



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, April 19, 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)) –

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on March 15, 2023 –
APPROVE

CA

- 4) Proposed reappointment of Director Amir Berjis, M.D., to the Kern County Hospital Authority Board of Governors, term to expire June 30, 2026 –
REFER TO KERN COUNTY BOARD OF SUPERVISORS TO MAKE APPOINTMENT

CA

- 5) Proposed Engagement Letter from Moss Adams LLP, an independent contractor, regarding the audit of Kern Medical Center financial statements for the fiscal year ending June 30, 2023, in an amount not to exceed \$211,350 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 6) Proposed Amendment No. 3 to Personal/Professional Services Agreement 17018 with NLeader Group, LLC, an independent contractor, for consulting services for the Medi-Cal Administrative Activities program, for the period July 1, 2018 through June 30, 2023, extending the term for two years from July 1, 2023 through June 30, 2025, and increasing the maximum payable by \$70,000, from \$105,000 to \$175,000, to cover the term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Proposed Master Services Agreement with Lenovo (United States) Inc., an independent contractor, containing nonstandard terms and conditions, for contingency purchase of computers, hardware and software from April 19, 2023 through April 18, 2026, in an estimated amount not to exceed \$1,500,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE CHIEF EXECUTIVE OFFICER TO APPROVE FUTURE PURCHASE ORDERS

CA

- 8) Proposed Telecommunications Services Request to Agreement 013-2028 with Charter Communications Operating, LLC, an independent contractor, for the connection of a new network circuit for the testing and education center from April 19, 2023 through April 18, 2028, in an amount not to exceed \$42,900 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed 85Order Form with Inmar Rx Solutions, Inc., an independent contractor, containing nonstandard terms and conditions, for pharmaceutical compliance software from April 19, 2023 through April 18, 2024, in an amount not to exceed \$10,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Amendment No. 1 to Agreement 034-2022 with Antony Minasaghanian, M.D., a contract employee, for professional medical services in the Department of Radiology, for the period June 8, 2022 through June 7, 2027, increasing the annual salary for a period of one year by \$75,000, and increasing the maximum payable by \$75,000, from \$4,050,000 to \$4,125,000, to cover the term, effective May 1, 2023 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed Master Services and License Agreement with Vendor Credentialing Service LLC, doing business as symplr, an independent contractor, containing nonstandard terms and conditions, for use of clinical and quality measuring compliance software from April 19, 2023 through April 18, 2026, in an amount not to exceed \$146,000, plus applicable taxes and travel expenses –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed acceptance of donation of travel and related expenses from Health Connect Partners for one Kern Medical Center employee to attend HCP23 Hospital Pharmacy Spring Conference in Indianapolis, Indiana, from May 22-24, 2023 –
APPROVE; ADOPT RESOLUTION

CA

- 13) Proposed Agreement with Arturo Gomez, M.D., a contract employee, for professional medical and administrative services in the Department of Surgery, Division of Orthopedic Surgery from April 22, 2023 through April 21, 2026, in an amount not to exceed \$4,500,000, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 14) Proposed Agreement with Ralph Garcia-Pacheco Suarez, M.D., a contract employee, for professional medical and administrative services in the Department of Medicine from April 22, 2023 through April 21, 2026, in an amount not to exceed \$2,100,000, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 15) Proposed Agreement with Ayham Aboeed, M.D., a contract employee, for professional medical services in the Department of Medicine, from April 22, 2023 through April 21, 2026, in an amount not to exceed \$2,000,000, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 16) Proposed Amendment No. 2 to Agreement 07820 with Paola A. Rosa, D.O., a contract employee, for professional services in the Department of Obstetrics and Gynecology, for the period June 6, 2020 through June 5, 2023, extending the term from June 6, 2023 through July 7, 2023, and increasing the maximum payable by \$40,000, from \$1,300,000 to \$1,340,000, to cover the extended term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 17) Proposed Agreement with Mark Wattenbarger Construction, Inc., an independent contractor, for modifications in the Laboratory Department to accommodate new equipment, effective April 19, 2023, in an estimated amount not to exceed \$75,053 –
MAKE FINDING PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 1502 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 \$68,230

CA

- 18) Proposed Master Agreement with TELCOR Inc, an independent contractor, containing nonstandard terms and conditions, for purchase of an interface system for point of care devices, effective April 19, 2023, in an amount not to exceed \$82,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 19) Proposed Amendment No. 4 to 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, 2024, increasing the maximum payable by \$358,200, from \$3,235,180 to \$3,593,380, to cover the term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 20) Proposed recommendation to Kern County Board of Supervisors to appoint Cynthia D. Pollard, a qualified candidate, to the Kern County Hospital Authority Board of Governors to fill the community at large member vacancy created by the resignation of Jacqui Kitchen, term to expire June 30, 2024 –
MAKE RECOMMENDATION; REFER TO KERN COUNTY BOARD OF SUPERVISORS TO MAKE APPOINTMENT

CA

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

- CA
22) Kern County Hospital Authority Chief Executive Officer report –
RECEIVE AND FILE
- CA
23) Monthly report on What's Happening at Kern Medical Center –
RECEIVE AND FILE
- CA
24) Claims and Lawsuits Filed as of March 31, 2023 –
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 25) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –
- 26) CONFERENCE WITH LEGAL COUNSEL - FORMALLY INITIATED LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: United States ex rel. Collado, Plaintiff v. Bracco, U.S.A., Inc., et al., Defendants, United States District Court, District of New Jersey, Case No. 2:20-cv-08719-EP-JSA –
- 27) 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-1633-M –
- 28) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Scott Thygerson, and designated staff - Employee organizations: Service Employees International Union, Local 521 (Government Code Section 54957.6) –
- 29) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –
- 30) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) –
- 31) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) –
- 32) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes, and designated staff - Unrepresented Employee: Chief Financial Officer (Government Code Section 54957.6) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, MAY 17, 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.

24) CLAIMS AND LAWSUITS FILED AS OF MARCH 31, 2023 –
RECEIVE AND FILE

- A) Claim in the matter of Dyann Lynn Harris
- B) Charge of Discrimination in the matter of Jeffry Huffman, EEOC Charge No. 480-2023-00366
- C) Unfair Practice Charge in the matter of Service Employees International Union, Local 521, Charging Party, v. Kern County Hospital Authority, Respondent, Public Employment Relations Board Case No. LA-CE-1633-M
- D) Summons and Second Amended Complaint in the matter of United States ex rel. Collado, Plaintiff v. Bracco, U.S.A., Inc., et al., Defendants, United States District Court, District of New Jersey, Case No. 2:20-cv-08719-EP-JSA



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

**Regular Meeting
Wednesday, March 15, 2023**

11:30 A.M.

BOARD RECONVENED

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

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!**

JESSICA ORTEGA, RN, HEARD REGARDING THE TERMINATION OF HER EMPLOYMENT; CHRISTOPHER HARKINS, CLINICAL NURSE LEADER, HEARD REGARDING WORKING CONDITIONS, TURNOVER, MANAGEMENT, AND CULTURE OF NURSING IN THE EMERGENCY DEPARTMENT, AND THE DECISION TO PLACE HIM ON ADMINISTRATIVE LEAVE AND TRANSFER HIM TO A DIFFERENT DEPARTMENT

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

- 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 –
PRESENTATION MADE; DIRECTOR BERJIS HEARD

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 –
APPROVED
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

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 –
MADE APPOINTMENT
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 025-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 026-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 027-2023; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN FOR RECEIPT OF DELIVERY
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

CA

- 9) Proposed Amendment No. 3 to 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 028-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

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 –
APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN THE PREMIUM FINANCE AGREEMENT-PROMISSORY NOTE 029-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

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 –
APPROVED; ADOPTED RESOLUTION 2023-003
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

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 –
APPROVED; ADOPTED RESOLUTION 2023-004
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

CA

- 13) Proposed acceptance of donation of travel and related expenses from Safety National and MedPro for one Kern Medical Center employee to attend “ASHRM Academy 2023” in Fort Lauderdale, Florida, from April 24-29, 2023 –
APPROVED; ADOPTED RESOLUTION 2023-005
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

CA

- 14) Proposed Certification of Medical Necessity for BD Alaris™ System Infusion Pump –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 030-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 031-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN 032-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

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 –
MADE FINDING PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301 AND 15061(b)(3) OF STATE CEQA GUIDELINES; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 033-2023; AUTHORIZED CHIEF EXECUTIVE OFFICER TO APPROVE ANY FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF \$88,000
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

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 for 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 034-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 035-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

- 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 036-2025
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar
- 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 037-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar
- 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 038-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar
- 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 039-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar
- 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 040-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar
- 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 041-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 042-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

- 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 043-2023
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

- 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 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 044-2023
Pelz-McLaughlin: 4 Ayes; 2 Absent - Alsop, Brar

- 29) Report on Kern Medical Center Accreditation Council Graduate Medical Education Institutional Self Study –
Pelz-McLaughlin: 4 Ayes; 2 Absent - Alsop, Brar
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT

- 30) Kern County Hospital Authority Chief Financial Officer report –
CHIEF FINANCIAL OFFICER ANDREW CANTU HEARD; RECEIVED AND FILED
McLaughlin-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

- 31) Kern County Hospital Authority Chief Executive Officer report –
CHIEF EXECUTIVE OFFICER SCOTT THYGERSON HEARD; CHAIRMAN BIGLER COMMENTED ON REIMBURSEMENT CHALLENGES; RECEIVED AND FILED
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

CA

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

CA

- 33) Miscellaneous Correspondence as of February 28, 2023 –
RECEIVED AND FILED
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

CA

- 34) Claims and Lawsuits Filed as of February 28, 2023 –
RECEIVED AND FILED
Berjis-Pelz: 4 Ayes; 2 Absent - Alsop, Brar

ADJOURNED TO CLOSED SESSION

McLaughlin-Pelz

CLOSED SESSION

- 35) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 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 – SEE RESULTS BELOW
- 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 – SEE RESULTS BELOW
- 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) – SEE RESULTS BELOW
- 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)) – SEE RESULTS BELOW
- 40) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION

Berjis-McLaughlin

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 35 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR MCLAUGHLIN, SECOND BY DIRECTOR PELZ; 2 ABSENT - ALSOP, BRAR), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, RELEASE OF PROCTORING, VOLUNTARY RESIGNATION OF PRIVILEGES, AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

- 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 – HEARD; NO REPORTABLE ACTION TAKEN

- 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 – HEARD; NO REPORTABLE ACTION TAKEN
- 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) – HEARD; NO REPORTABLE ACTION TAKEN
- 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)) – NOT HEARD
- 40) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) – HEARD; NO REPORTABLE ACTION TAKEN

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

Pelz

/s/ Mona A. Allen
Authority Board Coordinator

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



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

April 19, 2023

Subject: Proposed reappointment of Director Amir Berjis, M.D. to the Kern County Hospital Authority Board of Governors, term to expire June 30, 2026

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

Summary:

On June 2, 2020, Director Amir Berjis, M.D. was reappointed to the Board of Governors for a term of three years. His current term expires June 30, 2023. Members may serve an unlimited number of terms if reappointed by the Kern County Board of Supervisors.

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

Therefore, it is recommended that your Board refer this item to the Kern County Board of Supervisors to make the reappointment of Director Berjis for a three-year term expiring June 30, 2026.



April 11, 2023

HAND DELIVERED

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

Re: Reappointment to Kern County Hospital Authority Board of Governors

Dear Mr. Bigler:

As you may know, my term of office on the Kern County Hospital Authority Board of Governors expires June 30, 2023. Please accept this letter as notice of my intent to seek reappointment to the Board of Governors, term to expire June 30, 2026. Such notice is provided pursuant to Section 2.05 of the Kern County Hospital Authority Bylaws for Governance. Please take appropriate measures to ensure the Kern County Board of Supervisors is notified timely of my intent to continue to serve on the Board of Governors, as required by the Bylaws for Governance.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Amir Berjis".

Amir Berjis, M.D.



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

April 19, 2023

Subject: Proposed Engagement Letter from Moss Adams LLP

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Engagement Letter from Moss Adams LLP, an independent contractor, for financial auditing services for fiscal year ending June 30, 2023.

The primary purpose of an external financial audit is to conduct an audit sufficient to express an opinion as to whether the Kern County Hospital Authority's financial statements are fairly presented in accordance with Generally Accepted Accounting Principles and whether supplementary information is fairly presented in relation to the basic financial statements. The audit will include an evaluation and report of the Authority's internal controls for the purpose of identifying areas of weakness or noncompliance.

The parties have agreed on a payment schedule for the services based on a total fee estimate of \$152,000 - \$162,000. There is an incremental audit fee, estimated as \$15,000 - \$25,000 for the June 30, 2023 audit, related to the required Single Audit associated with the receipt of and expenditure of federal awards, in the event a Single Audit is required. In addition to fees, we will be billed for expenses. Invoices will include a flat expense charge, calculated as 5% of fees, estimated as \$7,600 - \$9,350, to cover expenses such as copying costs, postage, administrative billable time, report processing fees, filing fees, and technology expenses. Travel and related expenses, which are estimated not to exceed \$15,000, will be billed separately and are not included in the 5% charge, and will be reimbursed in accordance with the terms set forth in the separate Agreement for Professional Services.

Therefore, it is recommended that your Board approve the Engagement Letter from Moss Adams LLP, in an amount not to exceed \$211,350, and authorize the Chairman to sign.

April 12, 2023

Russell E. Bigler, Chairman, Board of Governors
Andrew Cantu, Chief Financial Officer
Kern County Hospital Authority
1700 Mount Vernon Avenue
Bakersfield, CA 93306-4018

Re: Audit and Nonattest Services

Dear Chairman Bigler:

Thank you for the opportunity to provide services to Kern County Hospital Authority, a local unit of government and a subdivision of the state of California, which owns and operates Kern Medical Center ("Kern Medical"). This engagement letter ("Engagement Letter") and the attached Agreement for Professional Services (Agt #005-2021) between Moss Adams LLP and Kern County Hospital Authority, effective January 1, 2021 ("PSA"), which is incorporated by this reference, confirm our acceptance and understanding of the terms and objectives of our engagement, and limitations of the services that Moss Adams LLP ("Moss Adams," "we," "us," and "our") will provide to Kern County Hospital Authority ("you," "your," and "KCHA" and "Company").

Scope of Services – Audit

You have requested that we audit the Company's financial statements, which comprise the statement of net position as of June 30, 2023, and the related statements of revenue, expenses, and changes in net position, and cash flows for the year then ended, and the related notes to the financial statements.

Accounting standards generally accepted in the United States of America provide for certain required supplementary information ("RSI"), such as management's discussion and analysis, to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to Government's RSI in accordance with auditing standards generally accepted in the United States of America. We will not express an opinion or provide assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide assurance. The following RSI will be subjected to certain limited procedures, but will not be audited:

- 1) Management's discussion and analysis
- 2) Schedule of the proportionate share of the net OPEB liability for Kern Medical
- 3) Schedule of the proportionate share of the net pension liability for Kern Medical
- 4) Schedule of contributions for Kern Medical

If a Single Audit under Uniform Guidance is required, we will also report on whether the schedule of expenditures of federal awards, presented as supplementary information, is fairly stated, in all material respects, in relation to the financial statements as a whole.

Scope of Services and Limitations – Nonattest

We will provide the Company with the following nonattest services:

- 1) Assist you in drafting the financial statements and related footnotes as of and for the year ended June 30, 2023. Although we will assist in drafting the financial statements and related footnotes, our fee estimate included in this engagement letter is based on management providing a substantially complete working draft of the financial statements and required footnotes. Should you request additional assistance, we can discuss the additional fees that may be required prior to commencing additional work.
- 2) Assist you in drafting the auditee section of the OMB Data Collection Form for the year ended June 30, 2023, if a Single Audit is required.

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

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

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

Timing

Stelian Damu is responsible for supervising the engagement and authorizing the signing of the report. We expect to be onsite or virtual the weeks of August 21, 2023 and August 28, 2023 for planning, interim, and the start of final test work, and again starting the week of October 23, 2023, to continue our final fieldwork. We expect to issue our report no later than December 31, 2023. As we reach the conclusion of the audit, we will coordinate with you the date the audited financial statements will be

available for issuance. You understand that (1) you will be required to consider subsequent events through the date the financial statements are available for issuance, (2) you will disclose in the notes to the financial statements the date through which subsequent events have been considered, and (3) the subsequent event date disclosed in the footnotes will not be earlier than the date of the management representation letter and the date of the report of independent auditors.

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

Fees

We have agreed to the following payment schedule for the services based on a total fee estimate of \$152,000 – 162,000.

Month Due	Amount
July 2023	\$ 42,000
September 2023	42,000
October 2023	42,000
November 2023	26,000 – 36,000
Total	\$152,000 – 162,000

Additionally, there will be an incremental audit fee, estimated as \$15,000 - \$25,000 for the June 30, 2023 audit, related to the required Single Audit associated with the receipt of and expenditure of federal awards, in the event a Single Audit is required.

In addition to fees, we will charge you for expenses. Our invoices include a flat expense charge, calculated as five percent (5%) of fees, estimated as \$7,600 - \$9,350, to cover expenses such as copying costs, postage, administrative billable time, report processing fees, filing fees, and technology expenses. Travel expenses and client meals expenses, which we estimate to be \$15,000, will be billed separately and are not included in the 5% charge, and will be reimbursed in accordance with the terms set forth in the PSA.

Reporting

We will issue a written report upon completion of our audit of the Company's financial statements. Our report will be addressed to the Board of Governors of the Company. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement. Our services will be concluded upon delivery to you of our report on your financial statements for the year ended June 30, 2023.

