible Personal Property from Assignor. By this Assignment, Assignor delegates to Assignee all of Assignor’s rights in, and duties, obligations and responsibilities of performance, if any, under the Intangible Personal Property.

2. Material Condition Precedent to This Assignment. The parties acknowledge and agree that this Assignment is expressly conditioned upon, and shall not become effective unless and until, Assignee purchases the Business from Assignor on the Effective Date. The parties also agree that this Assignment shall be immediately void and of no further force or effect if said express condition is not satisfied on the Effective Date.

3. Further Assurances. Each party shall execute and deliver any and all additional papers, documents or other assurances and shall perform any further acts which may be reasonably necessary to carry out the intent of the parties and this Assignment.

4. Binding Effect. This Assignment shall inure to and for the benefit of and be binding upon each party's respective parent, subsidiary or affiliated organizations, administrators, agents, attorneys, beneficiaries, conservators, custodians, directors, employees, executors, guardians, heirs, independent contractors, joint venturers, managers, members, officers, partners, predecessors, representatives, servants, stockholders, successors, trustees and all others acting for, under, or in concert with it, including associations, corporations, limited liability companies, and general or limited partnerships, present and future.

5. No Third-Party Beneficiary. This Assignment is made for the sole benefit of the parties and their respective successors and assigns and no other person or persons shall have any right of action hereon.

6. Entire Agreement; Modification. This Assignment, the Agreement and the other documents described therein contain the entire agreement between the parties and constitute an integration of the entire agreement, contract, promise and understandings of the parties. All prior agreements, conditions, contracts, promises, representations, understandings, or warranties, whether oral or written, express or implied, concerning the subject matter of this Assignment are expressly superseded hereby and have no further force or effect, except for the Agreement and the other documents described in this Assignment and the Agreement. This Assignment may not be altered, amended, or modified in any respect, except by a writing duly executed by all the parties.

7. Governing Law; Venue. This Assignment shall be construed, enforced, governed by, interpreted and performed pursuant to the internal laws, and not the law of conflicts, of the State of California applicable to agreements, contracts and understandings made and to be performed in such state. The parties also agree that this Assignment is made and to be performed in Kern County, California, and therefore that the only proper venue for any litigation shall be the Kern County Superior Court, Metropolitan District.

8. Construction. Headings are used herein for convenience only and shall have no force or effect in the construction or interpretation of this Assignment. As used in this Assignment, the singular includes the plural and masculine includes the feminine and neuter. This Assignment shall not be construed against the party drafting it but shall be construed fairly and equitably as though it was the joint product of the parties.

9. Partial Invalidity. If any clause, paragraph, phrase or sentence of this Assignment shall become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, or against public policy, the remaining clauses, paragraphs, phrases and sentences of this Assignment shall not be affected thereby and the parties shall negotiate an equitable adjustment of the affected provision with a view toward effecting the purpose of this Assignment.

10. Time of the Essence. Time is of the essence under this Assignment.

11. Separate Counterparts; Facsimile, .pdf or DocuSign Signatures. This Assignment may be executed in two (2) separate counterparts, each of which, when so executed, shall be deemed to be an original and to constitute the one and same contract. This Agreement may be signed and signatures transmitted by facsimile, .pdf, or docuSign and any such facsimile, .pdf or docuSign copy shall be equivalent to a binding signed original for all purposes.

12. Effectiveness. This Assignment shall become effective as of the Effective Date upon its execution and delivery by all of the parties.

ASSIGNOR	ASSIGNEE
PINNACLE WOMEN'S HEALTH GROUP, INC., a California professional medical corporation	KERN COUNTY HOSPITAL AUTHORITY, a California public agency
By: <u><i>Juan M. Lopez, MD</i></u> <u>Juan M. Lopez, MD (Mar 10, 2023 15:43 PST)</u>	By: _____
Its: JUAN M. LOPEZ, M.D. Chief Executive Officer and Secretary	Its: RUSSELL E. BIGLER Chairman
	APPROVED AS TO CONTENT:
	By: _____
	Its: SCOTT THYGERSON Chief Executive Officer
	APPROVED AS TO FORM:
	By: _____
	Its: KAREN S. BARNES Vice President & General Counsel

EXHIBIT A TO THE ASSIGNMENT

The Intangible Personal Property

The following Intangible Personal Property:

1. Business license(s) for the Practice, if any, to the extent assignable (collectively the "Business Licenses");
2. Any confidential or proprietary documentation or information, including, without limitation, trade secrets (as defined in Civil Code Section 3426.1(d)), arising out of, concerning or related to the Practice, to the extent they exist;
3. Goodwill of the Practice;
4. Prepaid expenses (excluding prepaid state or federal income taxes) of the Practice; and
5. The following telecommunication numbers of the Practice:
 - a. Telefax numbers for the Practice, if any, to the extent assignable; and
 - b. Telephone numbers for the Practice, if any, to the extent assignable (excluding cellular phone numbers); and
6. The computer lines, domain names and/or websites of the Practice, if any, to the extent assignable.



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

March 15, 2023

Subject: Proposed Agreement with Juan M. Lopez, M.D., for professional medical and administrative services in the Department of Obstetrics and Gynecology

Recommended Action: Approve; Authorize the Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Agreement with Juan M. Lopez, M.D., a contract employee, for professional medical and administrative services in the Department of Obstetrics and Gynecology, for the period March 15, 2023 through March 14, 2028. Dr. Lopez, a board-certified obstetrician and gynecologist, has been employed by Kern Medical Center since 2004. Currently he serves as Chair of the Department.

The proposed agreement facilitates enhanced access to care to the safety net population for obstetrics and gynecology services as well as graduate medical education training of OB/GYN physician residents. As Chair of the Department, Dr. Lopez's leadership and administrative responsibilities shall include the ongoing mentoring and professional development of all faculty, residents, and medical students along with a focus to increase capacity through provider recruitment, expansion of clinic services as well as maintain and enhance excellence of the residency program.

The proposed Agreement is for a term of five years from March 15, 2023 through March 14, 2028. The maximum payable under the Agreement will not exceed \$3,250,000 over the five-year term, excluding the cost of benefits.

Therefore, it is recommended that your Board approve the proposed Agreement with Juan M. Lopez, M.D., for professional medical and administrative services in the Department of Obstetrics and Gynecology from March 15, 2023 through March 14, 2028, in an amount not to exceed \$3,250,000, plus applicable benefits, and authorize the Chairman to sign.

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

This Agreement is made and entered into this ____ day of _____, 2023, between Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Juan M. Lopez, M.D. (“Physician”).

**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 Obstetrics and Gynecology at KMC (the “Department”), as such services are unavailable from Authority resources, and Physician desires to accept employment on the terms and conditions set forth in this Agreement; and

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

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical and administrative services in the Department and teaching services to resident physicians employed by Authority (Agt. #20119, dated May 30, 2019), for the period July 1, 2019 through January 31, 2023; and

(e) Each party expressly understands and agrees that Agt. #20119 is superseded by this Agreement as of the Commencement Date;

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

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall be for a period of five (5) years, commencing as of March 15, 2023 (the “Commencement Date”), and shall end March 14, 2028 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms of two (2) years each, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

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

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

4. **Obligations of Physician.**

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

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

4.3 **Qualifications.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. **Compensation Package.**

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

5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary of \$17,307.69 biweekly not to exceed \$450,000 annually. The Annual Salary shall be comprised of (i) a base salary for teaching and administrative services in the amount of \$50,000 and (ii) payment for care of KMC patients in the amount of \$400,000. 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 75th percentile of worked relative value units ("Worked RVU") based on the current MGMA Survey and fulfill all the duties set forth in Exhibit "A" during the Term of this Agreement.

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

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

5.2 Chair Stipend. Authority shall pay Physician an annual stipend of \$961.53 biweekly, less all applicable federal and state taxes and withholdings, not to exceed \$25,000 annually for services as Chair, Department of Obstetrics and Gynecology. Physician understands and agrees that he must remain in the position of Chair, Department of Obstetrics and Gynecology as of each payout date in order to earn and receive the stipend payment.

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

5.4 Call Coverage. Authority shall pay Physician for call coverage at KMC as follows: (i) Physician shall be paid a per diem in the amount of \$2,400 per twenty-four (24) hour day for weekend and holiday call coverage assigned (Saturday and Sunday; designated Authority holidays only); (ii) Physician shall be paid a fixed fee in the amount of \$1,200 for every weekday night of call coverage assigned (Monday through Friday); and (iii) Physician shall be paid a fixed fee in the amount of \$500 for backup coverage if called to come to the hospital. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.5 Excess Clinic Coverage at KMC. Authority shall pay Physician an hourly rate of \$150 per hour, less all applicable federal and state taxes and withholdings, for clinic coverage in the KMC outpatient clinics in excess of three (3) half-day clinics per week.

5.6 Coverage at Non-KMC Practice Sites. Authority shall pay Physician for coverage at non-KMC Practice Sites as follows: (i) Physician shall be paid an hourly rate of \$150 per hour for coverage at non-KMC Practice Sites in excess of six (6) half-day KMC shifts per week, which may include outpatient clinics, OR time, labor and delivery coverage, teaching and/or administrative services; and (ii) Physician shall be paid an hourly rate of \$200 per hour for clinic coverage at non-KMC Practice Sites that are located beyond a twenty-five (25) mile radius of 1700 Mount Vernon Avenue, Bakersfield, California 93306. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.7 Mileage Reimbursement. Authority shall reimburse Physician, on a per mile basis, for personal vehicle use at the current privately-owned vehicle (POV) mileage reimbursement rate established by the U.S. General Services Administration, when using his private vehicle to conduct hospital business within the geographic area, defined as the County of Kern, for mileage that is greater than or equal to twenty-five (25) miles in a single day.

5.8 Incentive Compensation. Within thirty (30) days following the end of each Employment Year, beginning from the Commencement Date, KMC will calculate the professional fee net collections (defined as actual cash received) for all professional services provided by Physician. Physician shall receive twenty-five percent (25%) of the professional fee net collections in excess of \$400,000, less all applicable federal and state taxes and withholdings, per Employment Year.

5.9 Retention Bonus.

5.9.1 Bonus. Physician shall be paid an annual retention bonus in the amount of \$20,000, less all applicable federal and state taxes and withholdings, payable within ten (10) days of March 15, 2023, for the previous Employment Year, and each March 15

thereafter during the Term if the conditions for Physician to receive the retention bonus are met.

5.9.2 Repayment. In the event that Physician voluntarily terminates his employment with Authority for any reason whatsoever during an Employment Year in which a retention bonus is paid, Physician will repay to Authority an amount equal to \$20,000 multiplied by the fraction, the numerator of which is 365 less the number of days during which Physician was employed by Authority, and the denominator of which is 365. Such repayment shall be made by Physician in full within thirty (30) days of the effective date of his termination of employment with Authority.

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

5.10 Professional Fee Billing.

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

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

5.11 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$3,250,000 over the five (5) year Term of this Agreement.

6. **Benefits Package**.

6.1 Retirement. Physician shall continue to participate in the Kern County Hospital Authority Defined Contribution Plan for Physician Employees (the "Plan"), a qualified defined contribution pension plan, pursuant to the terms of the instrument under which the Plan has been established, as from time to time amended. Physician is not eligible to participate in any other

retirement plan established by Authority for its employees, including but not limited to the Kern County Employees' Retirement Association, and this Agreement does not confer upon Physician any right to claim entitlement to benefits under any such retirement plan(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. **[Reserved]**

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

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

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

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

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

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

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

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

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

Notice to Physician:

Notice to Authority:

Juan M. Lopez, M.D.
17564 Harvest Grove Court
Bakersfield, California 93314

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

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

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

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

28. **Termination.**

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

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

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

29. **Effect of Termination.**

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

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

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

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

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

[Signatures follow on next page]

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

PHYSICIAN

By JUAN M. LOPEZ, MD
JUAN M. LOPEZ, MD (Mar 10, 2023 16:38 PST)
Juan M. Lopez, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM;
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Agreement.Lopez.030923

EXHIBIT “A”
JOB DESCRIPTION
Juan M. Lopez, M.D.

Position Description: Reports to Chief Medical Officer; serves as Chair, Department of Obstetrics and Gynecology; serves as a full-time faculty member in the Department; provides no fewer than 2,500 hours of service per Employment Year; day-to-day work activities and clinical workload shall include coverage within the Department; provides comprehensive and safe clinical coverage for day-to-day operations, timely completion of care, direct patient care, scholarly research, and resident education. The Chair is a working clinical position that models exemplary clinical outcomes and professional leadership behaviors. Physician shall work collaboratively with Department faculty, staff and administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience.

Essential Functions:

A. Leadership and Administrative Responsibilities

- Leadership as Department Chair, including mentoring and professional development of all Department faculty, residents, and medical students
- Leadership as Medical Director, Rural Clinics and Outreach
 - Work with rural clinic partners to meet patient needs by providing adequate coverage for such clinic sites
 - Provide oversight of strategic plan to increase capacity of rural clinics through provider recruitment and expansion of clinic services
 - Ensure supervision of providers servicing rural clinics
 - Act as a liaison to ensure cohesive care delivery
- Maintain and enhance excellence of the obstetrics and gynecology residency program and accreditation by the RRC and ACGME
- Appoint and provide oversight of the obstetrics and gynecology residency Program Director and program curriculum
- Develop a Department culture that ensures prompt recognition of medical adverse events, prompt corrective action, and transparency with the organization as well as a culture that consistently focuses on patient care and patient safety
- Develop a Department culture that does not allow disruptive behavior
- Monitor individual physician clinical performance by tracking and trending outcomes, utilization of resources, adherence to established protocols, and document and counsel as appropriate
- Develop mechanisms to conduct patient care reviews objectively for the purpose of analyzing and evaluating the quality and appropriateness of patient care and treatment
- Oversight of Department meetings, morbidity and mortality conferences, and ensuring leadership, structure and function of Department committees, including assigning faculty to appropriate committees and facilitating their involvement in hospital-wide quality and performance improvement programs

- Responsibility for preparing or delegating staff schedules and clinical assignments at KMC and non-KMC Practice Sites, including but not limited to schedules and assignments for the outpatient clinics and operating room with priority given to KMC Practice Sites, to maximize productivity and quality care as well as ensuring that all faculty are present at KMC and non-KMC Practice Sites performing their assigned and scheduled clinical, teaching, and administrative duties
- Ensure faculty assignments do not conflict
- Conduct annual performance evaluations of faculty
- Pursue further alignment with the University of California, Los Angeles (UCLA) in conjunction with all other KMC initiatives as well as specific alignment for Obstetrics and Gynecology with UCLA or another appropriate academic medical institution
- Membership on the Medical Executive Committee and participate on Medical Staff and other hospital committees
- Participation in quality and system improvement initiatives, including improving patient satisfaction and enhancing timely access to care as well as peer review within the Medical Staff and Department
- Collaboration with all other KMC Department Chairs
- Collaboration with KMC administration to enhance engagement with area health plans, community physicians, and members of the Medical Staff to improve patient care and overall volume growth
- Lead the clinical preparation monitoring, review, and performance of clinical activity in the Department
- Develop a faculty succession and recruitment plan. In consultation with Department faculty, recruit and recommend to the Chief Executive Officer and Chief Medical Officer new faculty, after appropriate vetting, for faculty appointments in the Department
- Work collaboratively with other clinical departments to develop a cohesive and collaborative environment across clinical departments with a focus of enhancing access to patient care for inpatient and outpatient services
- Support the development of the Simulation Laboratory and related education programs and curriculum
- Follow and comply with the Medical Staff Bylaws, Rules, Regulations, and policies, and Authority and KMC policies and procedures
- Participate in clinical and administrative integration efforts across the hospital as appropriate for the Department ensuring proper program planning, resource allocation, analysis, communication, and assessment

B. Clinical Responsibilities

- Serve as an attending physician in the Department performing appropriate therapeutic and diagnostic care and procedures within the scope of practice for an obstetrics and gynecology physician while on service
- Scheduled clinic time at KMC shall consist of a minimum of three (3) half-day clinics at KMC
- Scheduled operating room time at KMC shall consist of a minimum of eight (8) hours of operating room time per week

- Supervise residents and medical students
- Supervise Advance Practice Providers (APP) in the Department and ensure competence
- Supervise procedures performed by residents and mid-levels while on service

C. Medical Education, Teaching, and Academic Responsibilities

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

Employment Standards:

Completion of an accredited residency program in obstetrics and gynecology

AND

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

AND

Certification by the American Board of Obstetrics and Gynecology in obstetrics and gynecology-general

Knowledge of: The principles and practices of modern medicine; current techniques, procedures, and equipment applicable to obstetrics and gynecology; 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.