At the conclusion of the engagement, if a Single Audit is required, we will complete the auditor section of the Data Collection Form and electronically sign the Data Collection Form that summarizes our findings. We will provide electronic copies of our reports to you; however, it is management's

responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan, as applicable) along with the Data Collection Form to the Federal Audit Clearinghouse. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period. At the conclusion of the engagement, we will make arrangements with management regarding Data Collection Form submission procedures.

Objectives of the Audit

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

The objectives of our audit are also to obtain reasonable assurance about whether the Company has complied with applicable federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major federal program.

The objectives also include reporting on the following:

- Internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements as required by *Government Auditing Standards*.
- Internal control over compliance related to major federal programs and on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and the audit requirements contained in OMB Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

The reports on internal control and compliance will each include a statement that the purpose of the report is solely to: describe the scope of testing of internal control over financial reporting and compliance and the result of that testing and not to provide an opinion on the effectiveness of the entity's internal control over financial reporting or on compliance; describe the scope of testing internal control over compliance for major federal programs and major federal program compliance and the result of that testing and to provide an opinion on compliance but not to provide an opinion on the effectiveness of internal control over compliance; that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control over financial reporting and compliance and the OMB Uniform Guidance in considering internal control over

compliance and major federal program compliance; and, accordingly, it is not suitable for any other purpose.

The objectives of our audit are also to evaluate the presentation of the supplementary information in relation to the financial statements as a whole and report on whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole.

The Auditor's Responsibility

We will conduct our audit in accordance with U.S. GAAS; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the audit provisions of the OMB Uniform Guidance. As part of an audit conducted in accordance with U.S. GAAS, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

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

In accordance with the OMB Uniform Guidance we also:

- Determine major program(s)
- Identify and assess the risks of material noncompliance, whether due to fraud or error, design and perform audit procedures responsive to those risks and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion on compliance with applicable federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major federal program.
- Obtain an understanding of internal control over compliance that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each

major federal award program in order to design audit procedures that are appropriate in the circumstances. We will perform tests of controls to evaluate the effectiveness of the design and operation of such controls, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over compliance or to identify deficiencies in the design or operation of internal control over compliance. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control over compliance that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program that we have identified during the audit.

The supplementary information will be subject to certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves.

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

Procedures and Limitations

Our procedures may include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of certain receivables and certain other assets, liabilities and transaction details by correspondence with selected individuals, funding sources, creditors, and financial institutions. We may also request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from management about the financial statements and supplementary information and related matters. Management's failure to provide representations to our satisfaction will preclude us from issuing our report.

An audit includes examining evidence, on a test basis, supporting the amounts and disclosures in the financial statements. Therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. Material misstatements may include errors, fraudulent financial reporting, misappropriation of assets, or noncompliance with the provisions of laws, regulations, contracts, and grant agreements that are attributable to the entity or to acts by management or employees acting on behalf of the entity that may have a direct financial statement impact. Pursuant to *Government Auditing Standards*, we will not provide reasonable assurance of detecting abuse. As required by the Single Audit Act Amendments of 1996 and the audit provisions of the OMB Uniform Guidance, our audit will include tests of transactions related to major federal award programs for compliance with applicable federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk exists that some material misstatements and noncompliance may not be detected, even though the audit is properly planned and performed in accordance with U.S. GAAS, *Government Auditing Standards*, and the OMB Uniform Guidance. An audit is not designed to detect immaterial misstatements or noncompliance with the provisions of laws, regulations, contracts, and grant agreements that do not have a direct and material effect on the financial statements or noncompliance with the provisions of federal statutes, regulations, and the terms and condition of federal awards that do not have a direct and material effect on major federal programs. However, we will inform you of any material errors, fraudulent financial reporting, misappropriation of assets, and noncompliance with the provisions of laws, federal statutes, regulations, contracts grant agreements and federal awards that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any time period for which we are not engaged as auditors.

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

Procedures and Limitations—Internal Control

Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from noncompliance with the provisions of laws, regulations, contract and grant agreements and other noncompliance matters that have a direct and material effect on the financial statements.

Our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the OMB Uniform Guidance.

Procedures and Limitations—Compliance

Our audit will be conducted in accordance with the standards referred to in the section titled "Objectives of the Audit." As part of obtaining reasonable assurance about whether the financial statements are free from material misstatement, we will perform tests of the Company's compliance with the provisions of laws, regulations, contracts, and grant agreements that may have a direct and material effect on the financial statements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

Our procedures will consist of the applicable procedures described in the OMB Compliance Supplement for the types of compliance requirements that could have a direct and material effect on each of your major federal programs. The purpose of those procedures will be to express an opinion on the Company's compliance with requirements applicable to each of its major federal programs in our report on compliance issued pursuant to the OMB Uniform Guidance.

Management's Responsibility for Financial Statements, Internal Control, and Federal Award Compliance

As a condition of our engagement, management acknowledges and understands that management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America. We may advise management about appropriate accounting principles and their application and may assist in the preparation of your financial statements, including the schedule of expenditures of federal awards, but management remains responsible for the financial statements and the schedule of expenditures of federal awards. Management also acknowledges and understands that management is responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error or fraud. This responsibility includes the maintenance of adequate records, the selection and application of accounting principles, and the safeguarding of assets.

You are responsible for informing us about all known or suspected fraud affecting the Company involving: (a) management, (b) employees who have significant roles in internal control, and (c) others where the fraud could have a material effect on the financial statements. You are responsible for informing us of your knowledge of any allegations of fraud or suspected fraud affecting the Company received in communications from employees, former employees, grantors, regulators, or others. In addition, management is responsible for identifying and ensuring that the Company complies with applicable laws and regulations and for taking timely and appropriate steps to remedy any fraud or noncompliance with the provisions of laws, regulations, contract, and grant agreements, that we may report.

Management is responsible for adjusting the financial statements to correct material misstatements and for confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements as a whole.

Management is responsible for establishing and maintaining internal control and for compliance with federal statutes, regulations, and the terms and conditions of federal awards and for identifying and ensuring that the Company complies with such provisions. Management is also responsible for informing us of any significant contractor relationships in which the contractor is responsible for program compliance. Management is also responsible for addressing the audit findings and recommendations, establishing and maintaining a process to track the status of such findings and recommendations, and taking timely and appropriate steps to remedy any fraud and noncompliance with federal statutes, regulations, and the terms and conditions of federal awards or abuse that we may

report. Additionally, as required by the OMB Uniform Guidance, it is your responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan.

Management is responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. Management agrees that as a condition of our engagement, management will provide us with:

- access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements, whether obtained from within or outside of the general and subsidiary ledgers (including all information relevant to the preparation and fair presentation of disclosures), such as records, documentation, and other matters;
- additional information that we may request from management for the purpose of the audit; and
unrestricted access to persons within the Company from whom we determine it necessary to obtain audit evidence.

Management's Responsibility to Notify Us of Affiliates

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

- a fund, component unit, fiduciary activity or entity that the Company is required to include or disclose, and is included or disclosed in its basic financial statements, in accordance with generally accepted accounting principles (U.S. GAAP);
- a fund, component unit, fiduciary activity or entity that the Company is required to include or disclosed in its basic financial statements in accordance with U.S. GAAP, which is material to the Company but which the Company has elected to exclude, and for which the Company has more than minimal influence over the entity's accounting or financial reporting process;
- an investment in an investee held by the Company or an affiliate of the Company, where the Company or affiliate controls the investee, excluding equity interests in entities whose sole purpose is to directly enhance the Company's ability to provide government services;
- an investment in an investee held by the Company or an affiliate of the Company, where the Company or affiliate has significant influence over the investee and for which the investment is material to the Company's financial statements, excluding equity interests in entities whose sole purpose is to directly enhance the Company's ability to provide government services

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

Management's Responsibility for Supplementary Information

Management is responsible for the preparation of the supplementary information in accordance with the applicable criteria. Management agrees to include the auditor's report on the supplementary information in any document that contains the supplementary information and that indicates that we have reported on such supplementary information. Management is responsible to present the supplementary information with the audited financial statements or, if the supplementary information will not be presented with the audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance by the entity of the supplementary information and the auditor's report thereon. For purposes of this Agreement, audited financial statements are deemed to be readily available if a third party user can obtain the audited financial statements without any further action by management. For example, financial statements on your Web site may be considered readily available, but being available upon request is not considered readily available.

Other Information Included in an Annual Report

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

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

Key Audit Matters

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

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

Dissemination of Financial Statements and Reports

We will provide copies of our reports to the Company; however, management is responsible for distribution of the reports and the financial statements. Our report on the financial statements must be associated only with the financial statements that were the subject of our engagement. You may make

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

Offering of Securities

This Agreement does not contemplate Moss Adams providing any services in connection with the offering of securities, whether registered or exempt from registration, and Moss Adams will charge additional fees to provide any such services. You agree not to incorporate or reference our report in a private placement or other offering of your equity or debt securities without our express written permission. You further agree we are under no obligation to reissue our report or provide written permission for the use of our report at a later date in connection with an offering of securities, the issuance of debt instruments, or for any other circumstance. We will determine, at our sole discretion, whether we will reissue our report or provide written permission for the use of our report only after we have conducted any procedures we deem necessary in the circumstances. You agree to provide us with adequate time to review documents where (a) our report is requested to be reissued, (b) our report is included in the offering document or referred to therein, or (c) reference to our firm is expected to be made. If we decide to reissue our report or provide written permission to the use of our report, you agree that Moss Adams will be included on each distribution of draft offering materials and we will receive a complete set of final documents. If we decide not to reissue our report or withhold our written permission to use our report, you may be required to engage another firm to audit periods covered by our audit reports, and that firm will likely bill you for its services. While the successor auditor may request access to our engagement documentation for those periods, we are under no obligation to permit such access.

Changes in Professional or Accounting Standards

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

Representations of Management

During the course of our engagement, we may request information and explanations from management regarding, among other matters, the Company's operations, internal control, future plans, specific transactions, and accounting systems and procedures. At the conclusion of our engagement, we will require, as a precondition to the issuance of our report, that management provide us with a written representation letter confirming some or all of the representations made during the engagement. The procedures that we will perform in our engagement will be heavily influenced by the representations

that we receive from management. Accordingly, false representations could cause us to expend unnecessary efforts or could cause a material error or fraud to go undetected by our procedures. In view of the foregoing, you agree that we will not be responsible for any misstatements in the Company's financial statements and supplementary information that we fail to detect as a result of false or misleading representations, whether oral or written, that are made to us by the Company's management. While we may assist management in the preparation of the representation letter, it is management's responsibility to carefully review and understand the representations made therein.

Notwithstanding section 21 of the PSA to the contrary, because our failure to detect material misstatements could cause others relying upon our audit report to incur damages, the Company further agrees to indemnify and hold us harmless from any liability and all costs (including legal fees) that we may incur in connection with claims based upon our failure to detect material misstatements in the Company's financial statements and supplementary information resulting in whole or in part from knowingly false or misleading representations made to us by any member of the Company's management.

Use of Electronic Communication

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

Use of Moss Adams' Name

Neither the Company nor Kern Medical Center may use any of Moss Adams' name, trademarks, service marks or logo in connection with the services contemplated by this Agreement or otherwise without the prior written permission of Moss Adams, which permission may be withheld for any or no reason and may be subject to certain conditions.

Use of Nonlicensed Personnel

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

Hiring of Employees

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

Mutual Waiver of COVID-19 Claims

This provision addresses issues regarding the novel coronavirus ("COVID-19"). The Parties acknowledge their respective understanding of the hazards of COVID-19, including, but not limited to, its highly contagious nature and the corresponding health risks associated with being exposed to or infected by COVID-19. Each Party agrees to waive, release, discharge, and covenants not to sue the other Party or its affiliates and its and their respective officers, directors, partners, principals, employees, agents, or subcontractors from any and all claims, damages, expense, liability, illness or losses that may occur from exposure to or infection by COVID-19 arising out of, related to, or in any way connected with the professional services provided by Moss Adams under this engagement letter.

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

Very truly yours,



Stelian Damu, Partner for
Moss Adams LLP

Enclosures

Accepted and Agreed:

This Engagement Letter and the attached PSA set forth the entire understanding of Kern County Hospital Authority with respect to this engagement and the services to be provided by Moss Adams LLP:

Signature: _____

Print Name: _____ Russell E. Bigler _____

Title: _____ Chairman, Board of Governors _____

Date: _____

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By  _____
Vice President & General Counsel
Kern County Hospital Authority

Client: #636216
v. 11/10/2022

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Moss Adams LLP)**

This Agreement is made and entered into this 20 day of January 2021, between the Kern County Hospital Authority, a local unit of government (“KCHA”), which owns and operates Kern Medical Center (“KMC”), and Moss Adams LLP, a Washington limited liability partnership (“Contractor”), with its national office located at 999 Third Avenue, Suite 2800, Seattle, Washington 98104.

**I.
RECITALS**

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

(b) KCHA requires the assistance of Contractor to provide external auditing services to the KCHA, as such services are unavailable from KCHA resources, and Contractor, by reason of its qualifications and experience for doing the type of work herein contemplated, agrees to provide such services on the terms and conditions set forth in this Agreement; and

(c) KCHA contracts with Contractor as an independent contractor for the provision of external financial statement auditing services (Agt. #06918, dated October 17, 2018), under an agreement term August 17, 2018 through August 16, 2021 for the fiscal years ended June 30, 2018, June 30, 2019, and June 30, 2020; and

(d) Each party expressly understands and agrees that Agt. #06918 is terminated upon completion of financial statement auditing services for the fiscal year ended June 30, 2020 and is succeeded by this Agreement.

(e) KCHA is now contracting with Contractor as an independent contractor for the provision of external financial statement auditing services for the fiscal years ended June 30, 2021, June 30, 2022, and June 30, 2023;

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

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall commence January 1, 2021 (the “Effective Date”), and shall end March 31, 2024, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. Obligations of Contractor.

2.1 Specified Services. Contractor shall perform the services set forth in Exhibit "A," attached hereto and incorporated herein by this reference. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement. Each audit shall be documented in an engagement agreement (collectively, "Engagement Agreement"), which Engagement Agreement shall incorporate and be governed by the terms of this Agreement and attached as an exhibit to Exhibit "A" (starting with Exhibit "A-1," followed by Exhibit "A-2" and "A-3" in subsequent audit years).

2.2 Representations. Contractor makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Contractor has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Contractor does not have any actual or potential interests adverse to the KCHA nor does Contractor represent a person or firm with an interest adverse to the KCHA with reference to the subject of this Agreement; and (iii) Contractor shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

2.3 Standard of Care. KCHA has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all of its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by the KCHA shall not operate as a waiver or release.

2.4 Performance Standard. Contractor shall perform all services hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. If KCHA determines that any of Contractor's work is not in accordance with such level of competency and standard of care, KCHA, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with KCHA to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of section 35; or (d) pursue any and all other remedies at law or in equity.

2.5 Assigned Personnel. Contractor shall assign only competent personnel to perform the Services hereunder. In the event that at any time KCHA, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform the Services hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from KCHA.

2.6 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold KCHA harmless from

any liability which it may incur to the United States or to the state of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case KCHA is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish KCHA with proof of payment of taxes on these earnings.

2.7 Nonexclusive Services. Contractor understands and agrees that KCHA will utilize the services of Contractor pursuant to the terms of this Agreement on a non-exclusive basis. Contractor further agrees that KCHA shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

3. **Obligations of KCHA.**

3.1 KCHA Designee. KCHA will designate a primary contact, who will arrange for KMC staff assistance as may be required.

3.2 Control Retained in KMC. In compliance with title 22, California Code of Regulations, section 70713, KMC will retain professional and administrative responsibility for services rendered under this Agreement. Contractor shall apprise KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by KMC for follow-up action and evaluation of performance.

4. **Payment for Services.**

4.1 Fees and Charges. As consideration for the services provided by Contractor hereunder, KCHA will pay Contractor in accordance with the fee schedule set forth in Exhibit "B," attached hereto and incorporated herein by this reference. All services are payable in arrears.

4.2 Travel Reimbursement. Contractor will be reimbursed for all approved travel expenses, which approval will not be unreasonably withheld, incurred by Contractor on behalf of KCHA in an amount not to exceed \$15,000.00 each year over the three (3) year term of this Agreement. Reimbursement of travel expenses will include actual cost for lowest refundable coach round-trip airfare, local transportation (rental cars are reimbursable at actual cost for compact or midsize vehicles only; per mile reimbursement for personal vehicle use at the current privately owned vehicle [POV] mileage reimbursement rate established by the U.S. General Services Administration), meals and incidental expenses at the current domestic per diem rates established by the U.S. General Services Administration for Kern County ("County"), and reasonable hotel accommodations not to exceed the maximum allowable reimbursement rate including taxes established by County. Travel-related expenses will be billed monthly, as incurred, and are payable in arrears within 30 days of receipt and approval of each invoice by KMC.

4.3 Invoices. Invoices for payment shall be submitted in a form approved by KCHA and list each service performed. Invoices and receipts shall be sent to KCHA for review and processing within 60 days of the date of service or payment will not be made. Payment shall be made to Contractor within 30 days of receipt and approval of each invoice by KMC.

4.4 Maximum Payable. The maximum payable under this Agreement will not exceed \$622,000.00 over the three (3) year term of this Agreement, unless separately agreed to by KCHA and Contractor in writing and signed by both parties through a formal written amendment to this Agreement.

4.5 Taxpayer Identification. To ensure compensation is reported as paid to the proper party, Contractor will complete and execute IRS Form W-9 (Exhibit "C," attached hereto and incorporated herein by this reference), which identifies the taxpayer identification number for Contractor.