JUAN M. LOPEZ, MD

JUAN M. LOPEZ, MD (Mar 10, 2023 16:38 PST)

Physician

Mar 10, 2023

Date



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY OPEN SESSION**

March 15, 2023

Subject: Proposed Kern Medical Center ACGME Institutional Self-Study Report

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical Center represents the Sponsoring Institution (SI) for four accredited residency programs and three accredited fellowship programs. The Accreditation Council for Graduate Medical Education (ACGME) informed Dr. Amir Berjis, the Designated Institutional Official (DIO) on October 3, 2022 that the SI should begin its first self-study process. The Institutional Self-Study is meant to provide a framework for the SI to improve graduate medical education (GME) by developing and implementing a strategic plan aligned with its GME mission.

To complete this self-study, the DIO convened an Institutional Self-Study team that analyzed GME performance and identified actions that can be taken to achieve defined institutional aims. The self-study aimed to introduce innovation into our GME process, optimize health systems for learning, and demonstrate a commitment to excellence in patient care.

The Institutional Self-Study team met biweekly for several months. The team defined the SI's GME Mission Statement, analyzed the institution's strengths and opportunities for improvement, identified three specific institutional aims, and drafted specific, measurable and achievable goals to achieve those aims. The Self-Study report was reviewed and approved by the Graduate Medical Education Committee. The report now requires the review and approval of the Board of Governors prior to submission to the ACGME.

Therefore, it is recommended that your Board approve the Kern Medical Center ACGME Institutional Self-Study Report and authorize the Chairman to sign.

Institutional Self-Study Summary Form

After completing the Institutional Self-Study, provide responses to the questions below.

Sponsoring Institution Name: Kern Medical Center

ACGME 10-Digit ID: 8000500010

Self-Study Date (Month and Year): April 2023

Reviewed and approved by:

Printed Name: Glenn Goldis, MD

Date

Representative of Sponsoring Institution's Senior Administration

Printed Name: Russell E. Bigler

Date

Representative of Sponsoring Institution's Governing Body

By signing the Institutional Self-Study form, the designated institutional official attests that the completed form has been reviewed and approved by the Graduate Medical Education Committee.

Printed Name: Amir Berjis, MD

Date

Designated Institutional Official

Question 1: Institutional Self-Study Team

Who was included in the Institutional Self-Study team and why? List by name, role, and title.
(Maximum 300 words.)

Kern Medical's Institutional Self-Study team included a diverse group of stakeholders committed to respectful dialog and collaboration from inside and outside of the sponsoring institution's ACGME-accredited programs. The Designated Institutional Official (DIO), in their capacity for responsibility and oversight of Kern Medical's ACGME-accredited programs, served as Chair of the self-study team.

Executive leadership represented by the Chief Medical Officer offered insights into strategic planning and stewardship of resources related to graduate medical education. Program Directors with a track record of service on Program Evaluation Committees, Clinical Competency Committees, and participation in Annual Program Evaluations were recruited to offer their expertise on assessment, evaluation, and educational outcomes. Moreover, peer-selected resident physicians from the Resident Advisory Council were engaged to share their perspectives regarding training and well-being in the clinical learning environment, particularly in light of the pandemic's profound effect on accredited programs nationwide.

Additional nonphysician and administrative staff such as the sponsoring institution's Hospital Counsel, Performance Improvement Manager, and members from the Department of Medical Education were included to facilitate a robust exchange of perspectives and ideas.

Institutional Self-Study team:

- ✓ Designated Institutional Official: Amir Berjis, MD
- ✓ Chief Medical Officer: Glenn Goldis, MD
- ✓ Residency and Fellowship Program Directors: Manish Amin, DO; Greti Petersen, MD; Rebecca Rivera, MD; Sara Abdijadid, DO; Garth Olango, MD; David Weinstein, MD; Arash Heidari, MD; Amber Jones, DO
- ✓ Peer-selected residents and GMEC resident members: Tyler Wheeler, MD; Abdelhamid Dalia, MD; Ratha Kulasingam, MD
- ✓ Compliance & Privacy Officer: Shannon Hochstein, Esq.
- ✓ GMEC Quality Officer & Performance Improvement Manager: Eunice Hartsock, MSN, APRN, FNP-C, CPHQ
- ✓ Department of Medical Education: Marina Avalos-Kegley, Kayvon Milani

Question 2: Sponsoring Institution Mission

State the Sponsoring Institution's graduate medical education (GME) mission. (Maximum 250 words.)

Kern Medical provides a diverse learning environment that supports and expands access to the highest quality of patient-centered care in the Central Valley, promotes academic excellence and personal growth, sponsors scholarship and research, and nurtures professional development and well-being.

Question 3: Opportunities for the Sponsoring Institution

Describe important opportunities for the Sponsoring Institution. (Include information gathered for the Institutional Self-Study, and the Institutional Self-Study team's analysis of institutional performance, to discuss the Sponsoring Institution's environmental context. Maximum 250 words.)

Kern Medical is the only academic teaching institution in Kern County. Physicians and trainees participate in the assessment, management, and treatment of a diverse patient population with increasingly complex pathology, often with a psychosocial overlay. As a result, trainees have opportunities to develop professionally into more competent physicians as they consider factors such as health equity and social determinants of health when caring for patients in our community.

Opportunities to forge external partnerships with education and healthcare organizations throughout the community will improve the quality of patient-centered care and address the overall health and

well-being of Kern County's population. Partnerships will allow Kern Medical to promote academic excellence and coordinate with organizations to expand efforts to create healthcare education pipelines that are crucial to building the healthcare workforce of the future.

Question 4: Threats Facing the Sponsoring Institution

Describe real or potential challenges that may affect the Sponsoring Institution's ability to achieve its aims. (Maximum 250 words.)

Kern County, located in the Central Valley, is federally-recognized as a medically underserved area and projected to have one of the worst shortages of primary care clinicians and behavioral health providers over the next decade. Currently, Kern Medical faces challenges with physician recruitment and retention. Faculty and trainees manage heavy clinical loads that can lead to an imbalance between clinical service and trainee education. The imbalance limits opportunities for camaraderie, supervision, and mentorship among the workforce as well.

Furthermore, cultural, social, economic, and systemic barriers to care within the patient population and surrounding community result in significant delays in obtaining timely preventative and primary care services. As a result, adverse health outcomes such as premature mortality and increased morbidity are highly prevalent in our community. Challenging cases amid high clinical volume can lead to a sense of fatigue or burnout among our workforce. Since the pandemic, the sponsoring institution has not had the workforce depth necessary to fulfill its potential as a broad tertiary referral center to address the specialized needs of the community.

Federal and state-wide funding constraints, a dependence on grants, and staffing challenges can adversely impact the support for the academic programs and clinical mission of the sponsoring institution as well.

Question 5: Sponsoring Institution Aims

Describe three to five aims related to the Sponsoring Institution's GME mission, and informed by the Institutional Self-Study team's analysis. (Maximum 150 words.)

AIM #1: Kern Medical will grow and expand its graduate medical education in collaboration with its community partners, including the accreditation of a new general surgery residency program.

AIM #2: Kern Medical will raise the awareness and competency of its residents and fellows around professionalism and cultural competency while practicing at the highest ethical standard.

AIM #3: Kern Medical will promote and prioritize the well-being of its workforce.

Question 6: Aims Linked to National Learning Community for Sponsoring Institutions

If applicable, identify any institutional aims that are aligned with the work of the ACGME's national learning community for Sponsoring Institutions. (Maximum 200 words.)

Kern Medical's commitment to educational programming as evidenced by increasing the complement of trainees across several specialties is focused on meeting the needs of the surrounding community. In addition, educational offerings such as our state-of-the art Simulation Center and innovative Point-of-Care Ultrasound Curriculum seek to prepare trainees to practice in a variety of demanding environments. Finally, Kern Medical is dedicated to providing the safest, highest quality and most cost-effective care to our patients. As such, our trainees are educated on quality measures, participate in performance improvement, and constantly provided feedback regarding their ability and knowledge which aligns with our institutional aim regarding professionalism and competency.

Question 7: Advancing the Aims

Describe current resources, processes, activities, and/or policies that contribute to advancing these aims. (Maximum 250 words.)

Advancing AIM #1: Kern Medical identified a Program Director who collaborates weekly with the the DIO and GME stakeholders to facilitate the process of applying for accreditation. A Program Coordinator was hired to assist the Program Director in the development of the program as well. Core Faculty continue to engage in activities such as educational planning, curriculum design, and research to foster an academic and clinical environment essential to train experts in General Surgery. Participating rotation sites with community partners that provide the requisite case volume and a supportive training environment are being secured, along with Program Letters of Affiliation, in preparation to submit the program application in the Accreditation Data System.

Advancing AIM #2: Our sponsored programs will continue to harvest data from our electronic health records regarding population health and the social determinants of health that affect our patients. Our progress will be documented through well-defined quality and performance initiatives, as presented in our annual regional research forum.

Advancing AIM #3: Our sponsored programs will utilize the results of biannual internal surveys and the annual ACGME faculty and resident surveys to re-evaluate rotational blocks and workflow, while prioritizing education over service.

The institution will sponsor interdisciplinary joint conferences between sponsored programs to discuss clinical cases, enhance interpersonal communication skills, and improve team cohesion.

Question 8: Sponsoring Institution Actions

Describe actions that the Sponsoring Institution will take over the next three to five years to achieve each aim. (Maximum 350 words)

Actions to Achieve AIM #1: Kern Medical, in collaboration with its community partners of Adventist Health and Kaiser Permanente, will apply for and receive accreditation for a new general surgery residency program by 2025.

Kern Medical will continue to identify ways to expand trainee complements in our current sponsored programs, while exploring the possibility of applying for new accredited fellowships in Internal Medicine in the next 5 years. Our institution will work collaboratively with our community partners, including Kern Behavioral Health and Recovery Services and Adventist Health, to jointly recruit new faculty who in turn will support current and future training programs. The Kern Medical Foundation will continue to identify grants and other sources of funding for these future programs.

Kern Medical will strive to recruit and retain nurses, advanced practice providers, and faculty (particularly 20% of our graduating residents and fellows) into our GME programs over the next 3 years, with the emphasis of practicing in our medically underserved community.

Actions to Achieve AIM #2: In the next 2 years, Kern Medical will provide formal faculty development sessions on the topics of professionalism, integrity, and leadership with an emphasis on the importance of coaching and mentoring in academic medicine. Faculty will then serve as formal coaches for our residents and fellows, ensuring the progressive professional development of our trainees.

During the next 2 years, Kern Medical will offer quarterly presentations to our faculty and trainees at both the institutional and programmatic level regarding the topics of justice, equity, diversity and inclusion.

Actions to Achieve AIM #3: Over the next 2 years, Kern Medical will prioritize the well-being of the entire healthcare team with the assistance of established wellness resources and programs, while minimizing the effects of burnout and fatigue as measured through aggregate confidential institutional surveys.



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

March 15, 2023

Subject: Kern County Hospital Authority Chief Financial Report – January 2023

Recommended Action: Receive and File

Summary:

Kern Medical Operations:

Kern Medical key performance indicators:

- Operating gain of \$226,406 for January is \$134,913 more than the January budget of \$91,493 and \$44,326 more than the \$182,080 average over the last three months
- EBIDA of \$1,404,227 for January is \$242,768 more than the January budget of \$1,161,459 and \$110,228 more than the \$1,293,999 average over the last three months
- Average Daily Census of 169 for January is 19 more than the January budget of 150 and 3 more than the 166 average over the last three months
- Admissions of 830 for January are 204 less than the January budget of 1,034 and 8 less than the 838 average over the last three months
- Total Surgeries of 454 for January are 35 less than the January budget of 489 and 24 less than the 478 average over the last three months
- Clinic Visits of 16,114 for January are 538 more than the January budget of 15,576 and 880 more than the 15,234 average over the last three months. The total includes 83 COVID-19 vaccination visits

The following items have budget variances for the month of January 2023:

Patient Revenue:

Kern Medical operated at 6% under budget for gross patient revenue for the month due to less than average patient billing for the month. On a year-to-date basis there is a small unfavorable budget variance of 2%.

Indigent Funding Revenue:

Indigent funding has an unfavorable budget variance for the month and on a year-to-date basis due to a conservative approach to recognizing indigent funding revenue. During each month of fiscal year 2023 Kern Medical will only recognize 95% of the total projected revenue for the Managed Care Rate Range Program, the Medi-Cal Quality Assurance Fee Program, the Physician SPA Program, the Graduate Medical Education (GME) Program, and the AB915 Outpatient Supplemental Funding Program. Kern Medical will recognize 100% of total projected revenue for the Medi-Cal waiver programs including the Global Payment Program (GPP), CalAIM, the Enhanced Payment Program (EPP), and the Quality Incentive Program (QIP).

Capitation Premium Revenue:

Kern Medical reported capitation premium revenue of \$1.4 million for January due to the receipt of Respiratory Syncytial Virus (RSV) capitation readiness funding.

Other Operating Revenue:

Kern Medical reported other operating revenue for January at the budgeted dollar amount. On a year-to-date basis, revenue for items such as grants and Proposition 56 are received on a quarterly or otherwise periodically. Therefore, actual monthly revenue compared to the budget will fluctuate throughout the year, but should agree with the planned budgeted dollar amount on a year-to-date basis at year-end.

Other Non-Operating Revenue:

Other non-operating revenue has an unfavorable budget variance for the month and on a year-to-date basis because federal and state COVID-19 related funding is budgeted evenly throughout FY 2023 as other non-operating revenue; however, COVID-19 funding is not received consistently. Therefore, the actual dollar amount recorded for this line item may fluctuate vs. budget on a monthly basis but should align with budget on a year-to-date basis by year-end.

Nurse Registry Expense:

Nurse registry expense is under budget for the month and on a year-to-date basis. Kern Medical has substantially decreased its usage of contract nurse services. In addition, the hourly rates charged by the staffing agencies that provide registry nurse services are significantly lower than at various COVID-related peaks. During the past two years, staffing agencies were charging higher than average costs per hour due to nurse shortages during the pandemic. COVID-19 remains active and Kern Medical plans to continue its need for registry services.

Medical Fees:

Medical fees are over budget for the month and on a year-to-date basis because of an increase in services provided by the Acute Care Medical Surgery Group. The monthly fees for Regional Anesthesia Associates have also increased. In addition, the budget for this line item was reduced for FY 2023 with the expectation of less usage of contract physician services.

Other Professional Fees:

Other professional fees are over budget for the month and on a year-to-date basis because of monthly per-member-per-month (PMPM) payments for Universal Healthcare's Enhanced Care Management (ECM) services. These fees are offset by additional gross patient revenue for ECM services billed by Kern Medical. In addition, IT and other various contract labor expenses are higher than average for the month and on a year-to-date basis.

Supplies Expense:

Supplies expense is under budget for the month and on a year-to-date basis because of lower than average costs for pharmaceuticals and for general medical supplies.