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

6. Assignment. Contractor shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement. Contractor shall not assign any money due or which becomes due to Contractor under this Agreement without the prior written approval of KCHA.

7. Audits, Inspection and Retention of Records. Contractor shall make available, upon written request from KCHA or KMC, the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized agent or representative, this Agreement, and Contractor's books, documents and records. Contractor shall preserve and make available such books, documents and records for a period of seven (7) years after the termination or expiration of this Agreement. If Contractor is requested to disclose books, documents or records pursuant to this section for any purpose, Contractor shall notify KMC of the nature and scope of the request, and Contractor shall make available, upon written request of KMC, all such books, documents or records. Notwithstanding the foregoing, or anything to the contrary in this Agreement, KCHA and KMC shall not have access to audit work papers, in order to protect the integrity of the audit. If there is a question regarding any recommended audit adjustments, work papers may be made available to KCHA or KMC in support of conclusions made by Contractor.

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

9. **Captions.** The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

10. **Change in Law.** In the event that a change in state or federal law or regulatory requirement (or the application thereof), any of which renders this Agreement illegal, impossible to perform, or commercially impracticable, the parties agree to negotiate immediately, in good faith, any necessary or appropriate amendments(s) to the terms of this Agreement. If the parties fail to reach a mutually agreeable amendment within 30 days of such negotiation period, this Agreement shall automatically terminate at the end of such 30-day period.

11. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

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

13. **Confidentiality.**

13.1 **Use and Disclosure Restrictions.** Neither party shall, without the written consent of the other, communicate confidential information of the other, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that the receiving party would protect its own confidential information. The foregoing obligations will not restrict either party from disclosing confidential information of the other party: (i) pursuant to applicable law; (ii) pursuant to the order or requirement of a court, administrative agency, or other governmental body, on condition that the party required to make such a disclosure gives reasonable written notice to the other party to contest such order or requirement; and (iii) on a confidential basis to its employees, contractors, services providers, and legal or financial advisors.

13.2 **Trade Secrets.** The parties acknowledges that each party, in connection with its business, has developed certain operating manuals, symbols, trademarks, trade names, service marks, designs, patient lists, procedures, processes, and other copyrighted, patented, trademarked, or legally protectable information which is confidential and proprietary to the party that constitute its trade secrets. The parties shall not use any name, symbol, mark, or other proprietary information of the other party except as expressly permitted.

13.3 **Medical Records.** If applicable, the parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Records Information Act, codified at section 56.1 of the California

Civil Code, California Evidence Code sections 1156 and 1157, and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

13.4 Protected Health Information. Contractor and KCHA recognize that in performing services, Contractor may receive, create or otherwise have access to protected health information ("PHI") and thereby become a business associate of KCHA or KMC (as defined by the privacy, security, breach notification, and enforcement rules at 45 C.F.R. Part 160 and Part 164). Accordingly, the parties shall protect PHI in accordance with the HIPAA Business Associate Addendum, attached as Exhibit "D" and incorporated herein by this reference. In the event of a conflict between Exhibit "D" and any other confidentiality provision of this Agreement, Exhibit "D" shall control.

13.5 Ownership of Records. All final audit reports and other complete deliverables prepared by Contractor or Contractor's assigned personnel during and in connection with this Agreement and provided to KCHA, excluding any Contractor Material (defined below) contained or embodied therein (hereafter, "Deliverables"), shall be the property of KCHA at all times. Upon the expiration or termination of this Agreement, Contractor shall promptly deliver to KCHA all such Deliverables, which have not already been provided to KCHA in such form or format as the parties mutually agree. Such Deliverables shall be and will remain the property of KCHA, subject to any restriction or limitation set forth in the Engagement Agreement. In addition, KCHA may not alter or modify the audit report or any other Deliverable issued in Contractor's name. Contractor may retain copies of the above described Deliverables but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of KCHA. Contractor shall own its workpapers and general accounting-related skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, materials or other intellectual property which may have been discovered, created, received, developed or derived by Contractor either prior to or as a result of providing services under the Agreement (collectively, "Contractor Materials"). KCHA shall have a non-exclusive, non-transferable license to use Contractor Materials for its own internal use and for the purposes for which they are delivered to the extent they form part of a Deliverable. Notwithstanding anything to the contrary in this Agreement, Contractor and its personnel are free to use and employ their general skills, know how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of this Agreement so long as they acquire and apply such information without any unauthorized use or disclosure of confidential or proprietary information of KCHA.

14. Conflict of Interest. Contractor covenants that it has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, KCHA may immediately terminate this Agreement by giving written notice thereof.

15. **Consent.** Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

16. **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and KCHA acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and KCHA acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

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

18. **Disqualified Persons.** The parties mutually represent and warrant to one another that they and their respective representatives are not: (i) currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. section 1320a-7b-(f) (the "Federal health care programs") and/or present on the exclusion database of the Office of the Inspector General ("OIG") or the Government Services Administration ("GSA"); (ii) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits. This shall be an ongoing representation and warranty during the term of this Agreement and a party shall immediately notify the other party of any change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately.

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

20. **Immigration Compliance.** Contractor shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified, and shall provide KMC with confirmation of such verification required in 8 USCA section 1324a, if requested by KCHA. Without limiting the generality of the indemnification in section 21, Contractor agrees to indemnify, defend, and

hold harmless KCHA, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section.

21. **Indemnification and Hold Harmless.** Contractor agrees to indemnify, defend and hold harmless KCHA and KCHA's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of Hospital Counsel and counsel retained by KCHA, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with personal injury (including death) or damage to real or tangible personal property, to the extent caused by any act or omission of Contractor or Contractor's officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of KCHA; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of Contractor by any person or entity.

In addition, Contractor agrees to indemnify, defend and hold harmless KCHA and KCHA's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of Hospital Counsel and counsel retained by KCHA, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, to the extent arising out of or caused by a breach of confidentiality by Contractor or Contractor's officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives.

As a condition to the foregoing indemnity obligations, KCHA shall provide Contractor with prompt notice of any claim for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with Contractor in connection with any such claim. Contractor shall be entitled to control the handling of any such claim and to defend any such claim, in its sole discretion, with counsel of its own choosing.

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

23. **Insurance.** With respect to performance of work under this Agreement, Contractor shall maintain and shall require its subcontractors, consultants, and other agents providing services to KCHA under this Agreement to maintain, insurance as described in Exhibit "E," attached hereto and incorporated herein by this reference.
24. **Liability of KCHA.** The liabilities or obligations of KCHA with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of KCHA and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California. (Health & Saf. Code, § 101853, subd. (g).)
25. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.
26. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to KCHA and Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of KCHA and Contractor that any such person or entity, other than KCHA or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.
27. **Non-appropriation.** KCHA reserves the right to terminate this Agreement in the event insufficient funds are appropriated or budgeted for this Agreement in any fiscal year. Upon such termination, KCHA will be released from any further financial obligation to Contractor, except for services performed prior to the date of termination or any liability due to any default existing at the time this clause is exercised. Contractor will be given 30 days' prior written notice in the event that KCHA requires such an action.
28. **Non-collusion Covenant.** Contractor represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with KCHA. Contractor has received from KCHA no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.
29. **Nondiscrimination.** Neither Contractor, nor any officer, agent, employee, servant or subcontractor of Contractor shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, ancestry, national origin, religion, sex, actual or perceived sexual orientation, marital status, age, pregnancy, medical condition, handicap or other prohibited basis, either directly, indirectly or through contractual or other arrangements.
30. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither party nor any of their affiliates shall, without the prior written approval of the other employ, retain, offer employment to or offer retention of any person who is or was employed by or under contract with the non-soliciting party during the term of this Agreement. The foregoing will not prevent a party from employing any such person who (i) ceases to be employed by the other party prior to any direct solicitation by or encouragement or (ii) responds

to a general employment advertisement or other general solicitation or recruitment effort not specifically aimed at employees of the other party. Notwithstanding the foregoing, any offer of employment to members of the audit team prior to issuance of Contractor's report may impair independence, and may result in Contractor's inability to complete the engagement and issue a report.

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

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

Notice to Contractor: Moss Adams LLP
10960 Wilshire Blvd., Suite 1100
Los Angeles, CA 90024
Attn.: Stelian Damu, CPA, Partner

With a copy to:
Moss Adams LLP
999 Third Avenue, Suite 2800
Seattle, WA 98104
Attn: General Counsel

Notice to KCHA: Kern County Hospital Authority
1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn.: Chief Executive Officer

33. **Signature Authority.** Each party represents that they have full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

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

35. **Termination.**

35.1 Termination with Cause. Either party may terminate this Agreement in the event of a material breach by the other; provided, however, the termination for the breach of this Agreement will not become effective unless and until the party not in default, has given the other party written notice of breach, which notice shall state the general nature of the breach, and the party allegedly in default will thereafter have a period of 30 days following the giving of said notice in which to remedy the default to the reasonable satisfaction of the other party. If the alleged default is of the kind that cannot be cured within 30 days, then the party allegedly in default will have an additional 30 days in which to remedy the breach as long as such party is acting in good faith and using diligent efforts to remedy such breach throughout the cure period.

35.2 Termination without Cause. Either party may terminate this Agreement, without cause, upon 30 days' prior written notice to the other party.

35.3 Immediate Termination. Notwithstanding the foregoing, KCHA shall have the right to terminate this Agreement effective immediately after giving written notice to Contractor, for any of the following reasons: (i) KCHA determines that Contractor does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by Contractor in the providing of services may result in civil, criminal, or monetary penalties against KCHA or KMC; (iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which KCHA or KMC is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to KCHA or KMC; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against KCHA or KMC; (vi) the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of Contractor; or (vii) the failure of Contractor to cure a default within the time allowed in section 35.1.

36. Effect of Termination.

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

36.2 Vacate Premises. Upon expiration or earlier termination of this Agreement, Contractor shall immediately vacate KMC, removing at such time any and all personal property of Contractor. KCHA may remove and store, at Contractor's expense, any personal property that Contractor has not so removed.

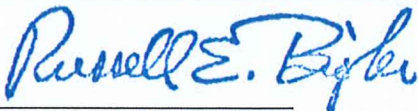
36.3 No Interference. Following the expiration or earlier termination of this Agreement, Contractor shall not do anything or cause any person to do anything that might interfere with any efforts by KCHA to contract with any other individual or entity for the provision of services or to interfere in any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

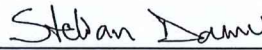
37. **Time of Essence.** Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

[Signatures follow on next page]


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

KERN COUNTY HOSPITAL AUTHORITY MOSS ADAMS LLP

By 
Chairman
Board of Governors

By 
Stelian Damu
Partner

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By 
Andrew Cantu
Chief Financial Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT


By 
Vice President & General Counsel
Kern County Hospital Authority

EXHIBIT "A"
DESCRIPTION OF SERVICES

The primary purpose of the financial audit will be to conduct an audit sufficient to express an opinion as to whether the KCHA financial statements are fairly presented in accordance with generally accepted accounting principles and whether supplementary information is fairly presented in relation to the basic financial statements.

The Report on the financial statements must state the scope of the audit and that the audit was performed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Governmental Auditing Standards, issued by the Comptroller General of the United States.

The audit will include an evaluation and report of the KCHA's internal control for the purpose of identifying areas of weakness or noncompliance. The purpose of this report is to: 1) report any significant deficiencies (including material weaknesses) which are identified as a result of performing an audit of the financial statements; and 2) report occurrences of noncompliance with provisions of laws, regulations, contracts and grants, which could have a direct and material effect on the required financial statements.

Standards of field work

During the period of time leading up to the year-end audit procedures, the designated Moss Adams LLP representative shall meet regularly with the KMC Finance Team and KCHA's Chief Financial Officer.

A draft copy of the reports should be delivered to KCHA's Chief Financial Officer. The Chief Financial Officer will address potential findings identified in the Schedule of findings and provide clarifications or responses to the findings. Final draft reports should be submitted to the Chief Financial Officer within six (6) months after the fiscal year end.

Contractor shall submit the following reports to KCHA:

1. Client Assistance Schedule;
2. Draft Independent Auditor's Report, report of Internal Control Over Financial Reporting and on Compliance and other Matters Based on an Audit of Financial Statements Performance in accordance with Government Auditing Standards; and
3. Final Report on the financial statements to those charged with governance of KCHA.

[Intentionally left blank]

EXHIBIT "B"
FEE SCHEDULE

AUDIT YEAR	FEES
Fiscal year ended June 30, 2021	\$144,000-\$154,000
Fiscal year ended June 30, 2022	\$148,000-\$158,000
Fiscal year ended June 30, 2023	\$152,000-\$162,000

Contractor shall issue invoices based on the timeframe set forth in the Engagement Agreement or, if none, on a monthly basis.

KCHA acknowledges that the following circumstances may result in an increase in fees:

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

Contractor will advise KCHA in the event these circumstances occur. In addition, to the extent future federal, state, or professional rule-making activities require modification of Contractor's audit approach, procedures, scope of work, etc., Contractor will advise KCHA of such changes and the impact on fees.

EXHIBIT “C”

IRS FORM W-9

EXHIBIT "D"
BUSINESS ASSOCIATE AGREEMENT

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

RECITALS

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

WHEREAS, Business Associate performs Services for or on behalf of Covered Entity, and in performing said Services, Business Associate may create, receive, maintain, or transmit Protected Health Information ("**PHI**");

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

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

AGREEMENT

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

ARTICLE I
DEFINITIONS

1.1 "**Breach**" shall have the meaning given under [45 C.F.R. § 164.402](#).

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

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

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

1.5 **“Electronic PHI”** or **“e-PHI”** means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).

1.6 **“Protected Health Information”** and **“PHI”** mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at [45 C.F.R. § 160.103](#). Protected Health Information includes e-PHI.

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

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

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

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

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

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

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

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

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or Subcontractors that is not specifically permitted by this BAA no later than five (5) days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI. Business Associate shall document and retain records of its investigation of any suspected Breach. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate determines that such Security Incident or non-

permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

2.3.2 Breach of Unsecured PHI. If Business Associate determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) calendar days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for the following reasonable and actual costs and expenses in providing the notification and as required by regulation, reasonable administrative costs associated with providing notice, printing and mailing costs, and one (1) year (or for the duration required by statute or regulation, if longer) of credit monitoring services for affected individuals whose PHI has or may have been compromised as a result of the Breach.

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

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

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

2.6 Access to Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall make the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets available to Covered Entity for

inspection and copying, or to an Individual to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524. If Business Associate maintains PHI in a Designated Record Set electronically, Business Associate shall provide such information in the electronic form and format requested by the Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524(c)(2). Business Associate shall notify Covered Entity within five (5) days of receipt of a request for access to PHI from an Individual.

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

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

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

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

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

2.12 Acknowledgement. Business Associate acknowledges that it is obligated by law to comply and represents that it shall comply with HIPAA, the HITECH Act, and the HIPAA

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

ARTICLE III OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity's Obligations.

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

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

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

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

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

ARTICLE IV TERM AND TERMINATION

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

4.2 Termination of Underlying Agreement.

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

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

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

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

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

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

4.4.1 Upon termination or expiration of this BAA, Business Associate shall destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI.

4.4.2 If destruction is not feasible, Business Associate shall: (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains the PHI; (d) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions set out in Sections 2.1 and 2.2 above, which applied prior to termination. For the avoidance of doubt, Covered Entity agrees that it is infeasible for Business Associate to return or destroy PHI to the extent incorporated into Business Associate's working papers supporting its professional services for Covered Entity, and Business Associate shall be permitted to retain such PHI without further notice and shall maintain its confidentiality in accordance with this BAA.

ARTICLE V MISCELLANEOUS

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

5.2 Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Rules, or the HITECH Act. Any amendment to this BAA must be made in writing and signed by both Parties.

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

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

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

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

5.7 Assistance in Litigation or Administrative Proceedings. Provided Business Associate is not a party to the action or in an adversarial position with Covered Entity, Business Associate shall make itself and any Subcontractors or members of its Workforce assisting Business Associate in the performance of its obligations under this BAA available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claim of violation of the HIPAA or other applicable laws relating to privacy or security caused or contributed to by Business Associate, Business Associate's Subcontractors or members of Business Associate's Workforce.

5.8 Indemnification. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, Business Associate hereby agrees to indemnify, defend, and hold harmless

Covered Entity and its respective officers, directors, managers, members, employees and agents from and against any and all losses, damages, fines, penalties, claims or causes of action and associated expenses (including, without limitation, costs of judgments, settlements, court costs and attorney's fees) resulting from Business Associate's (including its employees, directors, officers, agents, or other members of its Workforce, and its Subcontractors) breach of PHI to the extent resulting from the violation of the terms of this BAA, including but not limited to failure of Business Associate to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.

Business Associate's rights and obligations of indemnity set forth above are conditioned on (i) the prompt written notification from the Covered Entity to Business Associate of the claim for which indemnity is sought and (ii) cooperation and assistance from Covered Entity, including reasonable disclosure of information and authority necessary to perform the above. In the event of a claim for which the Covered Entity may seek indemnification hereunder, Business Associate shall be entitled to control the handling of such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing. Business Associate agrees to pay any claims and losses awarded against the Covered Entity by final judgment of a court, or the amount of any agreed settlement regarding any such claims and losses.

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

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

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

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

other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

Kern County Hospital Authority
c/o Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, CA 93306
Attn: Chief Executive Officer

Business Associate's Notice Address:

Moss Adams LLP
10960 Wilshire Blvd., Suite 1100
Los Angeles, CA 90024
Attn: Stacy J. Stelzriede, CPA, Partner

With a copy to:
Moss Adams LLP
999 Third Avenue, Suite 3300
Seattle, WA 98104
Attn: General Counsel

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

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

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

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

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

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

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


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

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

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

COVERED ENTITY:

The Kern County Hospital Authority on
behalf of Kern Medical Center


Title: Chairman

Date: Jan. 14, 2021

BUSINESS ASSOCIATE:

Moss Adams LLP


Title: Partner

Date: January 14, 2021

EXHIBIT "E"

Insurance

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

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

1. Workers' Compensation and Employers Liability Insurance:

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

2. General Liability Insurance:

- (a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- (b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance.
- (c) Contractor is responsible for any deductible for a claim that is covered under its General Liability Insurance or self-insured retention and shall fund it upon KCHA's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving KCHA.

- (d) KCHA shall be named as an additional insured on Contractor's General Liability Insurance (blanket endorsement is acceptable) for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement.
- (e) The insurance provided to KCHA as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by KCHA.
- (f) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- (g) The policy shall cover inter-insured suits between KCHA and Contractor and include a "separation of insureds" or "severability" clause which treats each insured separately.
- (h) Required Evidence of Insurance: (i) Copy of the additional insured blanket endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

3. Automobile Liability Insurance:

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

4. Professional Liability Insurance (Errors and Omissions):

- (a) Professional Liability Insurance (Errors and Omissions) appropriate to Contractor's profession.
- (b) Minimum Limits: \$1,000,000 per Occurrence or Claim; \$3,000,000 Annual Aggregate.
- (c) Contractor is responsible for any deductible for a claim that is covered under its Professional Liability or self-insured retention. .
- (d) Required Evidence of Coverage: Certificate of Insurance.

5. Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A-;VII.

6. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:

- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
- (b) Insurance must be maintained and evidence of insurance must be provided upon request *for at least five (5) years after completion of the contract work*.
- (c) If coverage is canceled or non-renewed, and *not replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of *five (5) years* after completion of the contract work.

7. Documentation:

- (a) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with KCHA for the entire term of this Agreement and any additional periods if specified in sections 1, 2, 3 or 4 above.
- (b) The name and address for the Certificates of Insurance and Additional Insured endorsements is: Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
- (c) Required Evidence of Insurance shall be submitted upon written request for any renewal or replacement of a policy that already exists before expiration or other termination of the existing policy.
- (d) Contractor shall provide immediate written notice if any of the required insurance policies is terminated.
- (e) Upon written request, copies of required insurance policies (except for the declarations pages of such policies) must be provided to KCHA within 30 days.

8. Policy Obligations: Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

9. Waiver of Subrogation: Except as to Professional Liability Insurance, Contractor hereby grants to KCHA a waiver of any right to subrogation, which any insurer of said Contractor may acquire against KCHA by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not KCHA has received a waiver of subrogation endorsement from the insurer.

10. Primary Coverage: For any claims related to this Agreement, Contractor's Commercial General Liability and Automobile insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects KCHA, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by KCHA, its officers, directors, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

11. Material Breach: If Contractor fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. KCHA, at its sole option, may terminate this Agreement and seek damages from Contractor resulting from

said breach. Alternatively, KCHA may purchase the required insurance, and without further notice to Contractor, KCHA may deduct from sums due to Contractor any premium costs advanced by KCHA for such insurance. These remedies shall be in addition to any other remedies available to KCHA.

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

April 19, 2023

Subject: Proposed Amendment No. 3 to the Personal/Professional Services Agreement (17018) with NLeader Group, LLC

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Amendment No. 3 to the Personal/Professional Services Agreement between NLeader Group LLC and the Kern County Hospital Authority to extend the current Agreement and add funds to support the extended term.

NLeader Group, LLC provides professional technical consulting services for the Medi-Cal Administrative Activities (MAA) including claims and coordination. With this Amendment No. 3, NLeader Group shall continue to review MAA invoices for federal reimbursement on behalf of Kern Medical.

Agreements	Term	Maximum Payable	Variance
Personal/Professional Services Agreement #17018	07/01/18 - 06/30/20	\$25,000	
Amendment #1 - #47420	07/01/20 – 06/30/21	\$35,000	\$10,000
Amendment # 2 - #25421	07/01/21 – 06/30/23	\$105,000	\$70,000
Proposed Amendment #3	07/01/23 – 06/30/25	\$175,000	\$70,000

Therefore, it is recommended that your Board approve the proposed Amendment No. 3 to the Personal/Professional Services Agreement with NLeader Group, LLC to ensure continuity of business services, by extending the term by two (2) years for the period of July 1, 2023 through June 30, 2025, increasing the maximum payable by \$70,000 from \$105,000 to \$175,000, and authorize the Chairman to sign.



Solutions & Services Group
Master Services Agreement

Effective Date

April 19, 2023 (the "**Effective Date**")

Parties

This Master Services Agreement (this "**Agreement**") is made by and between:

Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center on behalf of itself and its Affiliates ("**Customer**") with an office at 1700 Mt. Vernon Avenue, Bakersfield, CA 93306, and

Lenovo (United States) Inc. on behalf of itself and its Affiliates ("**Lenovo**") with an office at 8001 Development Drive Morrisville, NC 27560.

Customer and Lenovo may be referred to collectively as the "**Parties**" and each individually as a "**Party**." "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control of a party.

This Agreement consists of: (i) these terms; (ii) any SOW attached hereto as listed below in *Section 0 "Attachments and Statements of Work"*; and (iii) any other documents which both Parties agree in writing shall become part of this Agreement. Any additional or different terms not in a writing signed by both Parties and any conflicting terms on a Customer purchase order shall not be a part of this Agreement.

A Service (as defined below) becomes subject to this Agreement when Lenovo accepts Customer's order by sending Customer written acceptance of the order or by making the Service available to Customer within the country of this Agreement. Confirmation of Lenovo's receipt of a Customer order does not constitute Lenovo's acceptance of the order.

1 Definition

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

2 Price, Charges, Payment, and Taxes

Customer shall pay the price or charges for Services as specified in the Lenovo price list, Statement of Work ("**SOW**"), invoice, or another document as agreed to by the Parties. All amounts are due upon receipt of the invoice. Any amounts not received by Lenovo within thirty (30) days of receipt of the invoice shall be overdue. Customer shall pay applicable sales, use, or similar taxes, fees, or duties unless Customer provides exemption documentation to Lenovo. Customer is responsible for taxes, if any, from the date the Services are provided by Lenovo. No other discounts, quantity entitlements, or promotions apply unless expressly agreed in writing by Lenovo.

3 Personnel

3.1 Each Party is responsible for the supervision, direction, control, and compensation of its respective personnel.

3.2 Lenovo personnel used in the performance of Services shall be as determined by Lenovo in its sole discretion.

3.3 Lenovo may subcontract a Service, or any part of it, to subcontractors selected by Lenovo.

4 Warranty

4.1 Lenovo warrants that Services will be performed in a workmanlike manner consistent with the terms of the applicable SOW and standards in the information technology industry.



Solutions and Services Group

- 4.2 In the event Lenovo fails to perform Services in accordance with *Section 4.1*, Customer shall provide written notice of such failure to Lenovo within three (3) business days after the completion of such Services. Lenovo will either correct the failure or provide a credit to Customer in the amount of the charges paid to Lenovo for the defective portion of the Services, at Lenovo's option. This *Section 4.2* sets forth the extent of Lenovo's liability for Services and the sole remedy of Customer in the event that the Services do not comply with *Section 4.1*.
- 4.3 **THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.**
- 4.4 Lenovo does not warrant the uninterrupted or error-free operation of any deliverable or Service.
- 5 **Confidentiality**
- 5.1 Any non-public information which is received under this Agreement by one Party from the other and which is clearly marked as "confidential" ("**Confidential Information**") shall be (i) maintained in confidence during the term of this Agreement and for two (2) years following termination or expiration of this Agreement (or, if it is Confidential Information additionally marked as and comprising a "trade secret," for so long as it remains a trade secret under applicable law), (ii) used only for the purpose of fulfillment of the receiving Party's obligations under this Agreement, and (iii) protected during such periods against unauthorized disclosure by the receiving Party, except for the following permitted disclosures: (a) disclosure to the receiving Party's Affiliates, employees and contractors with a business "need to know" for the exercise of the receiving Party's rights or fulfillment of its obligations under this Agreement, provided that such further recipients are also obligated by the receiving Party to protect the Confidential Information to the same extent as the receiving Party under this *Section 5 "Confidentiality"* and (b) disclosure with the prior written consent of the disclosing Party. Further, the receiving Party is permitted to disclose any protected Confidential Information of the disclosing Party, to the extent required by law, on condition that in any such case, the receiving Party promptly notifies the discloser (to the extent not prohibited by applicable law), to allow the disclosing Party a reasonable opportunity to seek a protective order. Confidential Information is provided with no warranty and without liability as to its accuracy or completeness. Confidential Information disclosed to a third party, notwithstanding a valid consent provided under this Agreement or in the event of unauthorized disclosure, remains Confidential Information under *Section 5 "Confidentiality."* The terms of this Agreement are the Confidential Information of Lenovo. Lenovo 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.
- 5.2 Information shall not be considered "Confidential Information" under this *Section 5 "Confidentiality"*. The receiving Party is free to disclose it if: (i) the information was already in the recipient's possession without obligation of confidentiality at the time of its receipt from the receiving Party; (ii) the information was independently developed by the receiving Party without the use of the Confidential Information of the disclosing Party; (iii) the information was obtained from a third party without an obligation of confidentiality to the disclosing Party; (iv) the information was or becomes publicly available through no breach of this Agreement by the receiving Party or its Affiliates, employees and contractors; or (v) the disclosing Party reveals the information to a third party without imposing an obligation of confidentiality on the third party.
- 5.3 The terms of this *Section 5 "Confidentiality"* supersede and replace the terms of any confidentiality or non-disclosure agreement entered into by and between the Parties prior to the Effective Date (an "**NDA**"), provided, however, that any such NDA shall remain effective in accordance with its terms with respect to any confidential information disclosed under it by the Parties prior to the Effective Date.
- 6 **Personal Information**
- 6.1 Lenovo will collect, access, retain and, as appropriate, share (collectively "**Process**") the names and contact information of Customer and, as applicable, machine types and serial numbers of the products sold to Customer (collectively "**Personal Information**"). This Personal Information will be processed by Lenovo in order to perform the obligations of this Agreement, including contractual warranties.



Solutions and Services Group

- 6.2 Lenovo will Process the Personal Information of Customer consistent with its privacy statement available at <https://www.lenovo.com/us/en/privacy/> and/or, as applicable, privacy statements designed for a specific Lenovo Product or Service.
- 6.3 To perform its obligations pursuant to this Agreement in relation to the Services, Lenovo may transfer Personal Information (i) from any country to any other country in the world where Lenovo and its enterprise operations, and (ii) to Lenovo's enterprise and Lenovo service providers acting on Lenovo's behalf in relation to this Agreement and/or the Services.
- 6.4 Lenovo and Customer will comply with all data privacy or data protection laws applicable to their Processing of Personal Information pursuant to this Agreement.
- 6.5 Lenovo and Customer will have appropriate technical and organizational security measures in place to protect Personal Information from unauthorized access, use, or release.
- 6.6 If Customer accesses any Personal Information directly from a Lenovo order visibility platform or other data system, Customer (i) shall have in place appropriate administrative, physical, and technical controls to address threats to the confidentiality and security of Lenovo's platform or data system and associated information and (ii) shall not transfer across international borders any Personal Information it receives from Lenovo without Lenovo's express prior written consent.

7 Limitation of Liability

- 7.1 Except as expressly stated in this Agreement, neither Party nor its Affiliates shall be liable to the other Party or its Affiliates for any of the following even if informed of their possibility or foreseeable and whether the claim arises in contract, tort (including gross negligence where legally permissible) or otherwise: (a) third-party claims for damages; (b) loss of, or damage to, data; (c) special, incidental, indirect, punitive, exemplary or consequential damages; (d) lost profits, business, revenue, goodwill or anticipated savings; (e) loss of use; or (f) wasted management time.
- 7.2 The maximum cumulative liability of Lenovo and its Affiliates to Customer and its Affiliates for all actions arising out of or related to this Agreement and all orders issued hereunder, regardless of the form of the action or the theory of recovery, shall be limited to actual direct damages, not to exceed the total amount actually paid by Customer for the Services giving rise to the claim in the twelve (12) months preceding the claim under this Agreement.
- 7.3 The provisions of this *Section 7 "Limitation of Liability"* shall not apply to: (a) the extent prevented or restricted by mandatory applicable law (including, without limitation, in relation to fraud) that cannot be amended or excluded by a contractual waiver; (b) bodily injury (including death); (c) damage to real property; or (d) damage to tangible personal property.
- 7.4 The provisions of this *Section 7 "Limitation of Liability"* shall also limit the liability of Lenovo's subcontractors, suppliers, and program developers, collectively with Lenovo and its Affiliates, to Customer and its Affiliates.

8 Insurance

During a Service transaction, Lenovo will maintain commercial general liability insurance, commercial auto liability insurance; personal property insurance sufficient to cover any Lenovo equipment Lenovo brings onto Customer's premises; and workers' compensation insurance in an amount not less than that required by applicable law. Upon request, Lenovo will provide certificates of insurance that evidence the insurance set forth above.

9 Term, Termination, and Withdrawal of the Service

- 9.1 The term of this Agreement shall begin on the Effective Date and continue for three (3) years. Either Party may terminate this Agreement with thirty (30) days prior written notice to the other Party. If this Agreement terminates prior to the expiration or termination of an applicable SOW, the terms of this Agreement will continue to govern with respect to such SOW for the term of such SOW.



Solutions and Services Group

- 9.2** Either Party may terminate this Agreement if the other Party fails to comply with any material terms, provided the Party alleged not to be in compliance is provided with written notice of the non-compliance and not less than thirty (30) days to cure, except in the event of a non-payment in which case only ten (10) days to cure shall be required.
- 9.3** Upon termination of this Agreement, Customer shall pay Lenovo for: (1) all Services provided; (2) any minimum order requirements; (3) any intellectual property delivered through the date of termination; (4) all expenses Lenovo incurs through Service termination; and (5) any costs Lenovo incurs in terminating the Service.
- 9.4** Lenovo may terminate a Service or support for an eligible product on thirty (30) days written notice to Customer. If Lenovo terminates a Service for which Customer has paid in advance and Lenovo has not yet fully provided the Service, Lenovo shall provide Customer a refund on a prorated basis.
- 9.5** Any terms of this Agreement which by their nature extend beyond termination or withdrawal of a Service shall remain in effect until the Service is complete.
- 9.6** This Agreement shall immediately terminate in the event either Party is listed as a restricted party on any sanctions list including, but not limited to, the United Nations Sanctions List, United States Treasury Department's Office of Foreign Asset Control Specially Designated National List, and the United States Department of Commerce's Denied Parties List, Entity List, or Unverified List. Notwithstanding anything to the contrary under this Agreement, in the event a Party exercises its termination rights under this *Section 9.6*, the Party shall have no further obligations under this Agreement until the other Party is no longer designated a restricted party.
- 10 General**
- 10.1 Access to Customer Facilities and Systems.** Customer shall provide Lenovo and its subcontractors with free, safe, and sufficient access to Customer's facilities and systems in order for Lenovo to fulfill its obligations under this Agreement and any SOW.
- 10.2 Compliance with Laws.** Each Party shall comply with all applicable federal, state, and local laws, regulations, and ordinances, including all applicable export and import regulations as specified further in *Section 10.3 "Export Regulations"* of this Agreement, orders, and policies in the jurisdiction(s) in which Services are being provided.
- 10.3 Export Regulations.** Any use, export, re-export, or transfer in-country, either directly or indirectly, of technical data supplied by Lenovo under this Agreement is subject to applicable export laws and regulations, including without limitation those of the United States and the European Union, as applicable. Customer is responsible for compliance with all applicable export laws and regulations when using, exporting, re-exporting, or transferring in-country, directly or indirectly, any such technical data. Customer shall defend, indemnify and hold Lenovo and its Affiliates harmless from any claim, damage, liability, or expense (including but not limited to reasonable attorneys' fees, costs of investigation, and costs of defense) arising out of or in connection with any violation of this *Section 10.3 "Export Regulations."*
- 10.4 Assignment.** Neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party. Neither Party shall unreasonably withhold, condition, or delay such consent. The assignment of this Agreement, in whole or in part by either Party to any of its Affiliates or a successor organization by merger or acquisition, does not require the consent of the other Party unless the proposed assignee of Customer is a competitor of Lenovo. Lenovo may assign its rights to receive payments under this Agreement without Customer's consent, but with written notice.
- 10.5 Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of New York, without regard to its or any other jurisdiction's conflict of laws principles. Neither Party may bring an action arising out of or related to this Agreement more than one (1) year after the cause of action is discovered.
- 10.6 Force Majeure.** Except for payment obligations, neither Party shall be liable to the other for any failure or delay in the performance of its obligations, to the extent such failure or delay is caused by fire, flood, earthquakes, other elements of nature; acts of war; terrorism, riots, civil disorders, rebellions, or revolutions;



Solutions and Services Group

epidemics, communication line or power failures; governmental laws, court orders or regulations; or any other cause beyond its reasonable control.