Purchased Services:

Purchased services are over budget for the month and on a year-to-date basis because of additional revenue cycle support services provided by Signature Performance and by Health Advocates. Health Advocates helps qualify patients for Medi-Cal coverage. Therefore, Health Advocates' expenses are offset by additional Medi-Cal patient revenue. In addition, computer software maintenance fees have increased compared to prior year. There was also an increase in cost for security.

Other Expenses:

Other expenses are slightly over budget for the month due in part to higher than average repairs and maintenance expenses. In addition, there are new rental expenses for the new 19th Street clinic. On a year-to-date basis, the unfavorable budget variance is primarily because of higher than average costs for repairs and maintenance and for utilities.

Interest Expense:

Interest expense is over budget for the month and on a year-to-date basis due to higher than anticipated certificate of participation (COP) bond interest.

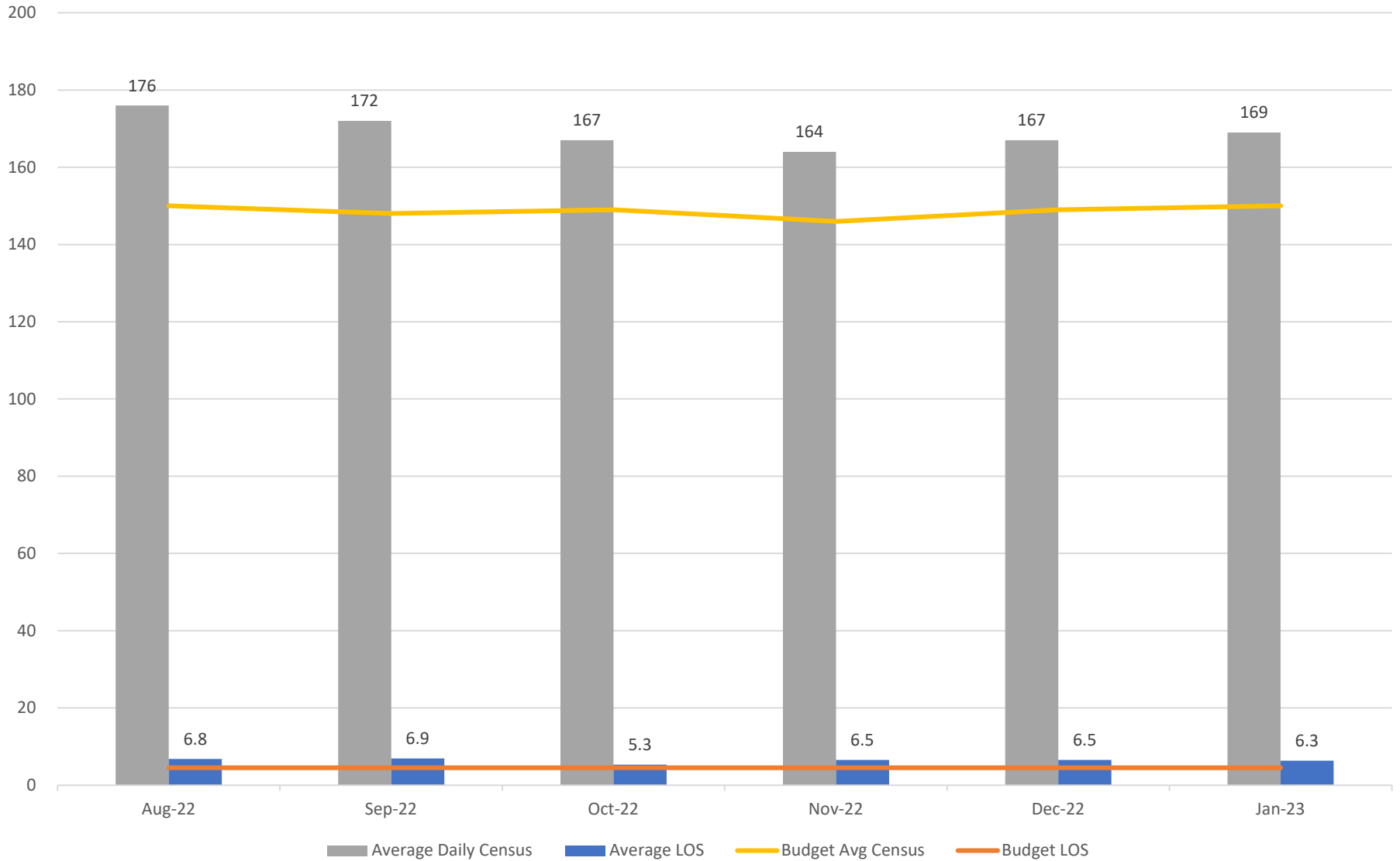
Depreciation and Amortization Expense:

Depreciation and amortization expenses are slightly over the budgeted dollar amount for the month and on a year-to-date basis. These expenses will fluctuate as new equipment is put in service and as capital projects are completed.