- 10.7 Survival.** Any terms of this Agreement which by their nature survive the expiration, termination, or cancellation of this Agreement, including but not limited to *Section 7, "Limitation of Liability,"* shall survive the expiration or termination of this Agreement.
- 10.8 Complete Understanding.** This Agreement is the sole and complete understanding of the Parties regarding the subject matter hereof, superseding all prior or contemporaneous agreements and understandings, whether written or oral.
- 10.9 Severability.** If the whole or any part of a provision of this Agreement is found invalid, unenforceable, or illegal by a court of competent jurisdiction, it shall be deleted, and the remainder of this Agreement shall remain in full force and effect.
- 10.10 Counterparts.** This Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument.
- 10.11 Notices.** All notices a Party may provide to the other concerning this Agreement shall be in writing by means of e-mail with receipt confirmed, facsimile, certified or registered mail, express mail, other overnight delivery, or hand delivery with proper postage or other charges paid and addressed directed to the Parties as follows. Such notice will be deemed received when actually received or seventy-two (72) hours after being sent as specified above, whichever occurs first:

To Customer
Attn: Chief Executive Officer
Kern Medical
1700 Mount Vernon Avenue
Bakersfield, CA 93306
E-mail: contracts@kernmedical.com

To: Lenovo (United States) Inc.
Attn: Sheri Courtney
8001 Development Drive
Morrisville, NC, 27560
E-mail: shericourtney@lenovo.com

- 10.12 Attachments and Statements of Work.** The following documents are incorporated herein and made a part of this Agreement:

Attachment A: Statement of Work for Advanced Imaging Services

(SIGNATURE PAGE FOLLOWS)

The Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date. This Agreement may be signed in counterparts and electronically signed or accepted.

LENOVO CONFIDENTIAL

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Lenovo

Solutions and Services Group

Accepted and agreed for and on behalf of:

Kern County Hospital Authority

by: _____
Authorized signature

Signatory Name: Russell Bigler
(Type or print)

Signatory Title: Chairman, Board of Governors

Signature Date:

Accepted and agreed for and on behalf of:

Lenovo (United States) Inc.

by:  _____
Authorized signature

Signatory Name: Whitney Polites
(Type or print)

Signatory Title: Executive Director

Signature Date: 12 April 2023

After signing, please return a copy of this Agreement to the Lenovo address shown above.

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By  _____
Legal Services Department

LENOVO CONFIDENTIAL

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

April 19, 2023

Subject: Proposed Telecommunications Services Request with Charter Communications Operating, LLC ("Spectrum") for the Oswell Training Facility

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the connection of a new network circuit for the Oswell Training facility. This location is used for testing and an education center for the Kern Medical Residency program and a dedicated network is required to facilitate these functions. The monthly cost for this service under the term of the current agreement with Spectrum is \$715 per month.

Solution Description	Monthly Fee	Term	Total
Oswell Training Network Circuit	\$715	60 months	\$42,900

Using the Master Agreement with Spectrum (013-2018) to govern this Telecommunications Service Request and conveying the understanding that as a utility this additional purchase may extend for as long as Kern Medical requires the use of this location, Kern Medical recommends that your Board approve the proposed Telecommunications Service Request with Spectrum, for an initial sixty (60) month term, at a cost of \$715 per month, and authorize the Chairman to sign.

Print Form

Reset Form

1. AGENCY REQUEST NUMBER

2. DATE

3. TYPE OF REQUEST

Check all boxes that apply to this request

☒ Service

☐ Equipment - Needs a Form 65

☐ Other

Attach additional information as needed

Contractor Name

Charter Communications Operating, LLC

4. AGENCY INFORMATION

Department

Kern County Hospital Authority

Division

Contact Name

General Services Agency Code

00658

Telephone Number

Fax Number

Email Address

Present Service Address:

Requested Service Address:

Requested service address listed under description/comment section below.

Billing Address:

5. ELIGIBILITY

☐ State Government

☒ Local Government**

☐ Federal Government*

Forms

Complete Section 6-CATR/ATR Information below

*Must complete a Non-State Agency Service Policy and an Authorization to Order (ATO) to obtain eligibility prior to first order.

6. CATR/ATR Information

Name

Email Address

Telephone Number

Fax Number

Address

CITY

State

Zip Code

This request complies with State telecommunications policies

SIGNATURE

Title

Date

7. ORDER DETAIL

Additional Request

Delete Request

Approved As To Form:


Hospital Counsel

☒ ADD ☐ CHANGE

☐ Disconnect ☐ MOVE

Requested Date of Service

Quantity

Monthly Recurring Cost (MRC)

\$ 715.00

Non-recurring Cost (NRC)

\$ 0.00

State Contract Number

C4-DNCS-19-001-33

Feature ID/USOC/Product ID

24.FIA.00100.C & 24.IP.5

Existing Billing Account Number

Description

100 Mbps dedicated Internet access \$715.00/mo. 5 Static IPs \$0.00/mo.
Service location \$2671 Oswell St. Bakersfield, CA 93306

Comment



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

April 19, 2023

Subject: Proposed 85Order Form for Compliance Solutions Services with Inmar Rx Solutions, Inc. ("Inmar") for the DSCSA Pharmacy Compliance Software Solution, containing non-standard terms and conditions

Recommended Action: Approve; Authorize Chairman to sign

Summary:

The Drug Supply Chain Security Act (DSCSA) requires pharmacies to be able to trace the transaction history of every medication that passes through the pharmacy. Inmar's DSCSA Pharmacy Compliance Software manages this requirement, as well as providing oversight over drug recall requirements, which enhances patient safety.

Inmar is the vendor currently utilized for reverse distributions of outdated medications who has been responsive and proficient in their services. The Form is for a two (2) year period, effective April 19, 2023, for a cost of \$4,990 per year and these costs can be covered out of credits received for the reverse distribution program. This Form does contain non-standard terms and conditions that Counsel cannot approve as to form as there is not a provision for termination for convenience and yearly auto-renewal of the term. Based on the history with the current vendor, the low cost of the vendor and the minimal risk of the need for an early termination, Kern Medical requests that your board approve the proposed Form with non-standard terms.

Therefore, it is recommended that your Board approve the 85Order Form for Compliance Solutions Services with Inmar Rx Solutions, Inc. for the DSCSA Pharmacy Compliance Software Solution, containing non-standard terms and conditions, effective April 19, 2023 through April 18, 2025, in an amount not to exceed \$10,000, and authorize the Chairman to sign.



85Order Form for Compliance Solutions Services

Inmar Rx Solutions, Inc. • One West Fourth Street, Suite 500 • Winston-Salem, NC 27101

This Order Form, together with the Terms and Conditions attached hereto (collectively, the "Agreement"), is made and entered into as of the date this Agreement is signed by both parties ("Effective Date") by and between Inmar Rx Solutions, Inc. ("Inmar") and the undersigned Client and sets forth the terms and conditions pursuant to which Inmar shall provide the Services, as defined herein, to Client.

Client Information	
Client Full Legal Name (include Inc., LLC, etc.)	Kern County Hospital Authority
Client Street Address (Corporate/Legal address; no P.O. boxes)	1700 Mt Vernon Avenue Bakersfield, CA 93306
Type of Legal Entity (corporation, LLC, sole proprietorship, partnership, etc.)	State Affiliated Not-For-Profit
State of Incorporation/Organization (may be different from address)	California
Primary Point of Contact	C/O; Jeff Jolliff
Email Address Phone Number of Primary Contract	C/O; jeff.jolliff@kernmedical.com , 661.326.2000
Accounts Payable Point of Contact	Same
Email Address Phone Number of Accts Payable Contact	Same
Group Purchasing Organization Name (if applicable)	HPG
Inmar BDE rep	Keith Lee
Inmar referring FAM	Sean Fahy

Compliance Solutions									
Service Locations (please use additional sheet if needed)	DSCSA Annually	USP<800> Annually	# of Users	OneRecall™ Pharmacy Annually	Add'l Services Fees Annually	Type of Facility	Total Annual Fee	Inmar Acct #	Check if using CAP credits
1700 Mt Vernon Ave Bakersfield, CA 93306	800	500	Inc	2590	1100	Acute	4990	34937	<input checked="" type="checkbox"/>

Additional Services				
Recall Connector*	USP<800> SoPs	OneRecall Unlimited Users	OneRecall Premium Features	OneRecall BRF
<input checked="" type="checkbox"/>				

*Requires DSCSA and OneRecall Subscription

Indicate ("X") if already existing customer for OneRecall ____

Agreement Term	Auto-Renewal?
Initial Term (Years)	Two (2) No

Total Annual Fee
4990

CONFIDENTIAL

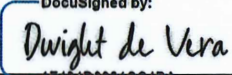

1

By signing this Order Form, the undersigned client ("Client") agrees to be bound by the Terms & Conditions – Applications License Agreement (the "Legal Terms and Conditions") attached hereto and incorporated herein, unless and until the parties enter into a master services agreement in connection with the subject matter hereunder that supersedes the Legal Terms and Conditions.

This Agreement supersedes any existing agreement between Inmar and Client for the provision of the Services selected on the Order Form.

The Legal Terms and Conditions are attached hereto and incorporated by reference

This Agreement has been executed and delivered by a duly authorized representative of each party hereto as of the date indicated corresponding to such party's signature.

Inmar Rx Solutions, Inc.	Client
<div>DocuSigned by:  1743400931CC4DA...</div> <div>_____ (Signature)</div>	<div>_____ (Signature)</div>
<div>Dwight de Vera _____ (Printed Name)</div>	<div>Russell Bigler _____ (Printed Name)</div>
<div>General Manager Healthcare Intelligence _____ (Title)</div>	<div>Chairman, Board of Governors _____ (Title)</div>
<div>3/28/2023 _____ (Date)</div>	<div>_____ (Date)</div>
<div>Inmar Legal Approval:  _____</div>	

REVIEWED ONLY
NOT APPROVED AS TO FORM

By 
Legal Services Department

TERMS AND CONDITIONS APPLICATIONS LICENSE AGREEMENT

This Applications License Agreement, together with these Terms and Conditions and the fully executed order form or enrollment form ("Order Form") (collectively, the "Agreement"), is made and is effective as of the date indicated on the Order Form (the "Effective Date"), by and between **Inmar Rx Solutions, Inc.**, a Texas corporation with offices at 1 W. 4th St., Suite 500, Winston-Salem, North Carolina 27101 ("Inmar"), and the entity signing the Order Form ("Client").

1. Services.

a. **Order Form.** Inmar will provide the services to Client that are selected on the Order Form ("Order Form") to which these terms and conditions (the "Terms and Conditions") are attached, as more particularly described in the applicable Services Exhibits attached to or indicated on the Order Form (the "Services") for Client's location(s), a list of which Client provided in the applicable Order Form or in writing to Inmar, email to suffice ("Location(s)"), that shall be considered to be attached hereto as the Location Exhibit and incorporated herein by reference.

b. **License.** All software, programs, coding, digital solutions, applications or platforms provided by Inmar to Client hereunder shall be referred to as "Application(s)." Employees or agents of a Client credentialed to use such Applications shall be referred to as "Users." For all Applications provided by Inmar to Client, subject to the terms of this Agreement and during the applicable Term set forth on the Order Form, Inmar grants to each Client a limited, worldwide, non-exclusive, non-transferable license, without resale or sublicense rights to (a) install or access (at Inmar's discretion) a single instance of each Application for one (1) platform instance in Client's environment, and/or permit credentialed Users to use, access and display the Application in connection with the intended purpose of the Application unless otherwise mutually agreed upon in writing by the parties, and (b) for the applicable Term, use and make a reasonable number of copies (for the purposes of utilizing the Application only) of any descriptions, instructions, or other documentation made available in connection with the Application, if any (the "Documentation"). If no Term is set forth in the Order Form, this license shall be for a period of one (1) year from the date of delivery or final re-delivery of the Application, after which time Inmar may terminate Client's access to the Application.

c. **Restrictions.** Client may not, nor allow any third party to: 1) copy or reproduce the Application or Documentation (except as set forth herein); 2) modify, translate or otherwise create derivative works of the Application or Documentation; 3) disassemble, decompile or reverse engineer the object code or source code of the Application or the Documentation or otherwise attempt to discover the source code of or trade secrets embodied in the Application; 4) use automated or software bot technology or other artificial intelligence programs or applications to access the Applications or any application programming interfaces provided by Inmar; 5) port or grant unauthorized third parties the right to use, frame or link to the Application or Documentation; 6) distribute, transfer, sublicense or otherwise make available to any third party the Application, Documentation or any benchmark testing or results relating to the Application or Documentation (or any portion thereof); 7) embed or incorporate in any manner the Application or Documentation into any other product, service or application of Client or any third parties; 8) use or transmit the Application or Documentation in violation of any applicable law, rule or regulation, including import/export laws; 9) use or copy the Application or Documentation or any portion thereof to directly or indirectly develop, promote, distribute, sell or support any product or service similar to or competitive with the Application or Documentation; 10) use the Application to store or distribute any information, material or data that is harassing, threatening, infringing, libelous, unlawful, obscene or which violates the privacy or intellectual property rights of any third party; 11) remove, obscure or alter any copyright notices or any name, trademark, service mark, hyperlink or other designation set or provided by Inmar; or 12) export the Application. Client shall not permit any affiliate, subsidiary or other third party to perform any of the foregoing

actions. Client shall immediately notify Inmar, in writing, if it knows or reasonably suspects that any of the foregoing actions have occurred.

2. **Term.** The initial term of this Agreement shall commence on the Effective Date and shall continue for the initial term indicated on the Order Form (the "Initial Term"). At the end of the Initial Term, unless otherwise indicated on the Order Form, this Agreement shall be renewed automatically for one (1) year periods (each one (1) year period shall be defined as a "Renewal Term") unless terminated in accordance with Section 11 herein. The Initial Term and all Renewal Terms, if any, are collectively referred to as the "Term" of this Agreement.

3. **Fees.**

a. As compensation for the Services, Client shall pay to Inmar those fees as set forth on the Order Form (the "Fees"). All amounts due hereunder are net amounts, and Client agrees that it will be responsible for all sales, use, or services taxes of any kind, if applicable, with the exception of taxes due on Inmar's income.

b. Inmar shall submit to Client itemized statements detailing the Fees accrued by Client during the current billing cycle. Payment in full of all Fees listed on the invoice shall be received from Client by Inmar within thirty (30) days of the invoice date via check, wire transfer or ACH draft. The Fees payable hereunder shall not be reduced by any deduction or other offsets. Funds must be presented in U.S. currency. All invoices not paid by Client by the due date are subject to a past due charge of 1.5% per month, or the maximum rate permitted by law. In the event Client fails to make payments within thirty (30) days of the date of the invoice, Inmar may, in its sole discretion, discontinue the performance of all Services for Client until such time as all accrued and unpaid Fees are paid in full. In the event that any Inmar invoice is collected by or through an attorney or collections agent, Inmar shall be entitled to recover reasonable attorneys' fees and the cost of collection from Client.

c. Client may elect to enroll in Inmar's optional Credit Assurance Plus ("CAP") program. If Client enrolls in the CAP program, payment by Client will be subtracted from the manufacturer(s) credits received pursuant to a separately executed returns processing agreement between the parties; provided, however, that if Inmar anticipates that Client will not have enough credit to satisfy payment or Inmar is otherwise unable to deduct credits, Client shall pay Inmar the Fees pursuant to this Agreement. The CAP program is subject to an administrative fee.

4. **Fee Adjustment.** Fees will be impacted should the actual volume and service requirements differ significantly from the volume assumptions and baseline services described herein. Services performed by Inmar that are not described herein shall be invoiced to Client at a mutually agreed upon fee. Unless otherwise indicated on the Order Form, the Fees charged for Services in this Agreement shall remain in effect for one (1) year from the Effective Date, after which Inmar shall have the right to adjust its Fees under this Agreement once annually, such adjustment not to exceed five percent (5%) annually.

5. **Confidentiality.** In connection with this Agreement, each party (in such capacity, the "Disclosing Party") has disclosed or may disclose to the other party (in such capacity, the "Receiving Party") certain of its trade secrets, know-how and other Confidential Information (as defined below). The Receiving Party agrees not to use any of the Disclosing Party's Confidential Information for any purpose except to perform its obligations under this Agreement. The Receiving Party further agrees (i) not to disclose any of the Disclosing Party's Confidential Information to any third party without the prior written approval of an authorized representative of the Disclosing Party; (ii) not to use any of the Disclosing Party's Confidential Information for its own or a third party's benefit; and (iii) to undertake reasonable precautions to safeguard and protect the confidentiality of the Confidential Information. "Confidential Information" means any information disclosed by the Disclosing Party, either directly or indirectly, in writing, orally or by inspection of tangible objects, including without limitation all financial and business information,

computer software, processes, pricing policies, product plans, designs, market research and analysis, costs, customer and supplier lists, strategies, forecasts, know-how, data, methodologies, concepts, tools, trade secrets, inventions and ideas, and all other information disclosed by the Disclosing Party pursuant to this Agreement. Confidential Information shall not, however, include any information which Receiving Party can establish (i) at the time of disclosure or thereafter is in the public domain or becomes generally known to the public through no fault of the Receiving Party; (ii) was available to the Receiving Party on a nonconfidential basis from a source other than the Disclosing Party, provided that such source was not known by the Receiving Party to be bound by a confidentiality agreement with the Disclosing Party; (iii) is known to the Receiving Party (as evidenced by its written records) prior to receipt thereof from the Disclosing Party; or (iv) is required to be disclosed by a court of competent jurisdiction or by law, provided that the Disclosing Party is given prior written notice of such disclosure (to the extent legally permitted). The obligations of nondisclosure and confidentiality undertaken by each party under this Agreement shall continue for the Term of this Agreement and for a period of four (4) years following the termination or expiration of this Agreement, except that Confidential Information identified as a trade secret shall be subject to and protected by such obligations of nondisclosure and confidentiality in perpetuity. Inmar 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. 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.

6. Intellectual Property and Data.

a. **Intellectual Property.** Each party shall own and continue to own all rights it may have in intellectual property developed, invented, gathered, or created by it before or during the Term of this Agreement. Except for the license grant set forth in the immediately succeeding paragraph, this Agreement shall not be construed to grant to either party any right, title, or interest in any intellectual property rights owned by the other party. Without limiting the foregoing, all intellectual property rights, title, and interest in the methodology, technology, and know-how that Inmar uses to perform the Services under this Agreement, including all enhancements and improvements thereto, and including the Applications, Software, and Documentation, are and shall remain the exclusive property of Inmar.

b. **Data Usage.** Data collected or generated by Inmar in the performance of the Services and held by Inmar in a form that is identifiable to Client shall be the property of Client ("Client Data"). Inmar shall have a perpetual, royalty-free, non-exclusive license to use Client Data to perform the Services, and to aggregate, or otherwise manipulate, or create derivative works from, Client Data in a form that is not identifiable to Client. Client agrees that it will not disclose or transmit any data generated by Inmar in the performance of the Services to any third party without the prior written consent of Inmar.

7. Warranty; Disclaimer of Other Warranties.

a. Inmar warrants that the Services will be performed in a professional, timely and workmanlike manner, in accordance with all applicable provisions of this Agreement, all applicable published specifications, and applicable law.

b. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN THIS SECTION, ALL LICENSED SOFTWARE, APPLICATIONS, DOCUMENTATION AND OTHER PRODUCTS, INFORMATION, MATERIALS AND SERVICES PROVIDED BY INMAR ARE PROVIDED "AS IS." INMAR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, INMAR MAKES NO WARRANTY OF ANY KIND THAT THE LICENSED SOFTWARE, APPLICATIONS, OR DOCUMENTATION, OR ANY OTHER LICENSOR OR THIRD-PARTY GOODS, SERVICES, TECHNOLOGIES OR MATERIALS (INCLUDING ANY SOFTWARE OR HARDWARE), OR ANY PRODUCTS OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET CLIENT'S OR ANY OTHER PERSON'S OR ENTITIES' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES OR MATERIALS (INCLUDING ANY SOFTWARE, HARDWARE, SYSTEM OR NETWORK OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL OPEN-SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN-SOURCE COMPONENTS AND THIRD-PARTY MATERIALS. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THE SERVICES PROVIDED BY INMAR ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. IN NO EVENT WILL INMAR BE LIABLE TO CLIENT FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOSSES, OR COSTS (INCLUDING LEGAL FEES AND EXPENSES), OR LOST TIME, SAVINGS, PROPERTY, PROFITS, OR GOODWILL, WHICH MAY ARISE IN CONNECTION WITH THE SERVICES PROVIDED BY INMAR, REGARDLESS OF THE FORM OF CLAIM OR ACTION, EVEN IF INMAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, OR COSTS.

8. **Limitation.** Unless otherwise limited herein, the liability of Inmar to Client under this Agreement or otherwise, regardless of the form of claim or action, will not exceed the amounts actually paid by Client to Inmar for Services provided by Inmar under this Agreement in the prior twelve (12) month period. The foregoing limitation on liability does not apply to damages arising out of a breach of a party's confidentiality obligations under Section 5, a party's indemnification obligations under Section 9, or a party's gross negligence, intentional misconduct, or violations of law.

9. **Indemnification.** Except as otherwise limited herein, each party (the "Indemnitor") agrees to defend, indemnify, and hold harmless the other party (the "Indemnatee") and its officers, directors, and employees from and against any and all damages, losses, costs and expenses (including reasonable attorneys' fees), judgments, and liabilities (collectively, "Expenses") that (i) are made against or incurred by the Indemnatee in connection with a third party claim and (ii) arise out of or relate to acts or omissions of the Indemnitor in the performance of this Agreement that constitute negligence or willful misconduct on the part of the Indemnitor, so long as such Expenses are not primarily caused by the Indemnatee, its officers, directors, or employees. The indemnification set forth in this Section 9 is conditioned upon (a) the Indemnatee providing the Indemnitor written notice of any claim or cause of action upon which the Indemnatee intends to base a claim of indemnification hereunder, (b) the Indemnatee providing reasonable assistance and cooperation to enable the Indemnitor to defend the action or claim hereunder, and (c) the Indemnatee refraining from making prejudicial statements associated with such claim without the prior written consent of the Indemnitor.

10. **Default.**

a. Any material breach of the terms of this Agreement that is not cured within thirty (30) days of receipt of written notice from the non-breaching party will constitute default of the Agreement by the breaching party.

b. Failure of Client to make any payment due to Inmar shall constitute default by Client if such nonpayment continues for a period of ten (10) days after receipt of written notice from Inmar.

c. Insolvency, receivership, bankruptcy, or any similar proceeding initiated against either party will constitute default by that party.

11. Termination.

a. Either party may terminate this Agreement upon written notice in the event of default by the other party if such default continues beyond the period for cure provided in Section 10 hereof. b. This Agreement may be terminated upon the expiration of the Term or any by either party hereto provided that written notice is received by the non-terminating party at least ninety (90) days prior to the expiration of the Initial Term. c. The termination of this Agreement will not affect any payment or performance obligation accruing or arising prior to such termination. In the event of termination of this Agreement, no refund shall be available or due with respect to amounts properly billed to and paid by Client prior to such termination. Upon any termination of this Agreement, without prejudice to any other rights or remedies which the parties may have, (a) all rights, licenses and obligations required hereunder shall immediately cease (except for any limitations on license as set forth herein), provided that the representations and warranties under this Agreement, which, by their terms and context show the parties intended them to survive the termination of this Agreement for any reason, including but not limited to, provisions governing confidentiality, ownership, indemnification and liability, shall survive any expiration or termination of this Agreement; (b) Client will promptly delete and destroy all instances of any software or Documentation in its possession or control (if any), and upon request by Inmar shall certify in writing such destruction; (c) Client shall pay to Inmar any outstanding Fees that have accrued prior to the date of termination.

12. Force Majeure. Inmar shall not be liable to Client for any delay or failure of performance of this Agreement if such delay or failure is caused by weather conditions, earthquake, fire, flood, externally caused transmission interferences, satellite failure, war, riot, acts of terrorism, civil disturbance, or any cause beyond the control of Inmar (each an "Event of Force Majeure"). If a delay or failure of performance by Inmar is caused by an Event of Force Majeure, Inmar shall notify Client and shall be released without any liability from its performance under this Agreement to the extent and for the period of time that such performance is prevented by the Event of Force Majeure.

13. Notice. All notices, requests, demands, or other communications required or permitted herein shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed by United States Postal Service certified or registered mail or by overnight courier to Client at the address set forth in the Agreement. Such notice to Inmar shall be to Inmar Rx Solutions, Inc., 1 W. 4th St., Suite 500, Winston-Salem, North Carolina 27101, Attn: President, with a copy to General Counsel.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflict of law rules of such state.

15. Reduction of Statute of Limitation. No action arising out of this Agreement may be brought by either party more than one (1) year after the date on which the cause of action has accrued.

16. Entire Agreement. This Agreement, together with the Exhibits, Schedules, Order Forms and Statements of Work hereto, sets forth the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, between the parties with respect to the subject matter hereof.

17. Modification. This Agreement, or any part thereof, may not be modified except by an agreement in writing executed by the parties.

18. Relationship. Inmar shall act as an independent contractor in the performance of Services provided for herein and nothing herein shall be construed to create the relationship of principal and agent, master and servant, or a partnership or joint venture between Inmar and Client.

19. Assignment/Binding Effect. This Agreement may not be assigned or transferred without the prior written consent of the parties and shall be binding upon and inure to the benefit of the

parties and their respective successors and permitted assigns. Notwithstanding the foregoing, Inmar may engage one or more of its affiliates to perform all or part of the Services hereunder.

20. **Waiver.** Failure of either party to enforce a specific provision of this Agreement shall not constitute waiver of such provision or of any other provision of this Agreement. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision of this Agreement, whether or not similar, nor shall any waiver by either party of any default hereunder constitute a waiver of subsequent defaults of the same or different kind. No waiver of any provision of this Agreement shall be binding on the parties hereto unless it is executed in writing by the party making the waiver.

21. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. The determination by any court of competent jurisdiction that one or more of the provisions of this Agreement are unenforceable shall not invalidate this Agreement, and the decision of such court shall be given effect so as to limit to the extent possible the provisions of this Agreement that are deemed unenforceable. To the extent such determination has a material impact upon the economic expectations of the parties hereto, the parties agree to make appropriate modifications to this Agreement to take such impact into account.

22. **Counterparts.** This Agreement may be signed in counterparts and delivered by facsimile, e-Signature (defined below), or by scanned PDF image delivered via electronic mail, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Pursuant to this Agreement, "e-Signatures" shall mean a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with the electronic document, that; (i) is unique to the person making the signature; (ii) the technology or process used to make the signature is under the sole control of the person making the signature; (iii) the technology or process can be used to identify the person using the technology or process; and (iv) the electronic signature can be linked with an electronic document in such a way that it can be used to determine whether the electronic document has been changed since the electronic signature was incorporated in, attached to or associated with the electronic document.

Services Exhibit
DSCSA Compliance Platform Services

Application: DSCSA Compliance Platform

1. Specifications of Application
 - a. Inmar shall provide Client with a designated internet portal through which to access the Application. No hard copy of any software will be provided, nor will any Application be installed on any Client device or computer.
 - b. Application will be accessible by internet browser (including versions of Microsoft Edge, Internet Explorer 11, Google Chrome, Apple Safari and Mozilla Firefox then currently supported by their developers) from any computer or device with access to the internet (devices and access to the internet not provided by Inmar);
 - c. Client will enter data into the Application to track and trace a 'prescription drug' or 'product' as defined by the Title II of the Drug Quality and Security Act (the Drug Supply Chain Security Act, § 581(12) or (13) ("the Act")). The Application will allow Client to capture or provide transaction history, transaction information and a transaction statement as required by § 582(d)(1)(A)(ii) and (iii) of the Act;
 - d. Inmar will not provide or enter any data into the Application, and Inmar does not warrant the accuracy of any data provided or entered into the Application. Client acknowledges that the performance of the Application is contingent upon the complete and accurate entry of appropriate data into the Application. Client agrees that it is solely responsible for the completeness and accuracy of the data entered in the Application by Client.
 - e. The Application may be updated from time to time, at the sole discretion of Inmar, to make updates, comply with changes in applicable law, or to increase compatibility with emerging hardware or software ("Maintenance"). There shall be no charge to Client for any such Maintenance.
 - f. Inmar may update the Application from time to time, in its sole discretion, to add functionality, new services or modules ("Upgrade"). Such Upgrades will not interfere with Client's ability to use the Application as licensed herein, but shall only be available to Client upon execution of an amendment to this Agreement or a new Statement of Work related to such Upgrades.
 - g. The Application shall be "Accessible" if Client, with unimpeded access to the internet and using a compatible web browser on a machine or device that is operating within normal parameters, may access the Application and input or retrieve data therefrom. Inmar will use commercially reasonable efforts to make the Application Accessible 24 hours a day, 7 days a week, excluding planned downtime. Inmar is not responsible for force majeure events, internet service slowdowns or interruptions at any point between Client and Inmar, Client or User's use of faulty or incompatible computers, devices, browsers or software or User errors.
2. Users
 - a. Client will be provided User credentials per Location with which to access the Application, including a user name and password;
 - b. Client will be solely responsible for ensuring that User credentials are (a) assigned to and used only by responsible Client personnel, and (b) maintained in a secure manner to avoid misuse or abuse.
3. Additional Services
 - a. Implementation and Training: Client will receive forty (40) hours of implementation and training services in the aggregate ("Additional Services"); training will be provided to the Users.

Implementation services include the following:

 - i. Verify and map data sources to the Inmar data extraction and load interfaces
 - ii. Modify load packages
 - iii. Configure system metadata
 - iv. Load historical data in a format based on the template provided by Inmar, when such data is provided by Client.
 - v. Review and integrate customer's 340B requirements

- vi. Conduct systems integration testing and remediate identified issues
 - b. Training will be provided by remote viewer, internet meeting software, video conference or telephone, as is convenient to, and effective for training of Client's Users.
 - c. Inmar shall provide the Additional Services to Client within four (4) weeks of the delivery or final re-delivery date of Client's portal and User credentials.
 - d. Inmar will provide training videos and documents on a website which may be accessed by each User, without charge, as often as desired during the Term. Such videos and documents may be altered, deleted or supplemented in Inmar's sole discretion.
 - e. Additional Services above and beyond the initial forty (40) hours set forth above shall be provided at Inmar's standard hourly rates, upon request by Client. Users may not request such Additional Services without Client's direct written request to Inmar.
 - f. Inmar shall provide reasonable support for the Application without additional charge to Client. Support includes troubleshooting access and usage issues; correcting errors, bugs or coding issues; and updating the Application for compatibility with new operating systems and browsers. All support requests must be made by email to an email address designated by Inmar; Client will receive a response to support requests within 24 hours of initial receipt. Inmar will make commercially reasonable measures to identify and implement a solution in a timely manner.
4. Documentation
- a. Inmar will provide training and specification documentation ("Documentation") to Client.
 - b. Client may maintain copies of the Documentation for internal use only. Upon termination of the Agreement, Client shall return, and not destroy, all copies of the Documentation to Inmar, without keeping any digital or hard copies of the Documentation.
5. Recall Connector. This function will automatically feed pharmaceutical purchase data captured by the DSCSA Compliance Platform directly to Inmar's OneRecall™ Pharmacy Platform, including up to three (3) years' historical purchase data. Client must subscribe to both the DSCSA Compliance Platform and the OneRecall Pharmacy Platform in order to receive the Recall Connector and must request the Recall Connector in writing, either by selection on the Order Form or via written request to Inmar.

Services Exhibit
USP<800> Module | USP<800> One-Time Assessment

USP<800> Module

The United States Pharmacopeia issued USP General Chapter<800> Hazardous Drugs - Handling in Healthcare Settings ("USP<800>") to set uniform standards and expectations for handling hazardous drugs in healthcare settings as it relates to receipt, storage, compounding, dispensing, administration, and disposal of both sterile and non-sterile hazardous pharmaceutical products. USP<800> serves to promote patient safety, healthcare employee safety, and environmental protection from Hazardous Drugs. The definition of "Hazardous Drugs" is based on the National Institute for Occupational Safety and Health (NIOSH) List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings (the "NIOSH Drug List").

If the USP<800> Module Add-on to DSCSA Compliance Platform Services is selected on the Order Form, Inmar will perform an initial assessment of Client's pharmaceutical product purchases in order to formulate a list of all Hazardous Drugs that would potentially be found within Client's facility using a machine learning algorithm to identify NDC-level detailed drug information for products that have been identified by Inmar as Hazardous Drugs based on the NIOSH Drug List. (the "USP<800> Risk Assessment"). The USP<800> Risk Assessment will be created using purchasing data provided by Client from a minimum of the prior twelve (12) months. For best results, it is recommended that Client provide purchasing (historical) data from the prior 24-36 months for analysis. Inmar will provide the USP<800> Risk Assessment in the form of a Microsoft Excel® spreadsheet that includes NDCs of Client's formulary list and any additional non-formulary NDCs Client has purchased during the timeframe. In addition to the USP<800> Risk Assessment, Inmar will provide continuous monitoring of DSCSA purchase data for any Client purchases identified as new Hazardous Drugs during the Term. The module will alert Client of any new Hazardous Drugs received via the USP<800> function in the DSCSA platform and an email notification and a system refresh will update the USP<800> Risk Assessment to add such Hazardous Drugs.

The USP<800> Risk Assessment will identify the following based on Client's purchasing data:

- A. Product name
- B. Product NDC
- C. NIOSH classification

One-Time USP<800> Assessment

If the One-Time USP<800> Risk Assessment is selected on the Order Form, Inmar will perform a **one-time** assessment of Client's pharmaceutical product purchases in order to formulate a list of all Hazardous Drugs that would potentially be found within Client's facility using a machine learning algorithm to identify NDC-level detailed drug information for products that have been identified by Inmar as Hazardous Drugs based on the NIOSH Drug List. (the "One-Time USP<800> Risk Assessment"). The One-Time USP<800> Risk Assessment will be created using purchasing data provided by Client from a minimum of the prior twelve (12) months. For best results, it is recommended that Client provide purchasing data from the prior 24-36 months for analysis. Inmar will provide the One-Time USP<800> Risk Assessment in the form of a Microsoft Excel® spreadsheet that includes NDCs of Client's formulary list and any additional non-formulary NDCs Client has purchased during the timeframe. Client shall be solely responsible for generating the non-formulary list based on historical purchases.

Inmar will perform the One-Time USP<800> Risk Assessment within three (3) business days of receiving Client's data submission. Inmar will provide Client with a summary spreadsheet that identifies all Hazardous Drugs Client has purchased, subdivided by current NIOSH classification (e.g., Table 1, Table 2, Table 3). If Client chooses to submit purchasing data for multiple facilities, the list will also be subdivided by the purchasing facility.

The One-Time USP<800> Risk Assessment will identify the following based on Client's purchasing data:

- A. Product name
- B. Product NDC
- C. NIOSH classification

Additional USP<800> SOPs

Upon request, either by selection on the Order Form or via written request to Inmar, subject to an additional fee, Inmar will develop a Standard Operating Procedure ("SOP") specific to Client's facility. The SOP on Inmar's standard SOP template will provide detailed instructions and guidance for USP<800> compliance. Client may request the USP<800> SOPs in writing, either by selection on the Order Form or via written request to Inmar.