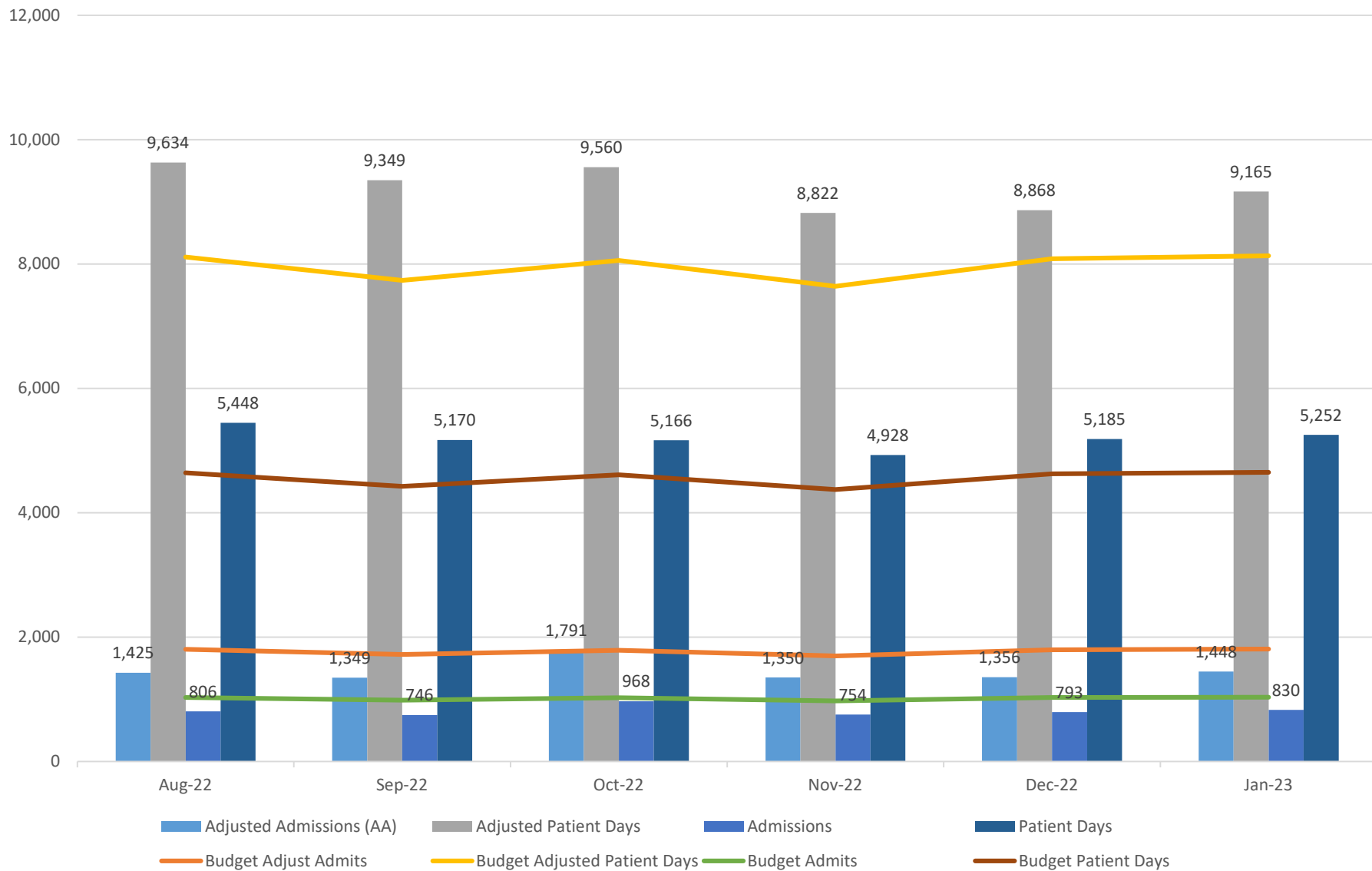


**BOARD OF GOVERNORS' REPORT
KERN MEDICAL – JANUARY 2023**

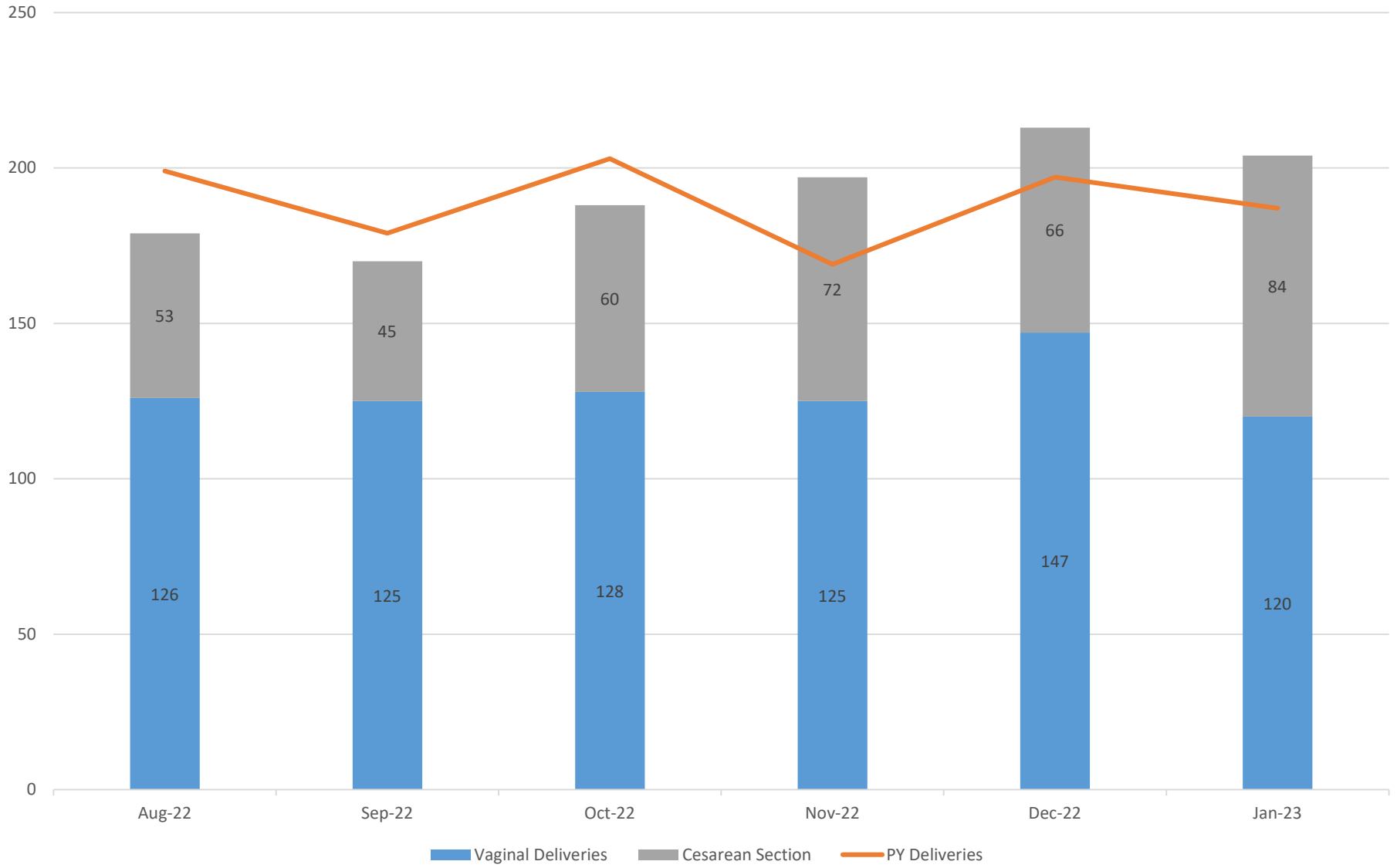
Census & ALOS



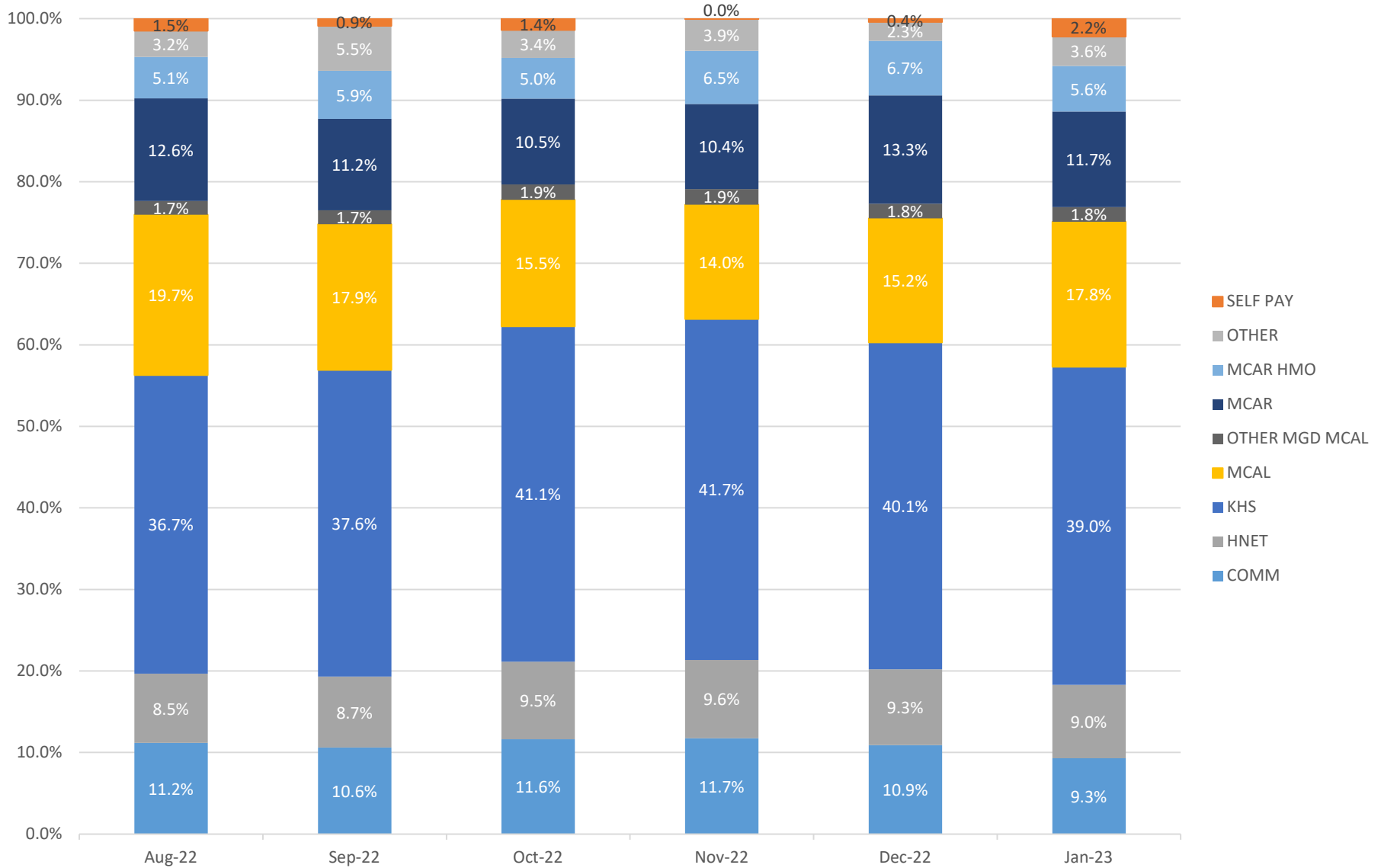
Hospital Volumes



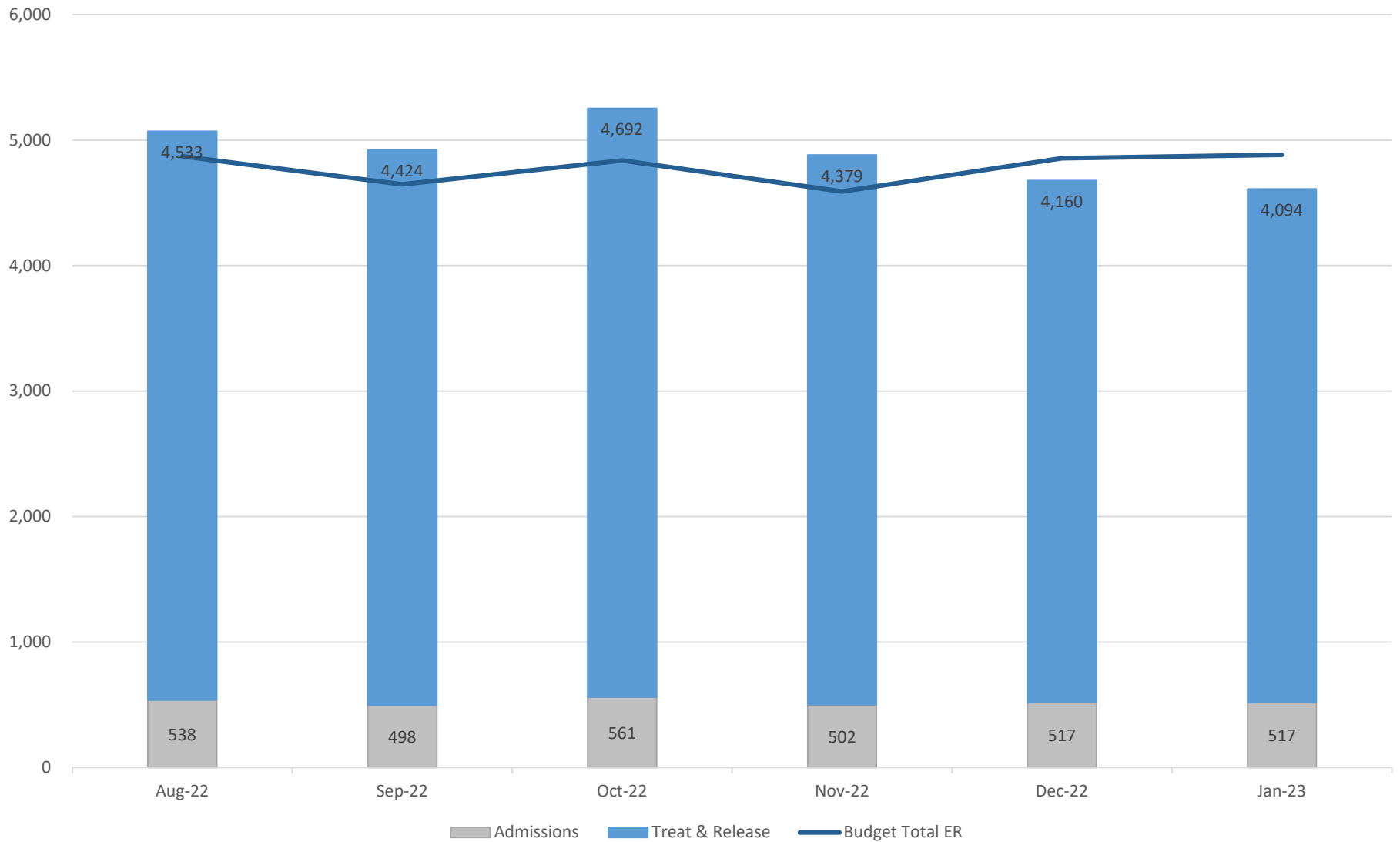
Deliveries



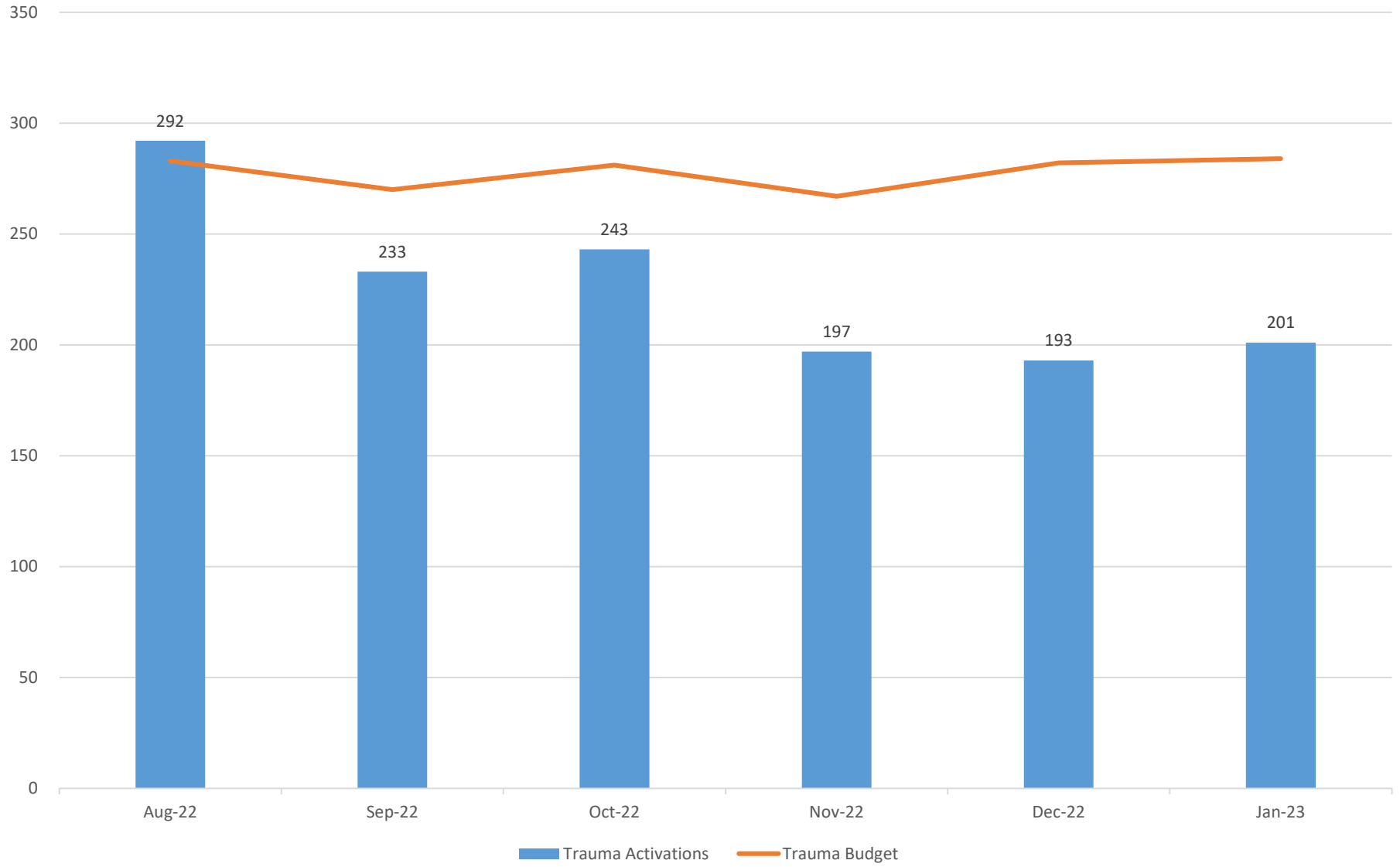
PAYER MIX



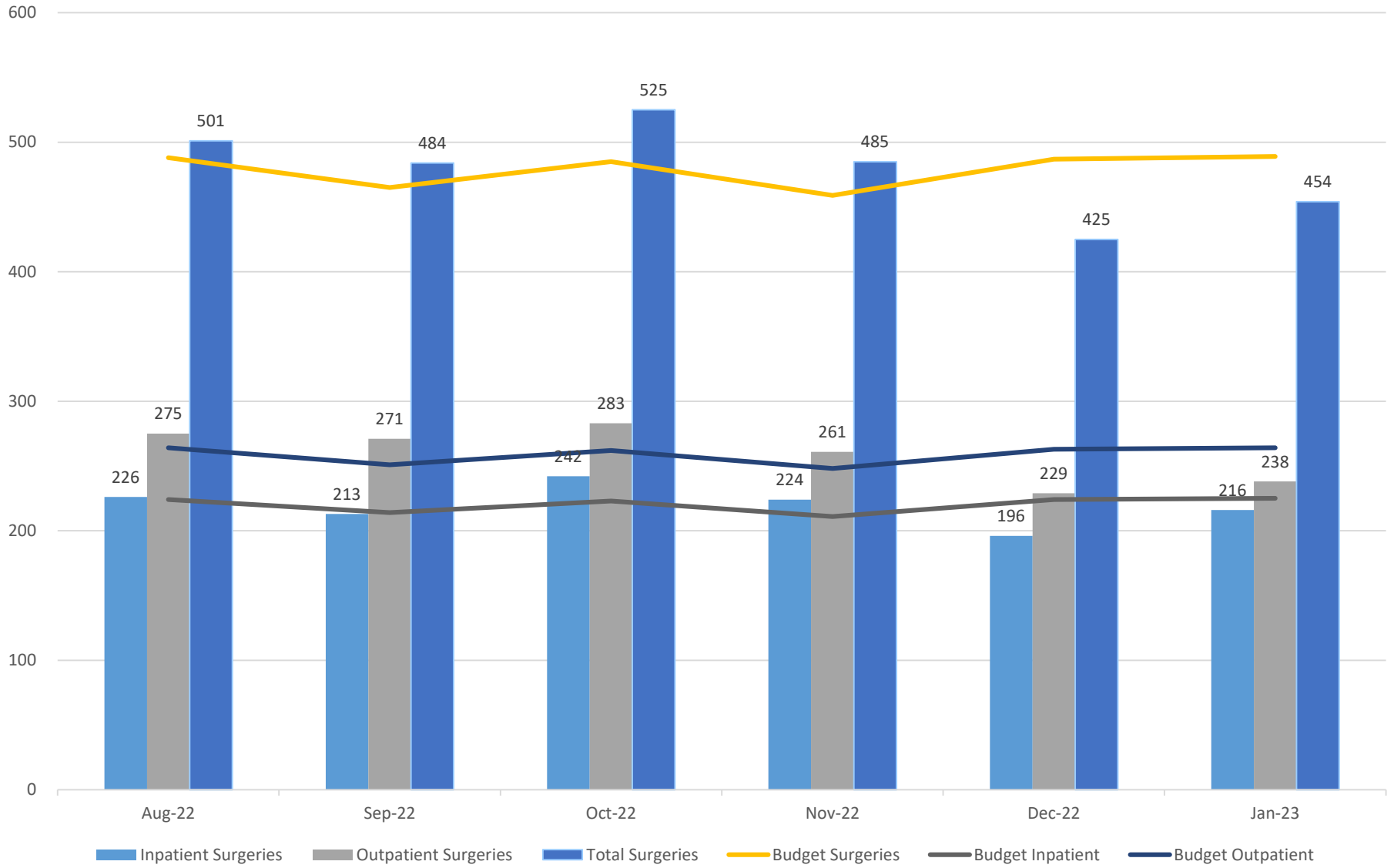
Emergency Room Volume



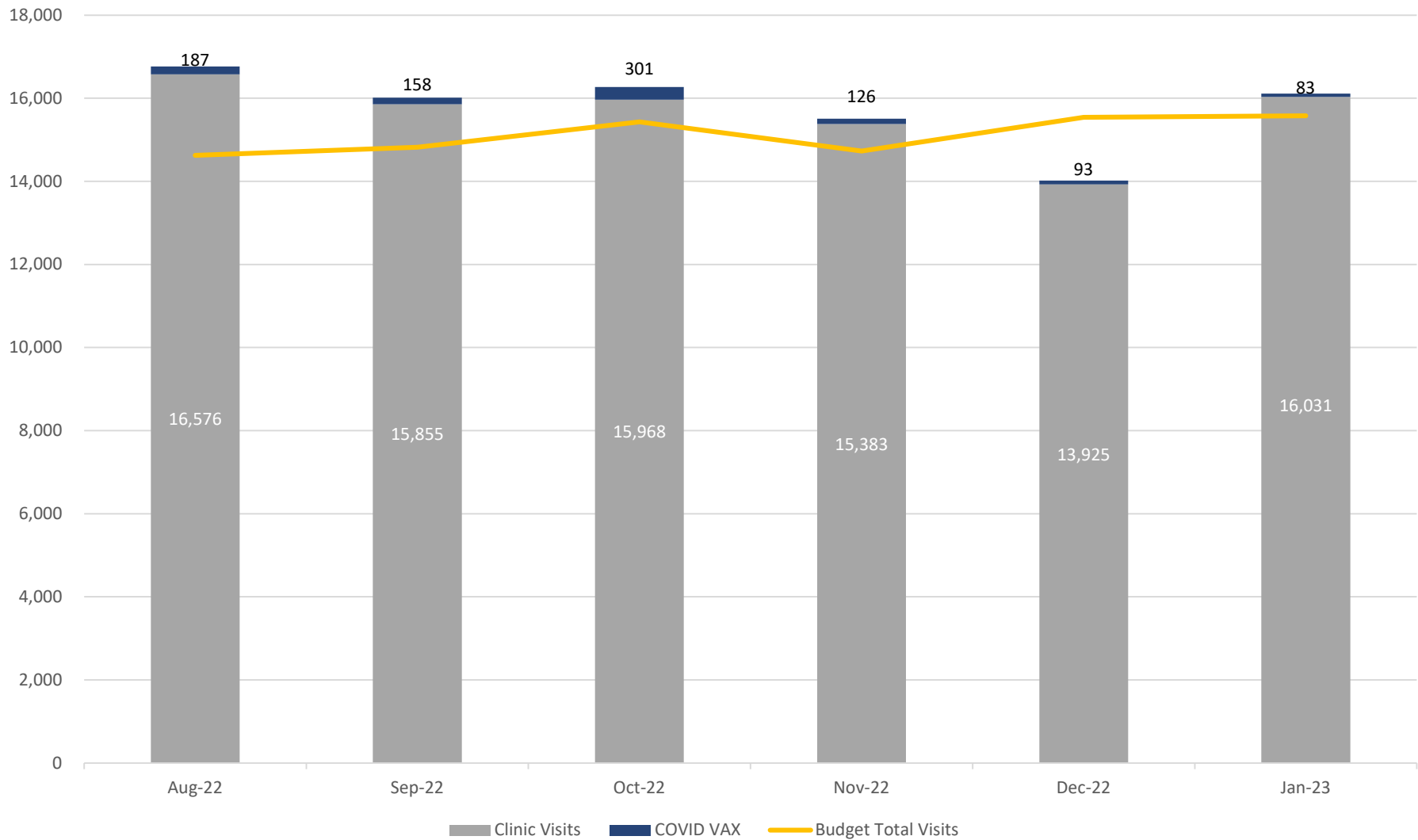
Trauma Activations



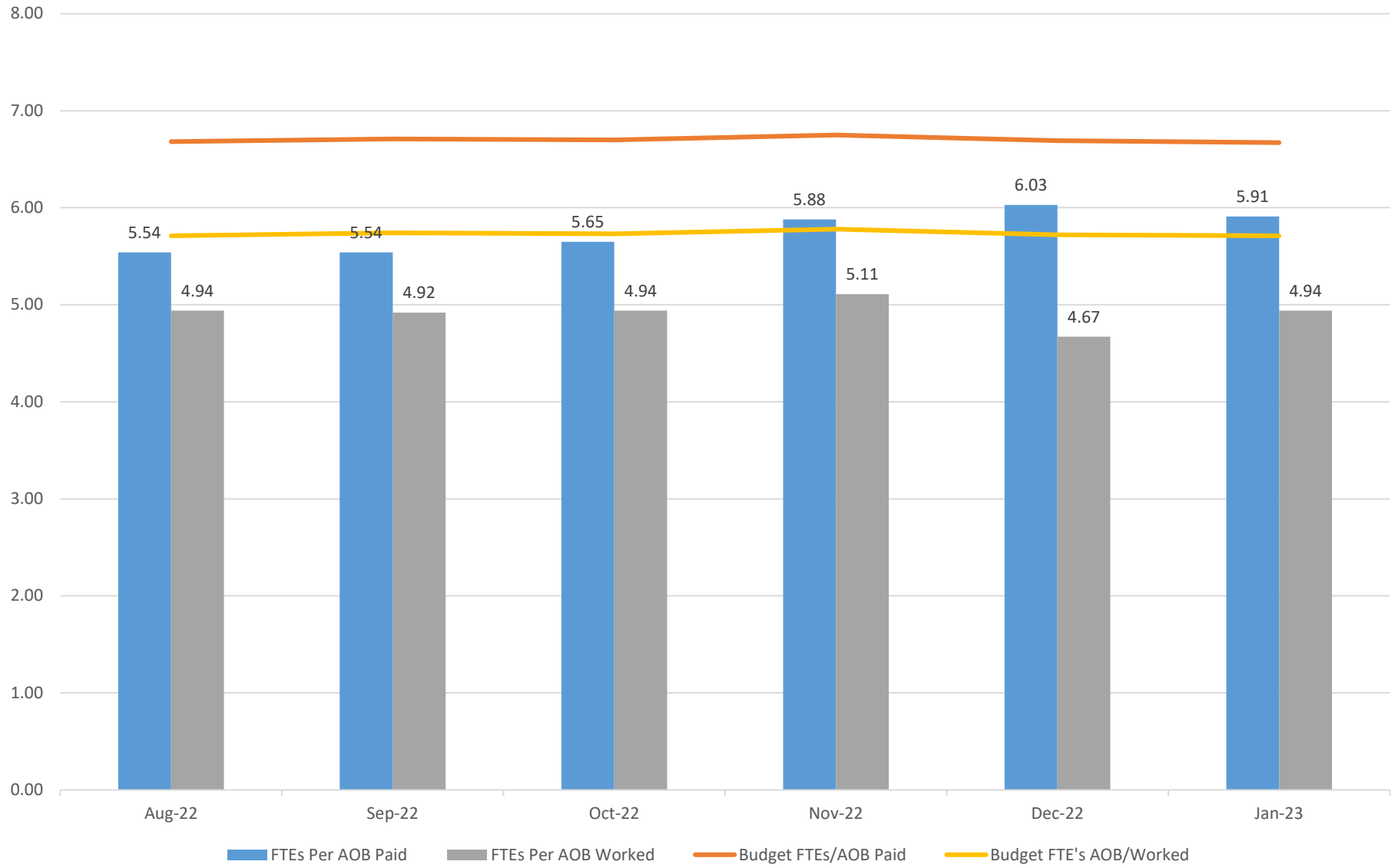
Surgical Volume



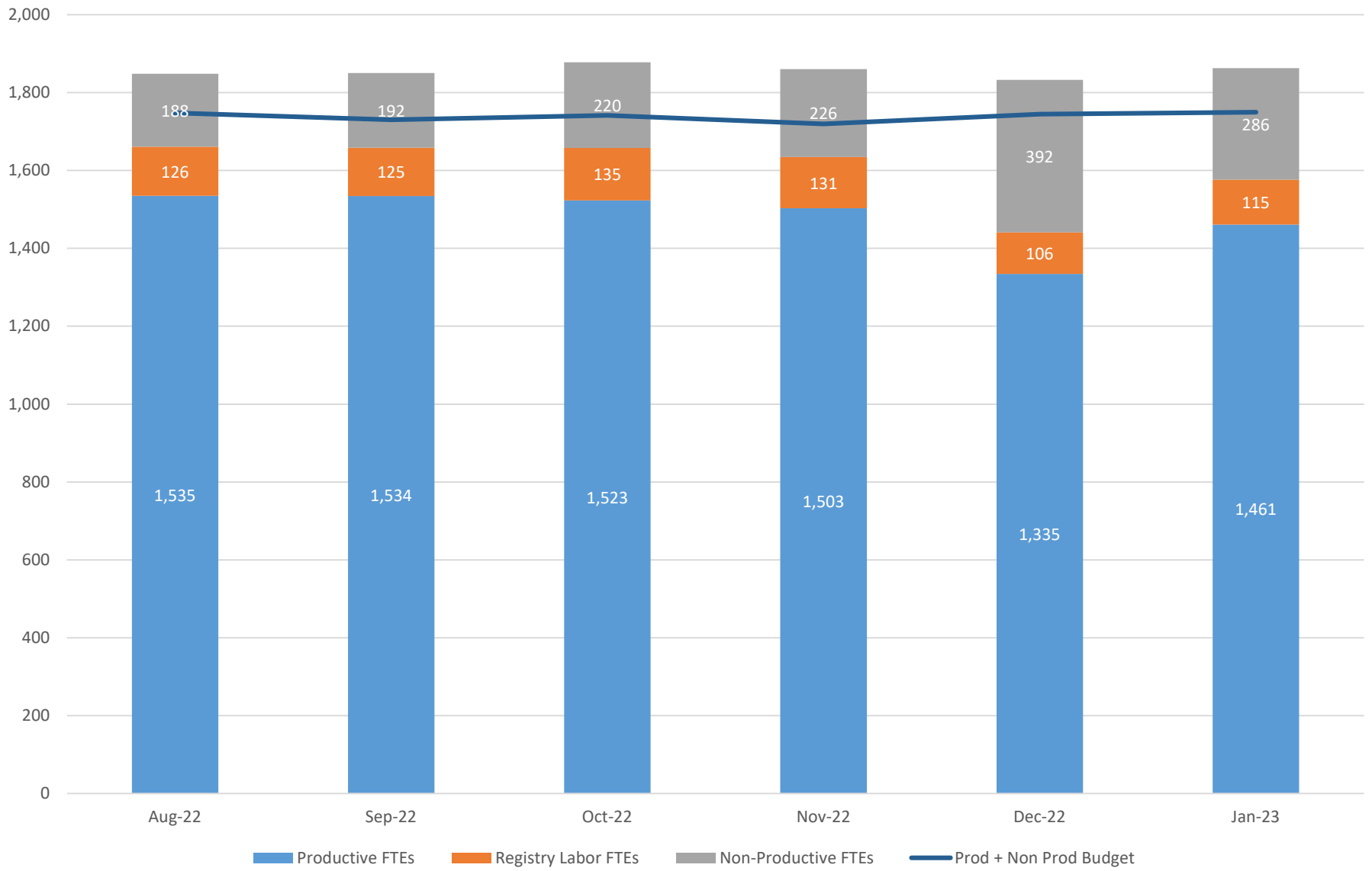
Clinic Visits



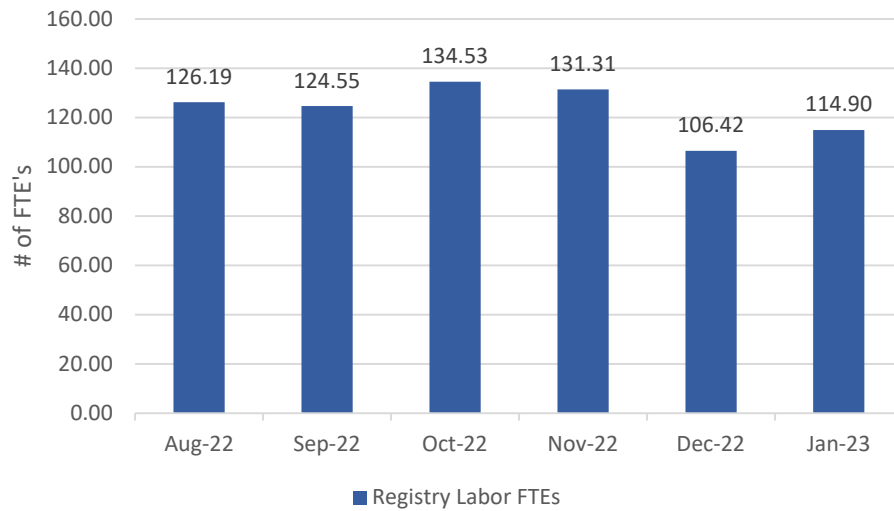
Labor Metrics



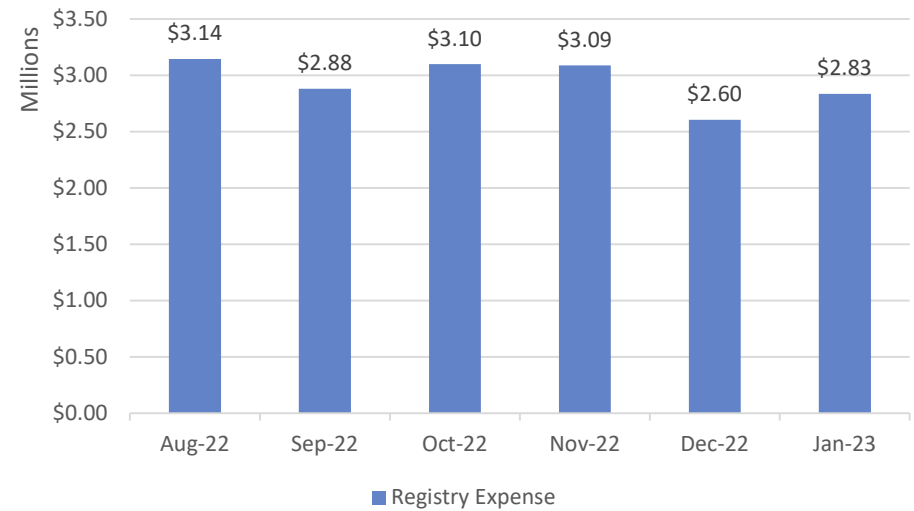
Productivity



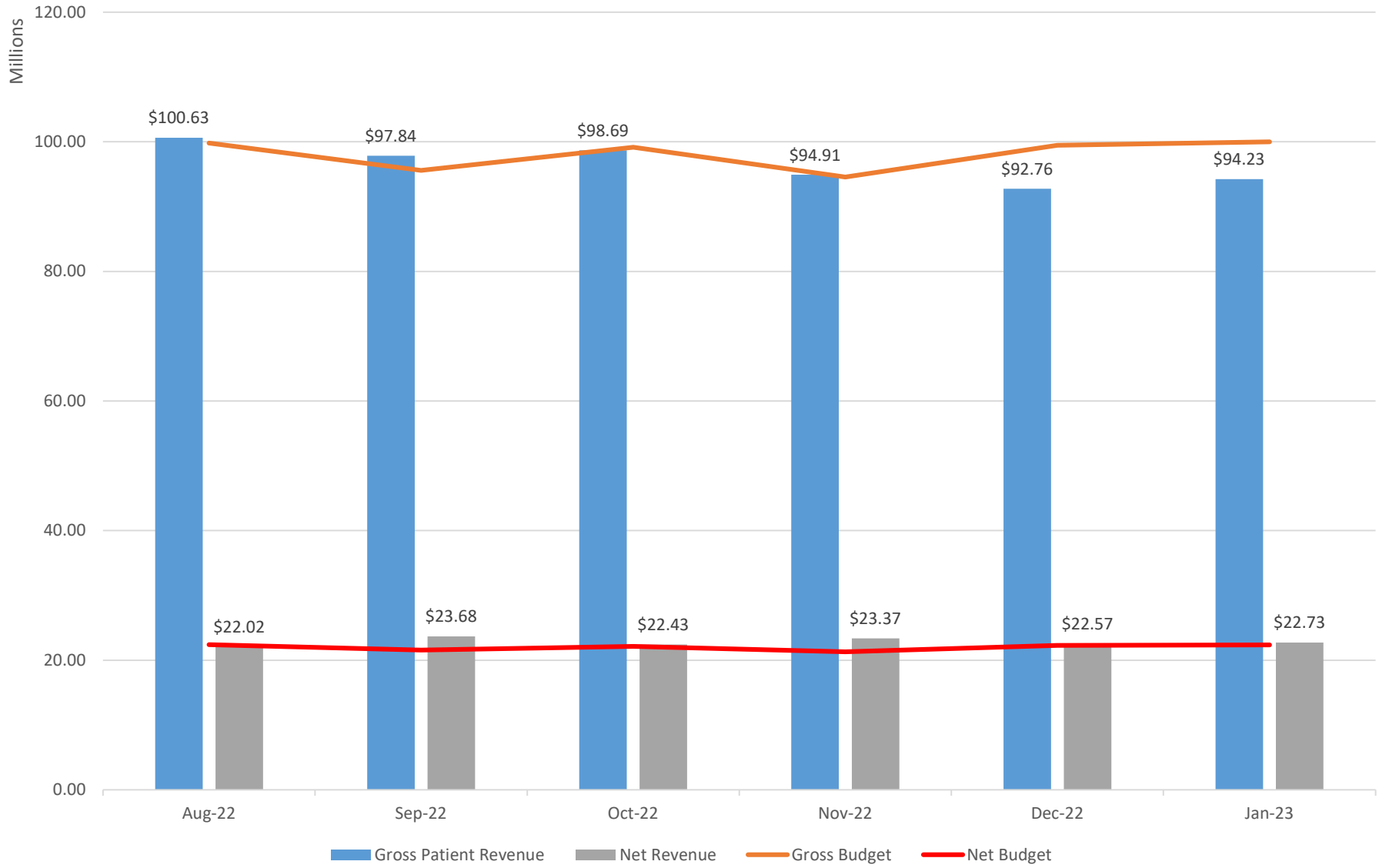
Registry FTE's



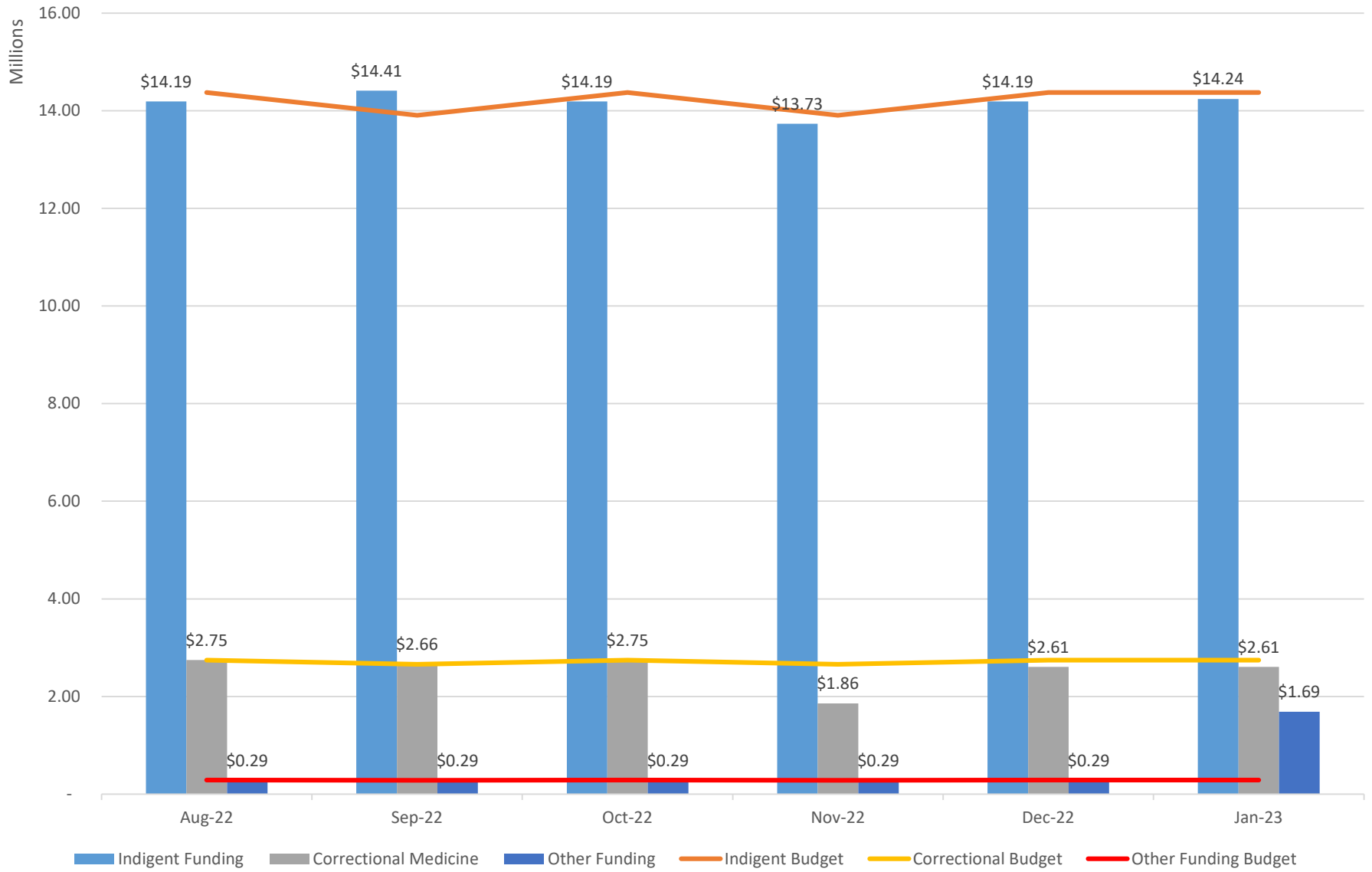
Registry Expense



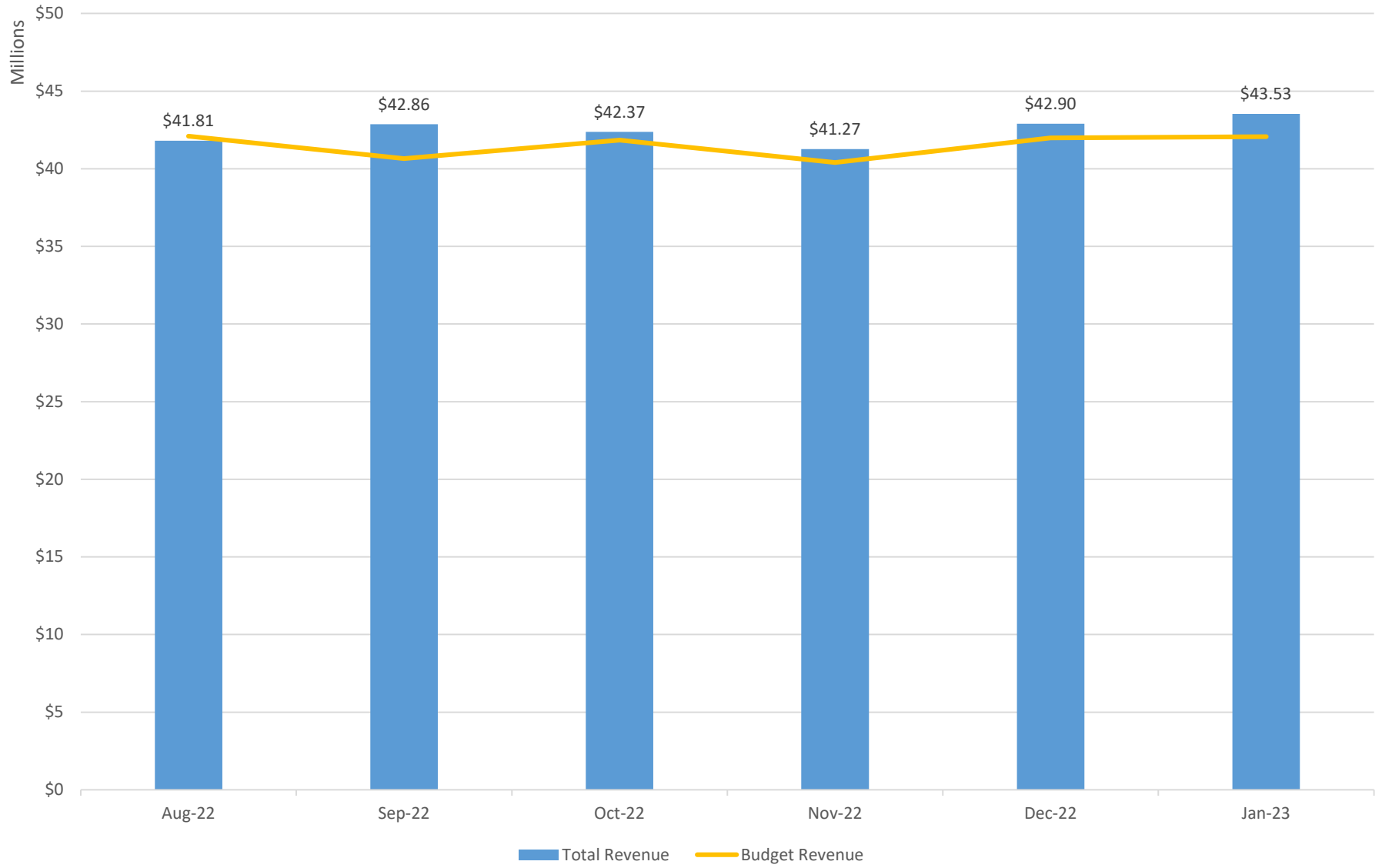
Patient Revenue



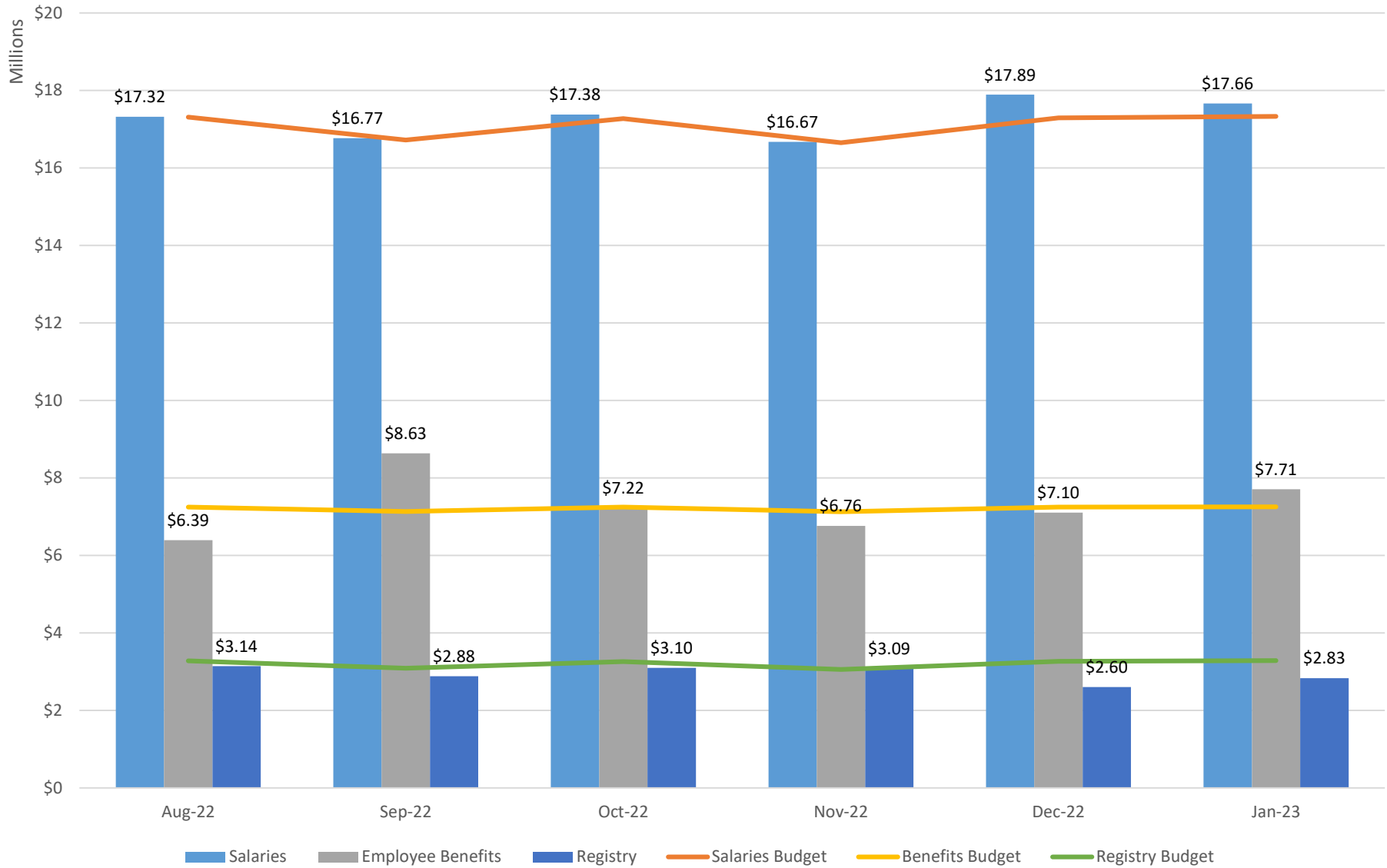
Indigent & Correctional Revenue



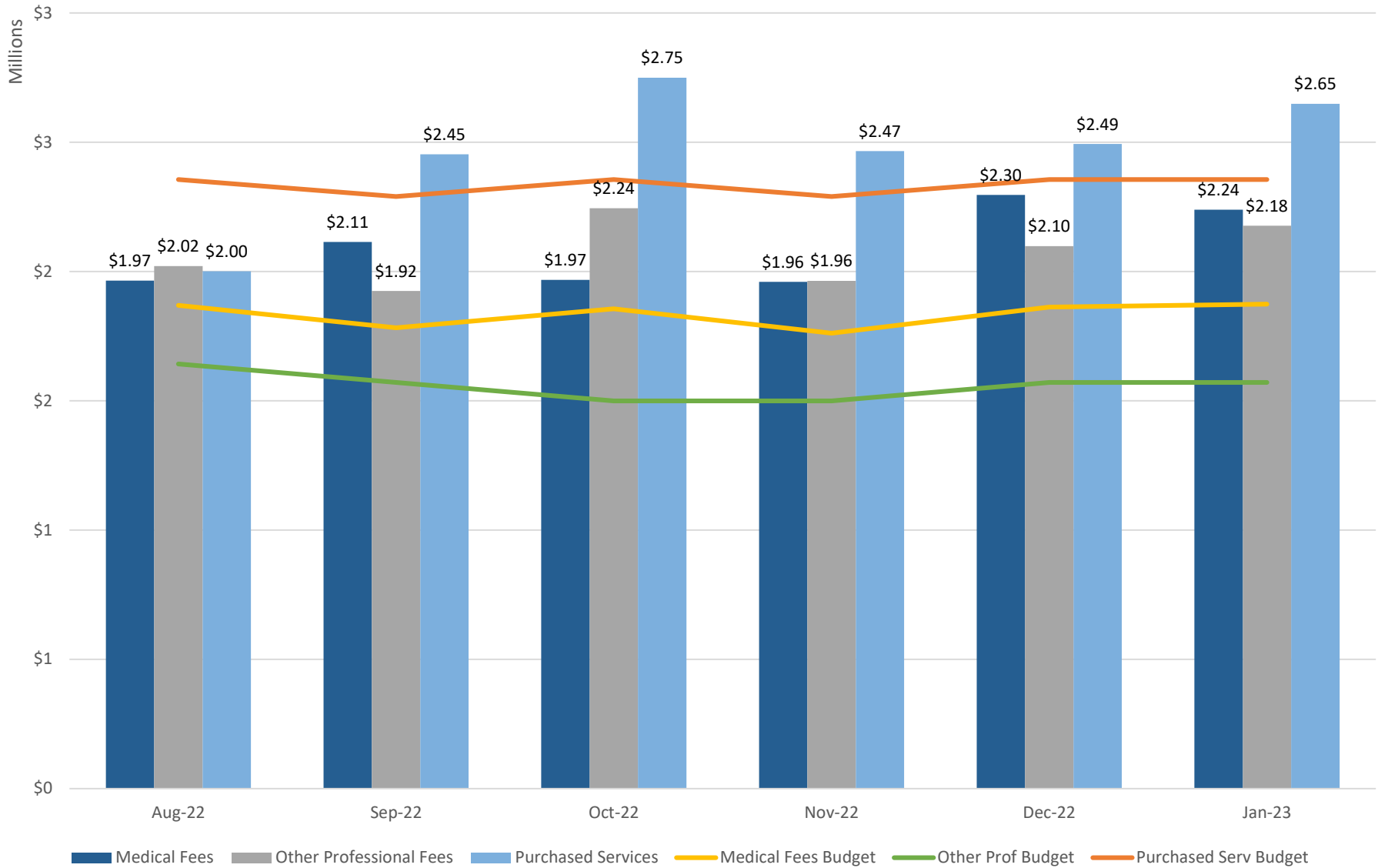
Total Revenue



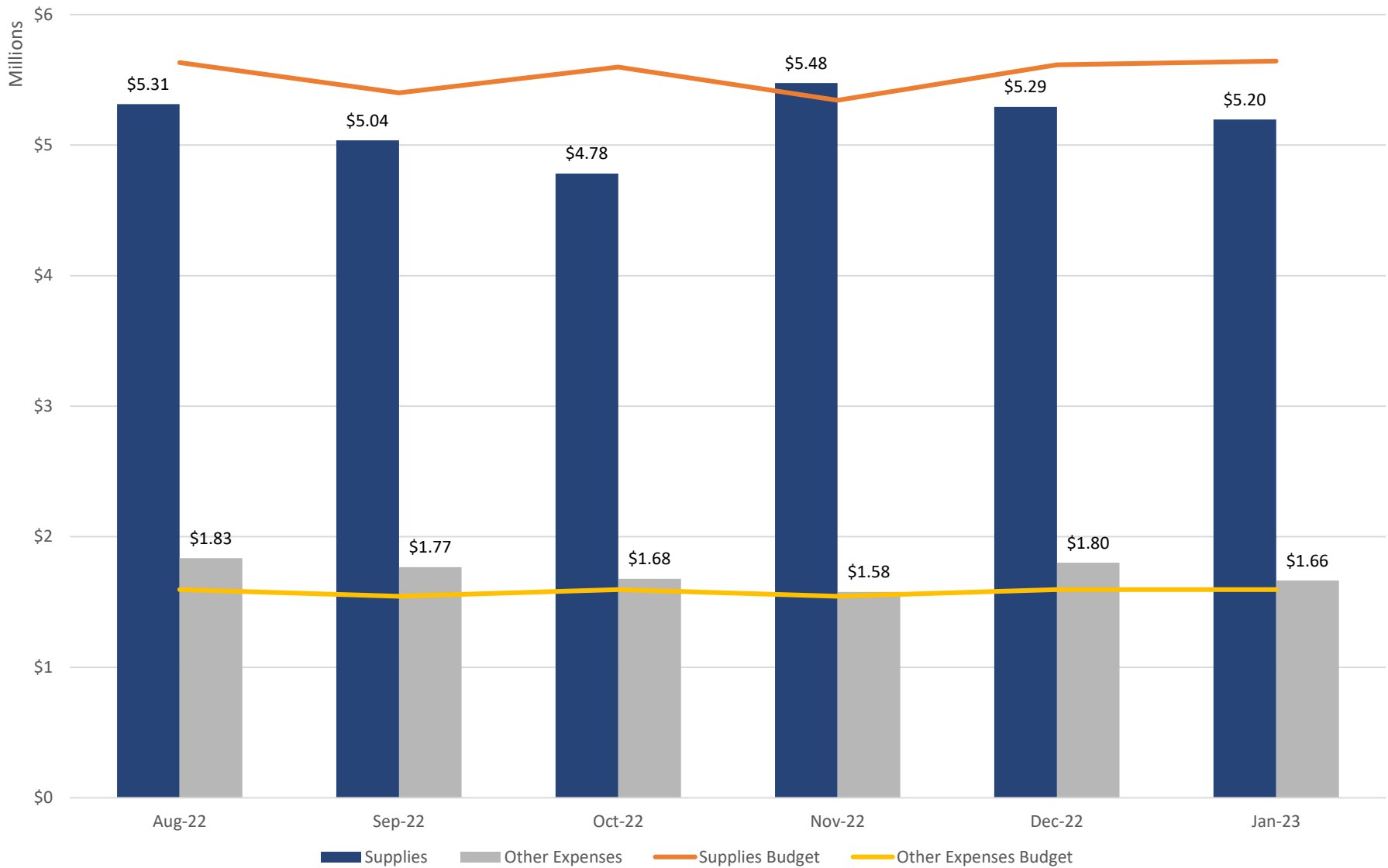
Expenses



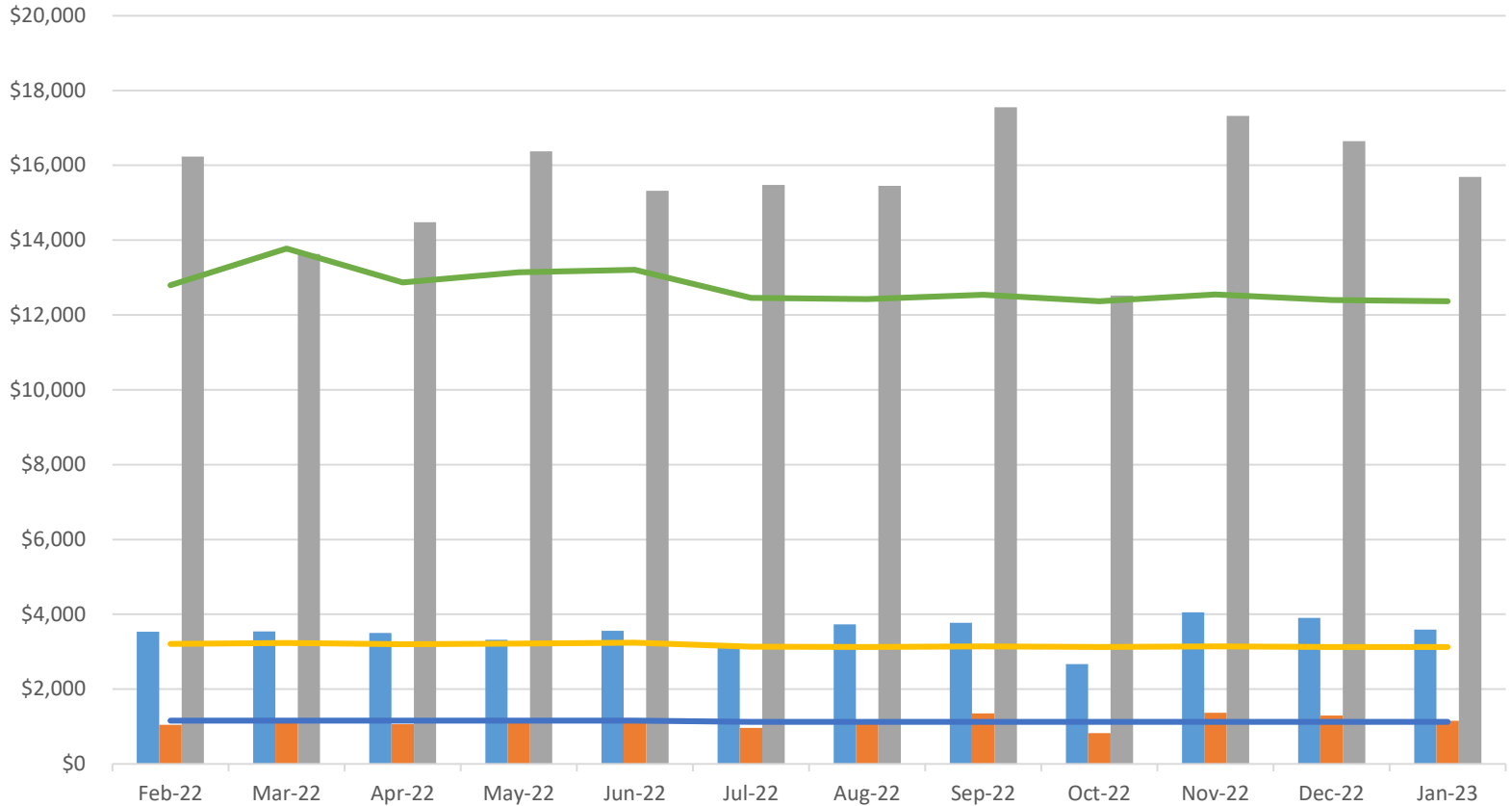
Expenses



Expenses

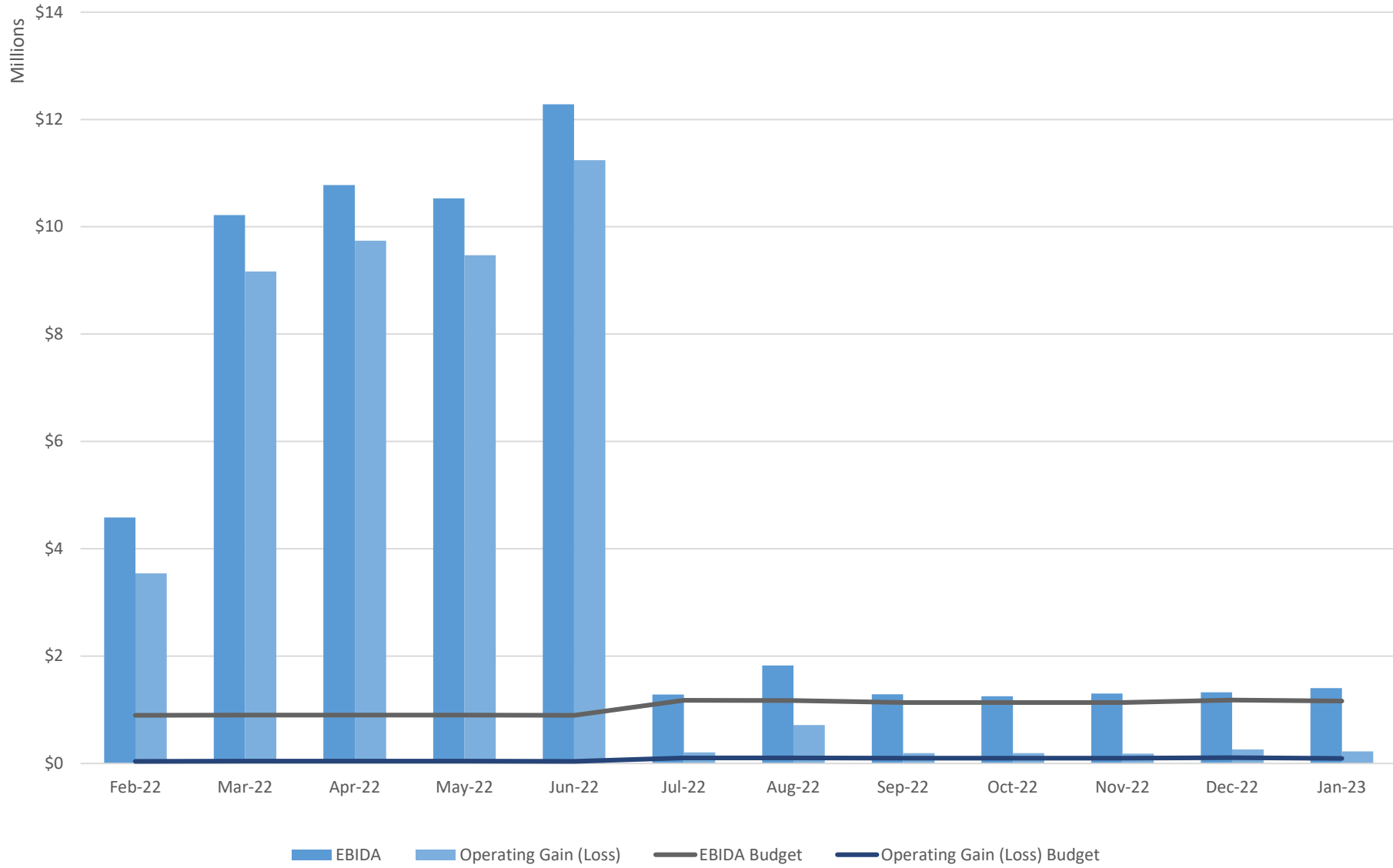


Operating Metrics

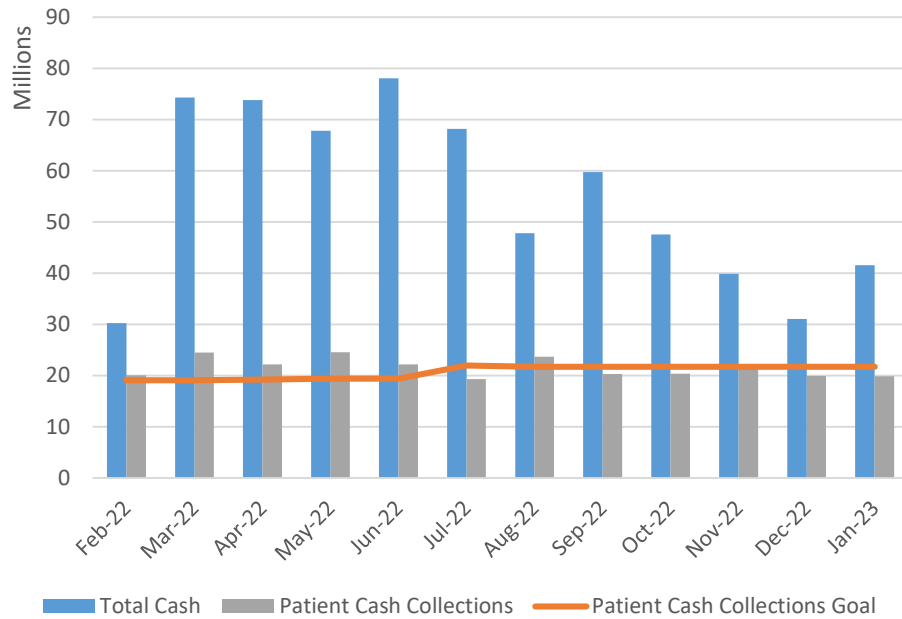


	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Jan-23
Supply Expense per AA	\$3,534	\$3,538	\$3,501	\$3,323	\$3,555	\$3,195	\$3,728	\$3,773	\$2,670	\$4,056	\$3,902	\$3,588
Pharm Cost per AA	\$1,048	\$1,120	\$1,062	\$1,097	\$1,218	\$966	\$1,101	\$1,349	\$826	\$1,368	\$1,293	\$1,153
Net Revenue Per AA	\$16,237	\$13,629	\$14,480	\$16,374	\$15,318	\$15,476	\$15,451	\$17,552	\$12,523	\$17,317	\$16,642	\$15,694
Budget Supp/AA	\$3,208	\$3,236	\$3,202	\$3,220	\$3,242	\$3,136	\$3,125	\$3,140	\$3,127	\$3,145	\$3,124	\$3,122
Budget Pharm/AA	\$1,154	\$1,156	\$1,154	\$1,156	\$1,156	\$1,126	\$1,126	\$1,126	\$1,126	\$1,126	\$1,126	\$1,126
Budget Net Rev/AA	\$12,793	\$13,771	\$12,868	\$13,141	\$13,206	\$12,461	\$12,428	\$12,543	\$12,368	\$12,545	\$12,398	\$12,368

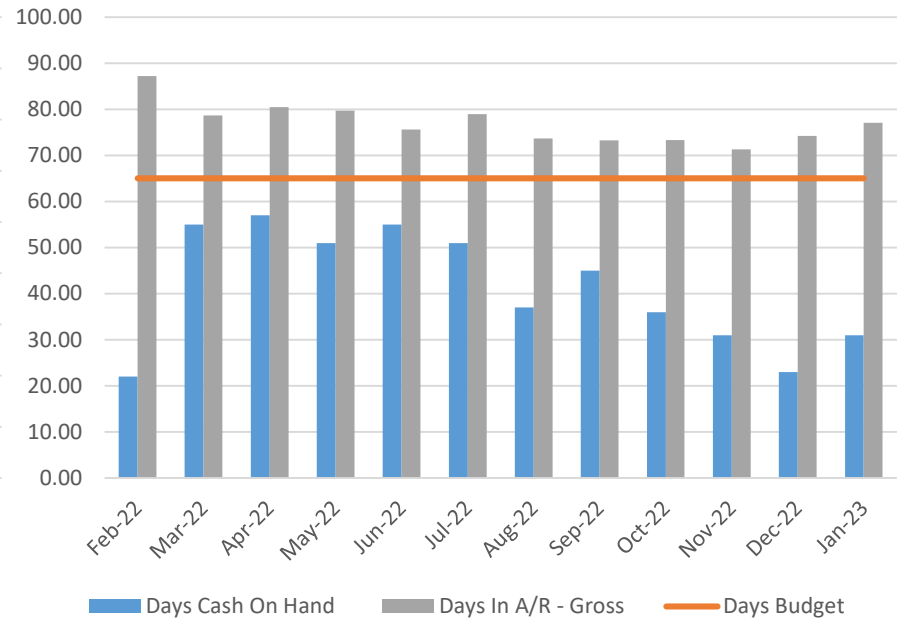
EBIDA Rolling Year



Cash Rolling Year



AR Days Rolling Year



KERN MEDICAL