Services Exhibit
OneRecall™ Pharmacy Platform Services

Application: OneRecall™ Pharmacy Platform

1. Specifications of Application

- a. The OneRecall™ Pharmacy Platform ("OneRecall") is a web-based subscription service that provides comprehensive notification, distribution, and management of product alerts in healthcare organizations. OneRecall provides an immediate improvement in patient safety by automating many of the manual processes currently used by healthcare organizations to handle product and safety alerts. OneRecall is an internet application and therefore subscribers must be able to connect to the internet to use the service. At this time bandwidth requirements are low and OneRecall will operate over a high-speed connection. OneRecall requires up-to-date web browsing software on a subscriber's computer. Reports are available in HTML, PDF, and CSV formats. PDF versions require Adobe Acrobat Reader. CSV formats require Microsoft Excel or Microsoft Excel Reader.
- b. Inmar will not provide or enter any data into the Application, and Inmar does not warrant the accuracy of any data provided or entered into the Application. Client acknowledges that the performance of the Application is contingent upon the complete and accurate entry of appropriate data into the Application. Client agrees that it is solely responsible for the completeness and accuracy of the data entered in the Application by Client.
- c. The Application may be updated from time to time, at the sole discretion of Inmar, to make updates, comply with changes in applicable law, or to increase compatibility with emerging hardware or software ("Maintenance"). There shall be no charge to Client for any such Maintenance.
- d. Inmar may update the Application from time to time, in its sole discretion, to add functionality, new services or modules ("Upgrade"). Such Upgrades will not interfere with Client's ability to use the Application as licensed herein but shall only be available to Client upon execution of an amendment to this Agreement or a new Statement of Work related to such Upgrades.
- e. The Application shall be "Accessible" if Client, with unimpeded access to the internet and using a compatible web browser on a machine or device that is operating within normal parameters, may access the Application and input or retrieve data therefrom. Inmar will use commercially reasonable efforts to make the Application Accessible 24 hours a day, 7 days a week, excluding planned downtime. Inmar is not responsible for force majeure events, internet service slowdowns or interruptions at any point between Client and Inmar, Client or User's use of faulty or incompatible computers, devices, browsers or software or User errors.

2. Users

- a. Client will be provided User credentials per Location with which to access the Application, including a username and password.
- b. Client will be solely responsible for ensuring that User credentials are (a) assigned to and used only by responsible Client personnel, and (b) maintained in a secure manner to avoid misuse or abuse.

3. Additional Services

- a. Training & Support: (a) Upon Client signing this Agreement, the Subscriber Account Administrator shall be sent via email a website link to the Inmar OneRecall online training application. The OneRecall online training application will provide comprehensive user implementation training. (b) Inmar provides a OneRecall help desk to answer questions by phone or email. Help desk support is available Monday through Friday, from 8:00 a.m. to 8:00 p.m., eastern standard time (excluding New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Eve and Day) for resolution of any problems in using the features of the Application.
- b. Implementation and Training will be provided by remote viewer, internet meeting software, video conference or telephone, as is convenient to, and effective for training of Client's Users.

4. OneRecall Alert Content

- a. Statement Regarding Third Party Web Site Content and Subscriber Submitted Material: The Application may include hyperlinks to websites not owned or controlled by Inmar and access to content, products and service from third parties. Inmar is not responsible for the availability of and any content on those websites to which it provides links. The inclusion of such links does not imply an endorsement of any product, service or entity by Inmar. Client agrees Inmar is not responsible for third party content accessible through the Application, including opinions, advice, statements and advertisements, and Client understands that it bears all risks associated with the use of such content and that Inmar is not responsible for any loss or damage of any sort Client

may incur from dealing with any such third party. The Application may distribute information from other subscribers relating to problem reports on a defect in a product that has not yet been reported by the manufacturer or a governmental agency. Inmar is not responsible for the content or accuracy of the problem reports sent out to the subscriber as a OneRecall Alert

- b. The alerts and information contained therein ("information") provided by the Application are based on information obtained by Inmar from third parties or submitted to Inmar by third parties and aggregated by Inmar. Inmar has not independently tested any product or verified the information provided by the third parties. Further, Inmar assigns each alert a domain that roughly corresponds to a hospital department. This domain identifier facilitates routing of each alert to OneRecall subscribers. Client may elect not to activate one or more domains and thereby turn off receipt of specific alerts. Inmar expressly disclaims any liability arising from Client's decision not to activate a OneRecall domain.
- c. Client hereby agrees that Inmar may disclose Client's BRF information related to a recall event to the applicable product manufacturer.

5. Documentation

- a. Inmar will use commercially reasonable efforts to maintain Client's account transaction history for a period of seven (7) years from the date of the activity. After the seven (7) year period, Inmar may archive closed Alert records from the OneRecall database. A copy of the archived records will be sent in electronic format to Client at its last known address. At the end of an active subscription and upon written request by Client, Inmar will furnish Client a copy of the account transaction history after which Inmar then may remove all of Client's records from the database. Except as required below, Inmar will have no obligation to retain Client's account transaction history or any other data related to the account after it is delivered to Client in electronic format. Access to vendor records: Inmar agrees to make available to Client and its authorized representatives, all records relating to the nature and extent of charges hereunder.
6. Client may maintain copies of the Documentation for internal use only. Upon termination of this Agreement, Client shall return, and not destroy, all copies of the Documentation to Inmar, without keeping any digital or hard copies of the Documentation.
7. Recall Connector. This function will automatically feed pharmaceutical purchase data captured by the DSCSA Compliance Platform directly to Inmar's OneRecall™ Pharmacy Platform, including up to three (3) years' historical purchase data. Client must subscribe to both the DSCSA Compliance Platform and the OneRecall Pharmacy Platform in order to receive the Recall Connector and must request the Recall Connector in writing, either by selection on the Order Form or via written request to Inmar.



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

April 19, 2023

SUBJECT: Proposed Amendment No. 1 to Agreement 034-2022 with Antony Minasaghanian, M.D., a contract employee, for professional medical services in the Department of Radiology

Requested Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical is requesting that your Board approve Amendment No. 1 to Agreement 034-2022 with Antony Minasaghanian, M.D., for professional medical services in the Department of Radiology. Dr. Minasaghanian has been employed full time with Kern Medical since June 8, 2019.

As a result of turnover within the Department of Radiology, the volume and workload per physician has increased. The proposed amendment increases Dr. Minasaghanian's base salary by \$75,000 for a period of one-year, effective May 1, 2023, while recruitment efforts are underway. The annual salary is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents reasonable and fair market value compensation for the services provided by Dr. Minasaghanian.

Therefore, it is recommended that your Board approve Amendment No. 1 to Agreement 034-2022 with Antony Minasaghanian, M.D., for professional medical services in the Department of Radiology, increasing the maximum payable by \$75,000 to cover the term, effective May 1, 2023, and authorize the Chairman to sign.

**AMENDMENT NO. 1
TO
AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Antony Minasaghanian, M.D.)**

This Amendment No. 1 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 Antony Minasaghanian, M.D. (“Physician”).

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Kern County Agt. #034-2022, dated March 16, 2022) (the “Agreement”), for the period June 8, 2022 through June 7, 2027, whereby Physician provides professional medical services in the Department of Radiology 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 May 1, 2023;

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

1. Section 5, Compensation Package, paragraph 5.1, Annual Compensation, including each subparagraph thereof, shall be deleted in its entirety and replaced with the following:

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

5.1.1 Annual Salary Effective June 8, 2022. Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$540,000 per year, to be paid as follows: Physician shall be paid \$20,769.23 biweekly not to exceed \$540,000 annually.

5.1.2 Annual Salary Effective May 1, 2023. Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$615,000 per year, to be paid as follows: Physician shall be paid \$23,653.84 biweekly not to exceed \$615,000 annually.

5.1.3 Annual Salary Effective May 1, 2024. Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$540,000 per year, to be paid as follows: Physician shall be paid \$20,769.23 biweekly not to exceed \$540,000 annually.

5.1.4 Annual Salary Effective June 8, 2025. Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$550,000 per year, to be paid as follows: Physician shall be paid \$21,153.84 biweekly not to exceed \$550,000 annually.

5.1.5 Annual Salary Effective June 8, 2026. Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$560,000 per year, to be paid as follows: Physician shall be paid \$21,538.46 biweekly not to exceed \$560,000 annually.

5.1.6 Salary Methodology. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units ("Worked RVU") based on the current MGMA Survey and fulfill all the duties set forth in Exhibit "A" during the Term of this Agreement.

5.1.7 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."

2. Section 5, Compensation Package, paragraph 5.7, Maximum Payable, shall be deleted in its entirety and replaced with the following:

"5.7 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$4,125,000 over the five (5) year Term of this Agreement."

3. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the Agreement.

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

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

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

[Intentionally left blank]

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

PHYSICIAN

By 
Antony Minasaghanian, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____ *Tw*
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Amend1.Minasaghanian.033023



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

April 19, 2023

Subject: Proposed Master Services and License Agreement with Vendor Credentialing Service LLC d/b/a symplr ("symplr"), for use of the Midas Software and Certified Reporting Services, containing non-standard terms and conditions

Recommended Action: Approve; Authorize Chairman to sign

Summary:

The symplr Midas Care Management Platform provides resources for coordinating care, evaluating, and demonstrating quality, identifying risks and monitoring compliance within a single system. Midas is also a verified vendor capable of reporting Clinical Performance Measure Sets (CPMS) as required by CMS for participation in the Medicare and Medicaid programs, as well as a verified vendor capable of reporting stroke data to the American Heart Association, a requirement of maintaining Stroke Certification. This agreement extends the licensed services with symplr for an additional three years at a rate of \$46,268 plus any applicable taxes and travel. The annual rate may increase based the current year CPI, not to exceed five percent (5%) per year. This Agreement will replace the current agreement with no break in service.

This agreement contains non-standard terms and conditions in that there is not a provision for termination for convenience and the agreement contains an End User Licensing Agreement ("EULA") that is governed by the laws and regulations of Massachusetts and limits the liability on the EULA to fees received. Based on the history with the current vendor, the regulatory requirements of maintaining a certified reporting vendor and the minimal risk of the need for an early termination, Kern Medical requests that your board approve the non-standard terms.

Therefore, it is recommended that your Board approve the proposed Master Services and License Agreement with Vendor Credentialing Service LLC d/b/a symplr, for use of the Midas Software and Certified Reporting Services, containing non-standard terms and conditions, in an amount not to exceed \$146,000 plus applicable taxes and travel over the three-year term of the agreement beginning on April 19, 2023 through April 18, 2026.



MASTER SERVICES AND LICENSE AGREEMENT
(On-Premises Software)

This Master Services and License Agreement (this “**Agreement**”) is made and entered into as of April 19, 2023 (the “**Agreement Effective Date**”) by and between **Vendor Credentialing Service LLC d/b/a symplr**, a Texas limited liability company (“**symplr**”), and **Kern County Hospital Authority**, a local unit of government, which owns and operates Kern Medical Center (“**Customer**”), (symplr and Customer are referred to herein each as a “**Party**” and collectively as the “**Parties**”). All capitalized terms not defined herein will have the meaning assigned to them in the General Terms (as defined below). As of the Agreement Effective Date, the following agreements shall be terminated: (i) System License Agreement, as amended, between symplr Care Management, LLC f/k/a, most recently, Conduent Care Management, LLC, and earlier, MidasPlus, Inc. and Customer; and (ii) Midas+ Comparative Performance Measurement System Participation Agreement, as amended, between symplr Care Management, LLC f/k/a, most recently, Conduent Care Management, LLC, and earlier, MidasPlus, Inc. and Customer ((i) and (ii) collectively, “**Original Agreements**”). For clarity, this Agreement replaces the Original Agreements with no break in service.

Purpose and Scope:

This Agreement establishes the terms and conditions governing the Licensed Materials and Services (as defined in the General Terms and Conditions) owned, licensed, and provided by symplr and to which Customer has been granted access as further set forth in this Agreement. Customer’s use of the Software is subject to the Software license limits (the “**Software License Limits**”) set forth in the applicable Order Form.

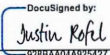
This Agreement applies to Order Forms and SOWs in substantially the form set forth in Exhibit B. An Order Form/SOW shall be approved and entered into by the Parties with respect to each proposed sale or license granted hereunder, and a change request shall be approved and entered into by the Parties with respect to an amendment, modification, or supplement to any specific Order Form/SOW. This Agreement supersedes all prior and contemporaneous agreements and understandings with respect to the subject matter hereof, whether oral or in writing.

Consideration: Customer shall pay to symplr the fees, costs, and expenses set forth in any Order Form/SOW or change request, or as otherwise set forth in this Agreement.

This Agreement consists of the following:

- This Signature Page
- The attached General Terms and Conditions (the “**General Terms**”)
- Exhibit A, the attached Solution Terms (the “**Solution Terms**”)
- Exhibit B, Order Form/SOW
- Exhibit C, Business Associate Agreement (attached)
- Exhibit D, Travel Expense Guidelines

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date(s) set forth below to be effective as of the Agreement Effective Date.

<p>VENDOR CREDENTIALING SERVICE LLC d/b/a SYMLR</p> <p>By:  <small>DocuSigned by: Justin Rofel 928BA003A025427</small> Name: <u>Justin Rofel</u> Title: <u>Sr. VP, Finance & Planning</u></p> <p>Address: 315 Capitol Street, Suite 100 Houston, TX 77002</p>	<p>CUSTOMER</p> <p>By: _____ Name: <u>Russell Bigler</u> Title: <u>Chairman, Board of Governors</u></p> <p>Address: 1700 Mount Vernon Avenue Bakersfield, California 93306</p>
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Approved
symlr Legal
M. Gilliland
04/11/2023

Kern County Hospital Authority

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

symlr Confidential or Proprietary Information
By: 
Legal Services Department

GENERAL TERMS AND CONDITIONS

1. Licensed Materials and Software Terms and Conditions.

1.1 Licensed Materials. symplr hereby grants to Customer a non-exclusive, non-transferable (except as expressly set forth in Section 11.14), non-sublicensable, limited license for the Term to use the Licensed Materials set forth in the initial order and all Additional Orders (collectively, “**Order Form(s)**”) or SOWs for Customer’s internal business purposes, subject to all applicable Software License Limits and all other limitations in this Agreement. symplr or one of its Affiliates shall provide the Licensed Materials to Customer in the format and in the manner specified in the applicable Order Form or SOW.

Defined terms not defined elsewhere in this Agreement shall have the following meaning: “**Affiliate**” means, with respect to a Party hereto, any entity that directly or indirectly controls, is controlled by, or is under common control with such Party (and, in the case of Customer, is also a healthcare services entity), but only for so long as such control exists; and “**control**” means the power to direct or cause the direction of the management and policies of the controlled entity, whether through the ownership of voting securities or other ownership interests, by contract or otherwise, provided that control shall be deemed to exist if an entity owns, directly or indirectly, fifty percent (50%) or more of the voting securities or other voting rights in, or ownership interests of, the controlled entity; “**Derivative Works**” means any modifications, adaptations, derivations, revisions, enhancements or improvements to or based on any Product, Service or symplr Materials; “**Documentation**” means the applicable symplr user instructions provided by symplr with the Products; “**Enhancement(s)**” means changes or additions made by symplr to the Software (exclusive of customizations, new versions and Updates) that add new functionality and/or improve performance; “**Equipment**” means any hardware or other equipment provided by symplr or any of its Affiliates under this Agreement; “**Software**” means the Software Products provided by symplr or any of its Affiliates under this Agreement and that are deployed on-premises at a Customer site; “**Licensed Materials**” means the Software, symplr Materials and Documentation provided to Customer by symplr or any of its Affiliates under this Agreement; “**Products**” means products (including Software and Equipment) provided under this Agreement by symplr or any of its Affiliates; “**Service(s)**” means services provided under this Agreement by symplr or any of its Affiliates; “**Support**” means Software support and maintenance Services provided under this Agreement by symplr or any of its Affiliates, which are subject to the Support Terms and Conditions located at [symplr Support Terms](#) (the “**Support Terms**”); “**symplr Materials**” means the object code version of any Software, any other items that symplr or any of its Affiliates makes available to or delivers to Customer or any of its Affiliates or Users in connection with any Service, and all output of any Service (including all tools, know-how, methodologies, processes, technologies, software, documentation, systems, modules, code (both source and object) if any, algorithms, development platforms and other materials created or resulting from any Services); “**System**” means any file system, computer system, database, device, equipment, server, website, application, software, storage media, network, infrastructure, networked environment or domain, including, without limitation, all development, quality assurance, staging, and production environments; “**Updates**” means bug fixes, hot fixes, patches, and maintenance releases to the Software made by symplr that it solely deems necessary to correct a Software error; and “**User**” means any contractor or employee of Customer or any of its Affiliates that accesses or uses any Licensed Materials.