3-Month Trend Analysis: Revenue & Expense
January 31, 2023

				BUDGET	VARIANCE	PY
	NOVEMBER	DECEMBER	JANUARY	JANUARY	POS (NEG)	JANUARY
Gross Patient Revenue	\$ 94,906,726	\$ 92,763,154	\$ 94,229,366	\$ 99,998,353	(6%)	\$ 97,984,263
Contractual Deductions	(71,533,169)	(70,191,960)	(71,498,539)	(77,638,724)	(8%)	(72,187,292)
Net Revenue	23,373,557	22,571,194	22,730,827	22,359,629	2%	25,796,971
Indigent Funding	13,734,085	14,191,888	14,241,868	14,370,622	(1%)	86,431,707
Correctional Medicine	1,857,998	2,608,400	2,608,481	2,746,855	(5%)	2,242,175
County Contribution	285,211	285,211	285,211	291,120	(2%)	285,526
Incentive Funding	0	0	1,404,200	0	0%	0
Net Patient Revenue	39,250,851	39,656,693	41,270,587	39,768,226	4%	114,756,379
Other Operating Revenue	2,009,213	3,231,026	2,242,396	2,243,837	(0%)	2,057,914
Other Non-Operating Revenue	10,929	11,635	18,353	49,452	(63%)	2,004,765
Total Revenue	41,270,993	42,899,354	43,531,336	42,061,515	3%	118,819,057
Expenses						
Salaries	16,674,232	17,889,327	17,661,435	17,328,080	2%	17,262,049
Employee Benefits	6,763,065	7,101,819	7,707,456	7,250,836	6%	(13,994,013)
Registry	3,087,751	2,602,860	2,833,340	3,282,170	(14%)	5,854,184
Medical Fees	1,959,480	2,296,002	2,239,065	1,873,239	20%	1,772,682
Other Professional Fees	1,964,146	2,097,587	2,177,254	1,570,785	39%	1,729,246
Supplies	5,475,098	5,292,544	5,196,818	5,644,322	(8%)	4,872,801
Purchased Services	2,465,510	2,492,913	2,648,107	2,355,395	12%	2,065,470
Other Expenses	1,577,173	1,800,266	1,663,634	1,595,229	4%	(2,840,212)
Operating Expenses	39,966,456	41,573,318	42,127,109	40,900,056	3%	16,722,206
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,304,538	\$ 1,326,036	\$ 1,404,227	\$ 1,161,459	21%	\$ 102,096,851
EBIDA Margin	3%	3%	3%	3%	17%	86%
Interest	112,241	112,380	157,018	86,199	82%	641,359
Depreciation	722,678	666,461	737,458	682,877	8%	671,551
Amortization	285,372	285,372	283,345	300,890	(6%)	4,825,640
Total Expenses	41,086,747	42,637,531	43,304,929	41,970,022	3%	22,860,757
Operating Gain (Loss)	\$ 184,246	\$ 261,822	\$ 226,406	\$ 91,493	147%	\$ 95,958,301
Operating Margin	0.4%	0.6%	0.5%	0.2%	139.1%	80.8%

KERN MEDICAL
Year to Date: Revenue & Expense
January 31, 2023

	ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
	FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
Gross Patient Revenue	\$ 671,535,496	\$ 685,178,471	(2%)	\$ 698,702,972	(4%)
Contractual Deductions	(512,174,952)	(531,418,315)	(4%)	(533,610,567)	(4%)
Net Revenue	159,360,544	153,760,156	4%	165,092,405	
Indigent Funding	99,153,217	99,667,218	(0.5%)	167,875,896	(41%)
Correctional Medicine	17,973,691	19,050,770	(6%)	17,942,175	0%
County Contribution	1,996,476	2,019,056	(1%)	1,996,791	(0%)
Incentive Funding	1,404,200	0	0%	0	0%
Net Patient Revenue	279,888,128	274,497,199	2%	352,907,267	(21%)
Other Operating Revenue	16,073,915	15,607,069	3%	15,137,793	6%
Other Non-Operating Revenue	92,315	342,971	(73%)	2,079,808	(96%)
Total Revenue	296,054,358	290,447,239	2%	370,124,868	(20%)
Expenses					
Salaries	120,754,775	119,669,209	0.9%	115,382,636	5%
Employee Benefits	50,201,686	50,480,628	(1%)	27,949,528	80%
Registry	21,234,784	22,400,007	(5%)	30,503,944	(30%)
Medical Fees	14,426,926	12,808,029	13%	12,232,927	18%
Other Professional Fees	14,409,767	10,852,698	33%	10,737,680	34%
Supplies	35,752,109	38,693,573	(8%)	42,370,413	(16%)
Purchased Services	17,390,933	16,356,082	6%	13,864,908	25%
Other Expenses	12,199,254	11,063,685	10%	6,790,234	80%
Operating Expenses	286,370,235	282,323,911	1%	259,832,269	10%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 9,684,123	\$ 8,123,328	19%	\$ 110,292,599	(91%)
EBIDA Margin	3%	3%	17%	30%	(89%)
Interest	830,004	597,835	39%	1,148,532	(28%)
Depreciation	4,943,476	4,736,083	4%	4,701,823	5%
Amortization	2,025,681	2,086,815	(3%)	6,315,681	(68%)
Total Expenses	294,169,397	289,744,643	2%	271,998,305	8%
Operating Gain (Loss)	\$ 1,884,962	\$ 702,596	168%	\$ 98,126,564	(98%)
Operating Margin	0.6%	0.2%	163.2%	26.5%	(98%)

**KERN MEDICAL
BALANCE SHEET**

	JANUARY 2023	JANUARY 2022
ASSETS:		
<i>Total Cash</i>	\$ 41,546,268	\$ 44,548,955
Patient Receivables Subtotal	264,189,742	329,850,591
Contractual Subtotal	(206,424,384)	(278,674,282)
<i>Net Patient Receivable</i>	57,765,358	51,176,309
Total Indigent Receivable	198,369,961	154,345,503
Total Other Receivable	6,737,826	6,488,551
Total Prepaid Expenses	7,038,307	5,290,121
Total Inventory	4,222,512	4,425,652
<i>Total Current Assets</i>	315,680,232	266,275,091
Deferred Outflows of Resources	127,290,855	127,290,855
Total Land, Equipment, Buildings and Intangibles	229,109,173	223,085,065
Total Construction in Progress	9,641,470	2,931,352
<i>Total Property, Plant & Equipment</i>	238,750,642	226,016,416
Total Accumulated Depr & Amortization	(143,639,155)	(131,869,901)
<i>Net Property, Plant, and Equipment</i>	95,111,487	94,146,515
<i>Total Long Term Assets</i>	127,290,855	127,290,855
<i>Total Assets</i>	\$ 538,082,574	\$ 487,712,461

**KERN MEDICAL
BALANCE SHEET**

	JANUARY 2023	JANUARY 2022
ASSETS:		
LIABILITIES & EQUITY:		
Total Accounts Payable	\$ 22,972,924	\$ 12,285,813
Total Accrued Compensation	35,318,290	33,424,256
Total Due Government Agencies	17,311,476	15,860,995
Total Other Accrued Liabilities	48,137,692	54,422,548
 <i>Total Current Liabilities</i>	 123,740,382	 115,993,611
 Unfunded Pension Liability	 381,152,811	 381,152,811
Other Long-Term Liabilities	61,859,422	64,286,919
<i>Total Long-Term Liabilities</i>	443,012,233	445,439,730
 <i>Total Liabilities</i>	 566,752,615	 561,433,341
 Fund Balance	 36,714,022	 36,714,022
Retained Earnings	(65,384,063)	(110,434,902)
<i>Total Fund Balance</i>	(28,670,041)	(73,720,880)
 <i>Total Liabilities and Fund Balance</i>	 \$ 538,082,574	 \$ 487,712,461



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

March 15, 2023

Subject: Kern County Hospital Authority Chief Executive Officer Report

Recommended Action: Receive and File

Summary:

The Chief Executive Officer of the Kern County Hospital Authority will provide your Board with a hospital-wide update.



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

March 15, 2023

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.



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

March 15, 2023

Agenda #32 – What’s Happening at Kern Medical Center, the file is unavailable as the file is too large. Please contact the Kern County Hospital Authority Board Coordinator at 661-326-2102 if you would like a printed copy of the presentation.



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

March 15, 2023

Agenda #33 – Miscellaneous Correspondence

Public Comment for Agenda Item 13 *“Presentation on Report of Independent Auditors from Moss Adams LLP regarding the audit of Kern Medical Center financial statements for the fiscal year ended June 30, 2022.”*

On 7/20/22, SEIU notified the Board of Governors that CFO Andrew Cantu’s company, Cantu Management Group, had received nearly \$3 million in unauthorized compensation from January 27, 2021 to August 31, 2021.

Cantu Management Group’s (“CMG”) maximum payable per Agreement 049-2019 was \$7,200,000 between September 1, 2019 to August 31, 2021.

CMG’s compensation exceeded \$7.2 million by January 27, 2021; however, former CEO Russell Judd continued to approve nearly \$3 million in unauthorized payments to CMG – a company owned by KCHA CFO Andrew Cantu.

The union provided [invoices signed by former CEO Russell Judd](#) as evidence.

1. According to KCHA CEO Scott Thygerson, “[a]ll payments made to [CMG] were made in accordance with KCHA policy for approval of payments and in accordance with the terms of payment for services rendered.”
 - a. Are “maximum payable” provisions non-binding for all KCHA contracts?
 - b. Which provisions in Cantu Management Group’s contract, and other Board-approved contracts, does the Authority consider binding?
 - c. Did the Authority’s treatment of “maximum payable” provisions for executive contracts influence the auditor’s evaluation of KCHA’s internal controls?
2. CEO Scott Thygerson seems to suggest that the \$3 million in payments made to CFO Andrew Cantu were permissible under the “resolution to regarding authority to enter into contracts.” On September 20, 2017, the Authority eliminated the CEO’s obligation to provide written quarterly reports about expenditures made pursuant to this resolution “to reflect more accurately the operational needs of the hospital.”

- a. What “operational need” was satisfied by removing the CEO’s duty to provide quarterly expenditure reports to the Board?
- b. Would this resolution allow the CEO to approve agreements with himself or an affiliate, like Meridian Healthcare Partners?
- c. Did this policy influence the auditor’s evaluation of KCHA’s internal controls?

From: [Sydnee Galusha](#)
To: [Public Comment](#)
Subject: Public Comment for 7/20/22
Date: Tuesday, July 19, 2022 12:16:00 PM
Attachments: [Cantu Invoices Sept 2019 - Aug 2021.pdf](#)
[image003.png](#)

I would like to submit the following comments and questions regarding Agenda Item 20 – “Proposed retroactive Amendment No. 1 to Agreement 049-2019 with Cantu Management Group, Inc., an independent contractor, for Chief Financial Officer, healthcare consulting and financial management services, for the period September 1, 2019 through August 31, 2023, increasing the maximum payable by \$13,043,284, from \$7,200,000 to \$20,243,284, to cover the term, effective September 1, 2021.”

- Cantu Management Group’s (Cantu) maximum payable per Agreement 049-2019 was \$7,200,000 between September 1, 2019, to August 31, 2021.
- Cantu’s compensation exceeded \$7.2 million by January 27, 2021; however, former CEO Russell Judd continued to approve nearly \$3 million in unauthorized payments to Cantu – a company owned by Kern Medical’s Chief Financial Officer, Andrew Cantu. (See the tables below and attached invoices for reference)

Total Monthly Compensation				Cumulative Compensation			
	2019	2020	2021		2019	2020	2021
January		\$ 1,114,091.51	\$ 822,401.81	January		\$ 2,172,842.37	\$ 7,203,498.13
February		\$ 419,533.72	\$ 205,438.53	February		\$ 2,592,376.09	\$ 7,408,936.66
March		\$ 430,288.79	\$ 618,747.17	March		\$ 3,022,664.88	\$ 8,027,683.83
April		\$ 430,165.90	\$ 424,953.40	April		\$ 3,452,830.78	\$ 8,452,637.23
May		\$ 409,590.16	\$ 212,079.32	May		\$ 3,862,420.94	\$ 8,664,716.55
June		\$ 408,657.51	\$ 618,887.25	June		\$ 4,271,078.45	\$ 9,283,603.80
July		\$ 409,424.75	\$ 422,186.53	July		\$ 4,680,503.20	\$ 9,705,790.33
August		\$ 240,875.33	\$ 415,737.64	August		\$ 4,921,378.53	\$ 10,121,527.97
September	\$ 410,477.90	\$ 632,660.93		September	\$ 410,477.90	\$ 5,554,039.46	
October	\$ 419,553.62	\$ 410,921.93		October	\$ 830,031.52	\$ 5,964,961.39	
November	\$ 228,719.34	\$ 416,134.93		November	\$ 1,058,750.86	\$ 6,381,096.32	
December	\$ -	\$ -		December	\$ 1,058,750.86	\$ 6,381,096.32	

1. Given that the Cantu Management Group is responsible for developing internal controls and providing oversight for the Hospital’s finances, does the Board intend to investigate how the CFO failed to notice that his own company received \$3 million in authorized compensation from the Hospital Authority?
2. What steps, if any, will the Board take moving forward to monitor the efficacy of internal controls and ensure proper oversight of the Hospital’s finances?
3. Has the Board established any policies or limitations around “retroactive” agenda items? Such as limiting backdates to the date of the previous meeting, or limiting the types of proposals that can be retroactively approved?

Thank you,

Sydnee Galusha



August 17, 2022

VIA EMAIL ONLY

Sydnee.Galusha@seiu521.org

Ms. Sydnee Galusha
Service Employees International Union, Local 521

Re: Public Comment at Kern County Hospital Authority Board of Governors' Meeting on July 20, 2022

Dear Ms. Galusha:

This correspondence constitutes the Kern County Hospital Authority's ("KCHA") response to your public comment at the July 20, 2022 Board of Governors' meeting. At the July 20, 2022 Board meeting, the Board of Governors ("Board") directed staff to respond to you. Due to the amount of work relating to last minute negotiations and finalizing the MOU with SEIU, Local 521, the Board approved delaying the response at its Special Meeting held on August 1, 2022, until August 17, 2022.

Please find the response to each of your three questions below:

Question #1: Given that the Cantu Management Group is responsible for developing internal controls and providing oversight for the Hospital's finances, does the Board intend to investigate how the CFO failed to notice that his own company received \$3 million in authorized [sic] compensation from the Hospital Authority?

Response to Question #1: All payments made to Cantu Management were made in accordance with KCHA policy for approval of payments and in accordance with the terms of payment for services rendered. On July 20, 2022, the Board approved a retroactive amendment to the Cantu agreement increasing the maximum payable of the agreement for services rendered by Cantu Management.

Question #2: What steps, if any, will the Board take moving forward to monitor the efficacy of internal controls and ensure proper oversight of the Hospital's finances?

Response to Question #2: KCHA has a policy for the acquisition of goods or services and the payment of invoices for items acquired by requisition for the care of its patients and the operation of the organization (see attachment). Approval processes are required for all transactions that result in a payment to a vendor. Oversight of these standards include a joint effort between the Accounts Payable Department, Materials Management Department, and Chief Financial Officer.

The procurement to payment module is contained within the PeopleSoft accounting software system. There are increasing levels of authorization to the above-referenced policy established within the PeopleSoft accounting software system at KCHA.

Furthermore, an annual audit of KCHA is undertaken by independent auditors and presented to the Board. These audits are posted as part of the Board agenda.

Question #3: Has the Board established any policies or limitations around "retroactive" agenda items? Such as limiting backdates to the date of the previous meeting, or limiting the types of proposals that can be retroactively approved?

Response to Question #3: KCHA, similar to other public agencies, permits retroactive agreements. All proposed agreements that require Board approval, including retroactive agreements, must be presented to the Board for approval. The Board resolution regarding authority to enter into contracts and secure and pay for services is attached (see attachment).

Thank you for your public comment at the July 20, 2022 Board meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Thygersen', with a long horizontal flourish extending to the right.

Scott Thygersen
Chief Executive Officer

cc: KCHA Board of Governors

Attachments:

- (1) Policy regarding acquisition of goods or services and the payment of invoices
- (2) Resolution regarding authority to enter into contracts and secure and pay for services

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

(Government Code Section 54957.7)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on March 15, 2023, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

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

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on March 15, 2023, 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: Service Employees
International Union, Local 521 Plaintiff/Petitioner, v. Kern County Hospital
Authority, Kern Medical Surgery Center, LLC, and DOES 1-25, Defendants/
Respondents, Kern County Superior Court Case No. BCV-22-101782 JEB –

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on March 15, 2023, 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: Service Employees
International Union, Local 521, Charging Party, v. Kern County Hospital Authority,
Respondent, Public Employment Relations Board Case No. LA-CE-1580-M –

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

(Government Code Section 54957.7)

The Board of Governors will hold a closed session on March 15, 2023, to consider:

 X CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) –

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

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 March 15, 2023, 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:

 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)) –

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on March 15, 2023, to consider:

 X PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) –