1.2 Use by Affiliates and Contractors. Subject to the terms of this Agreement, Customer’s Affiliates may order Licensed Materials for use during the Term for internal business purposes only and as set forth in the Order Form or SOW. Customer and its Affiliates may add contractors as a User so long as such use is: (a) for Customer’s or its Affiliates’ internal business purposes only as expressly authorized by Customer or its Affiliate; and (b) in accordance with the terms of this Agreement. Contractors may not work for or on behalf of any entities that develop, market or sell software, solutions, equipment or services that compete with the software, solutions, equipment or services offered by symplr, and Customer shall ensure that, upon conclusion of the engagement of any contractor, all Licensed Materials are promptly returned to Customer or the applicable Affiliate or destroyed (and Customer shall certify in writing the destruction or return of such Licensed Materials). Any act or omission by any Customer Affiliate, contractor or User will be deemed an act or omission by Customer. Customer shall maintain the confidentiality of its Software administrative accounts, any sub-accounts created by Customer for any Customer Affiliate or User, and all associated log-in credentials and passwords and activities that occur under Customer’s account and sub-accounts. Customer’s account and sub-accounts are for Customer’s and its Affiliates’ internal business use only. Customer shall prevent unauthorized access to or use of the Licensed Materials by third parties, and Customer shall be responsible and liable for actions and activity associated with Customer’s account. Customer shall use the Software only on Customer Systems that have appropriate security enabled and in force. Customer shall immediately notify symplr if Customer knows of or suspects any unauthorized access or use, and shall promptly terminate, and assist symplr in terminating, such access or use.

1.3 Restrictions. Except as expressly permitted in this Agreement, Customer shall not, and shall not permit Customer Affiliates, Users, or any third-parties to: (a) transfer or use the Software outside of the United States; (b) lease, rent, loan, license, sublicense, provide service bureau, time sharing, outsourcing, data processing, or other services, or commercialize, or otherwise permit the use of or access to any Licensed Materials, by or for the benefit of any third-parties; (c) assign, sell, pledge, charge,

encumber, transfer, or otherwise dispose of any Licensed Materials or the rights granted hereunder to any third-party, whether voluntarily, by operation of law, or otherwise; (d) remove or destroy, or permit others to remove or destroy, any proprietary markings of symplr, its Affiliates, or other parties or legends that may appear on any components of any Licensed Materials; (e) use any Licensed Materials for any unlawful or fraudulent purpose or in any manner that competes with symplr's business or that is outside the scope of this Agreement; (f) copy (except to the extent necessary for Customer's internal backup, business continuity, and disaster recovery purposes related to the On-Premise Software; provided only one instance of the On-Premise Software is running in production mode and all proprietary notices are retained in such copies), translate, decompile, disassemble, or reverse engineer any Licensed Materials or attempt to obtain the source code of any Licensed Materials; (g) create or use any Derivative Works; (h) use the Licensed Materials for storage or processing of personal information or Protected Health Information (as such term is defined in the Health Insurance Portability and Accountability Act of 1996, as amended) except to the extent permitted by the Documentation, the Solution Terms, or an Order Form; (i) provide Software passwords or other Software log-in information to any third-party; (j) engage in web scraping or data scraping on or related to any Software, including without limitation, collection of information through any software that simulates human activity or any bot or web crawler; or (k) attempt to gain unauthorized access to the Licensed Materials or symplr's Systems or networks.

1.4 Export Restrictions. Customer acknowledges the Licensed Materials may be subject to United States export control laws. Accordingly, Customer shall not, directly or indirectly, export or permit the use of Licensed Materials: (a) in violation of United States export laws; (b) to or in any country subject to a U.S. trade embargo or sanction (including without limitation Crimea, Cuba, Iran, North Korea, Sudan, or Syria) or to or by any resident or nation of those countries, or to or by any person, organization, or entity on any of the restricted parties' lists maintained by any United States government agency.

1.5 Third-Party Materials. Customer acknowledges that, in certain cases, use of the Products may require the purchase by Customer of equipment, software or materials not provided by symplr ("**Third-Party Materials**"). In such cases, symplr will provide to Customer a list of such required Third-Party Materials. Except where Third-Party Materials are provided by symplr to enable the access and use of Software through symplr's hosting services, Customer is responsible for obtaining any such Third-Party Materials and symplr has no responsibility, liability or obligation with respect to such Third-Party Materials.

1.6 Installation. Customer is responsible for installation of Licensed Materials and Equipment, except for installation Services expressly set forth in a SOW, if any. symplr shall have no responsibility or liability for any failure of the Licensed Materials or Equipment to the extent resulting from Customer's failure to comply with symplr's installation instructions (including in the Documentation).

1.7 Software Terms and Conditions.

(a) **Software Acceptance and Restrictions.** Beginning upon completion of the applicable Software implementation, Customer will have thirty (30) days to notify symplr if the Software does not operate substantially in accordance with the Documentation ("**Software Test Period**"). Customer will include in such notification a detailed description of all non-conformities. After correction by symplr so that the Software operates substantially in accordance with the Documentation, Customer will have the remainder of the Software Test Period or five (5) days from the date the corrected Software is made available to Customer (the "**Extension Period**"), whichever is greater, to continue testing of the corrected Software. The Software is deemed accepted ("**Acceptance**") upon the earliest of the following events: (a) Customer provides written notice to symplr of Software acceptance; (b) expiration of the Software Test Period (as may be extended by the Extension Period); or (c) the date the Software is first used to process actual data in a production environment. As set forth in the applicable Order Form, Customer's use of Software shall be limited to applicable Software License Limits.

(b) **Support and Maintenance.** Customer must purchase from symplr and maintain uninterrupted Support for the Software through the term of such Software. The term of Support commences on delivery of the applicable Software or commencement of the applicable Services and continues for the applicable initial Support term. Thereafter, the Support shall automatically renew for successive one-year terms and is coterminous with the Term. Fees for Support purchased under Order Forms will be prorated based on the remaining portion of the Term.

(c) **Enhancements and Updates.** Customer shall be entitled to receive Enhancements and Updates to Software at no charge so long as Customer is not delinquent on any Support or Software Fees. Enhancements and Updates to Software shall be promptly installed by Customer (and Enhancements and Updates for Software hosted by symplr in its capacity as a data center shall be installed by symplr).

(d) **Software Warranties.** Except for code that prohibits use of the Software outside of the Software License Limits, upon Acceptance the Software shall not contain any disabling or malicious code, such as a computer time bomb, a computer virus,

or a computer worm. For ninety (90) days after Acceptance (the “**OPS Warranty Period**”), the Software will perform substantially in accordance with applicable specifications set forth in the Documentation.

(i) **Warranty Remedies.** If Customer notifies symplr of a breach of Section 1.7(d) above within the OPS Warranty Period, symplr will correct the non-conformity or replace the Software. symplr will perform warranty Service at no cost to Customer from 8:00 a.m. to 5:00 p.m. local time, Monday - Friday, excluding symplr holidays, and if requested by Customer outside those hours at symplr’s then-current rates and subject to availability of symplr personnel. symplr may require warranty repairs to be performed via a secure, remote connection. Corrected or replacement Software shall be subject to the applicable warranties in Section 1.7(d) above for the remainder of the OPS Warranty Period.

(ii) **Limitations on Warranties.** The warranties set forth in Section 1.7(d) above shall not apply to any claimed nonconformity to the extent caused by (a) the malfunction or improper use of any hardware or software not provided by symplr, (b) Customer’s negligence, fault, or improper use of the Software (including use other than in accordance with this Agreement), or (c) modifications to or changes in the Software not made by symplr. The remedies set forth in Section 1.7(d)(i) above are Customer’s sole remedies and symplr’s sole obligations with respect to any breach of Section 1.7(d).

2. Warranties.

2.1 Mutual Warranties. Each Party represents and warrants to the other Party that: (a) it is duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, and has the power and authority to enter into and perform its obligations under this Agreement; (b) the person executing and delivering this Agreement on behalf of such Party is duly authorized to make such execution and delivery; (c) this Agreement constitutes a valid obligation, binding upon and enforceable against such Party in accordance with its terms; and (d) execution and delivery of this Agreement and the performance of such Party’s obligations do not breach any contract between such Party and any third-party.

2.2 Service Warranty. Services will be performed in a professional and workmanlike manner and in accordance with generally accepted industry standards. If Customer notifies symplr of a breach of the warranty set forth in the first sentence of this Section 2.2 within five (5) days after performance of the applicable Service, symplr will re-perform the Service. Such warranty shall not apply to any claimed nonconformity to the extent caused by: (a) the malfunction or improper use of any hardware or software not provided by symplr; (b) Customer’s negligence, fault, or improper use of any Licensed Materials or Equipment; (c) modifications to or changes in any Licensed Materials or Equipment not made by symplr; (d) Customer’s failure to be live on the most recent version of the Software which has been made commercially available by symplr, plus the immediately preceding version of the Software (“**Current Release**”); or (e) Customer’s breach of this Agreement. The remedies of Customer and the obligations of symplr set forth in this Section 2.2 are sole and exclusive with respect to any breach of such warranty.

2.3 Product Warranties. Additional warranty terms, if any, may be set forth in the applicable Solution Terms.

2.4 Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED HEREIN, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE PRODUCTS, SERVICES, AND SYMPLR MATERIALS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. TO THE FULL EXTENT ALLOWED BY APPLICABLE LAW, SYMPLR EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY WAIVES, ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. SYMPLR DISCLAIMS ANY WARRANTY THAT THE PRODUCTS, SERVICES, OR SYMPLR MATERIALS WILL BE SECURE, ERROR FREE OR THAT ANY ERRORS IN THE PRODUCTS, SERVICES OR SYMPLR MATERIALS WILL BE CORRECTED. SYMPLR MAKES NO WARRANTY AS TO THE RESULTS OR ACCURACY OF INFORMATION OBTAINED THROUGH USE OF THE LICENSED MATERIALS.

3. Customer Data.

3.1 Customer Data. Unless it receives Customer’s prior written consent, symplr shall not use Customer Data other than as necessary to: (a) perform its obligations or exercise its rights hereunder; (b) monitor, benchmark, troubleshoot, track feature usage, support, or Process as necessary to operate or improve symplr products and services; or (c) comply with applicable law. symplr shall not intentionally grant any third-party access to Customer Data, including, without limitation, symplr’s other customers, except: (i) subcontractors, and vendors who Process data and are subject to nondisclosure obligations; and (ii) symplr Affiliates. Notwithstanding the foregoing, symplr may use Customer Data that has been anonymized, aggregated and/or de-identified for its legitimate business purposes and as may be required to perform the Services or deliver the Products, and such data shall not be considered Customer Data or otherwise Confidential Information of Customer. “**Customer Data**” means Customer’s data in electronic or other format that is received by symplr from Customer or any third-party acting on behalf of Customer and that is

managed, accessed, stored, used, or transmitted by symplr in connection with, or during the provision or performance of, the Products or Services, or that is entered into any of the Products by Customer or any Customer Affiliate or User using any Licensed Materials or Equipment. **“Process”** means any operations performed on data, whether or not by automated means, such as collection, accessing, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

3.2 Data Protection. symplr shall process Customer Data that is included in any of the Products and that identifies, relates to, or is capable of being linked to an individual, including protected health information, if applicable (such Customer Data, **“Personal Data”**) in compliance with all laws that apply to symplr pertaining to the privacy, data protection, or security of such Personal Data (**“Data Protection Laws”**). symplr and Customer acknowledge and agree that symplr is processing the Personal Data as a service provider or business associate of Customer. symplr and Customer shall reasonably negotiate in good faith any supplemental agreements that are required to be entered into by Data Protection Laws in connection with symplr's processing of, or any cross-border transfer of, Personal Data. Customer represents and warrants that it has obtained the right to provide Customer Data (that may include Personal Data) to symplr sufficient to authorize symplr to use and disclose such Customer Data as contemplated by this Agreement. Any such use and disclosure by symplr of such Customer Data will comply with applicable Data Protection Laws.

4. Data Security Terms.

4.1 Software Security. Customer acknowledges and agrees that Customer, and not symplr, is responsible for the security of the system on which the Software is installed, the environment in which it is installed, and configuring such Software securely on Customer's premises. Notwithstanding anything else in this Agreement to the contrary, symplr's sole obligations related to the security of the Software are to: (i) provide Updates in accordance with Section 1.7(c); and (ii) to design the Software reasonably, in accordance with current industry standards for data security. Customer acknowledges and agrees that all software may have security vulnerabilities which can be mitigated by deploying that software in a secure environment that employs a defense-in-depth strategy and intrusion detection capabilities.

4.2 Safeguards. symplr has adopted and implemented, and will continue to maintain, physical, administrative, and technical safeguards and other security measures designed to: (a) maintain the security and confidentiality of Personal Data and protect it from threats or hazards to its security and integrity, as well as accidental loss, alteration, disclosure and all other unlawful forms of processing while it is in symplr's control; (b) prevent, detect, contain, recover, remediate and respond to any compromise of the security, confidentiality, or integrity of, unauthorized access to, or acquisition of, or unauthorized or unlawful processing of Personal Data in symplr's control (**“Data Breach”**); (c) enforce the use of secure authentication protocols and devices consistent with industry standards on any of symplr's Systems that store Personal Data; (d) enforce secure access control measures consistent with current industry standards for access to logical and physical resources on any of symplr's Systems that store Personal Data; (e) require the use of then-current industry standard encryption for all storage and transmission of Personal Data entered into any of the Products by Customer or any Customer Affiliate or User; and (f) include automated security measures, including, but not limited to, current industry standard perimeter monitoring and protection systems, auditing systems, firewalls, and security software capable of detecting and mitigating threats from viruses, spyware, and other malicious code on any of symplr's Systems that protect, defend, secure, or process Personal Data or access Customer's Systems.

4.3 Breach Obligations. symplr shall notify Customer in writing promptly, but in no event more than five (5) days, after it is notified of or discovers (collectively **“Discovery”**) a Data Breach. The notification to Customer shall include, to the extent known by symplr, and shall be supplemented on a periodic, ongoing basis, with: (a) the general circumstances and extent of any unauthorized processing of Personal Data or intrusion into Systems that are used by symplr to protect or process Personal Data; (b) the types and volume of Personal Data that were involved; (c) symplr's plans for corrective actions to respond to the Data Breach; (d) the identities of all individuals whose Personal Data was or may have been affected; (e) steps taken to secure Personal Data and preserve information for any necessary investigation; and (f) any related information reasonably requested by Customer.

5. Fees & Payment.

5.1 Fees. Customer shall pay symplr the fees and rates set forth in each Order Form and SOW (**“Fees”**) and symplr's actual, reasonable travel and incidental project-related expenses pre-approved by Customer pursuant to Customer's Vendor Travel and Expense Reimbursement Rate policy included as Exhibit D, and incurred while performing Services. Commencing twelve (12) months after the Agreement Effective Date, recurring Fees may increase on an annual basis in an amount equal to the published percentage increase in the Consumer Price Index – All Urban Consumers (Current Series) for the immediately preceding twelve (12) month period (provided that such increase is greater than zero percent (0%)), plus five percent (5%). All amounts due under this Agreement shall be paid in United States Dollars.

5.2 Invoicing & Payment. symplr shall invoice Customer for the Fees in accordance with the invoicing schedule or frequency set forth in each Order Form or SOW. Fees shall be paid to symplr within thirty (30) days after Customer's receipt of the applicable invoice. Customer may withhold reasonably disputed amounts, provided that Customer: (a) notifies symplr of the disputed amount and Customer's reasons for disputing such amount prior to the date the applicable invoice is due; (b) pays the undisputed portion of such invoice; and (c) uses reasonable efforts to promptly resolve the dispute. Customer shall pay the amount mutually agreed to be due on any disputed invoice or portion thereof within thirty (30) days after resolution of the dispute. symplr may charge Customer a surcharge for any Customer payments made via credit card.

5.3 Overdue Payments. All amounts payable under this Agreement by Customer shall be paid in full without set-off, deduction or other withholding of any amount. Interest shall accrue on all payments received after the due date at the rate of the lesser of one and one-half (1.5%) per month and the highest rate allowable by applicable law.

5.4 Taxes. Fees do not include federal, state or local sales, use, property, excise, services, or other taxes levied in connection with this Agreement or any Products, Services or symplr Materials. Customer shall remit such taxes directly to the applicable taxing authorities. Any amounts paid or payable by symplr in respect of any such taxes or the Fees invoiced in accordance with this Agreement (excluding taxes on symplr's income) shall be included on invoices and paid by Customer to symplr.

5.5 Additional Orders; SOWs. During the Term, Customer and symplr may choose to enter into additional orders and/or purchase orders for Products and Services (each, an "**Additional Order**") and statements of work for Products and Services (each, an "**SOW**"), and each Additional Order and SOW may be fulfilled by symplr or any of its Affiliates. Each Additional Order and SOW shall be governed by this Agreement. Any symplr Affiliate that enters into one or more Additional Orders or SOWs shall, for purposes of such Additional Orders/SOWs and this Agreement, be deemed "symplr" and shall be a Party to this Agreement.

6. Proprietary Rights. Licensed Materials and symplr Materials are and shall remain the exclusive property of symplr. Except for the rights expressly granted to Customer hereunder, symplr hereby retains all right, title and interest in, to, and under the Licensed Materials and symplr Materials. symplr reserves all rights to the Licensed Materials or symplr Materials not specifically granted herein. Customer hereby assigns to symplr all right, title, and interest in and to any Derivative Works created by or on behalf of Customer or any Customer Affiliate or User.

7. Confidentiality.

7.1 Confidential Information. "**Confidential Information**" of a Party means all nonpublic information communicated by or on behalf of a Party to the other Party, whether before or after this Agreement Effective Date, which is marked as "Confidential" or which the receiving Party should reasonably understand to be confidential or proprietary given the nature of the information or the circumstances of its disclosure, including without limitation symplr's SOC 2 or SOC 3 report ("**Third-Party Audit Report**"), the terms and conditions of this Agreement, and the Products, Services, Documentation, and symplr Materials. Notwithstanding the foregoing, Confidential Information shall not include information which is: (a) already known by the receiving Party without an obligation of confidentiality; (b) publicly known or that becomes publicly known other than as a result of a breach by the receiving Party of this Agreement or any other obligation to the disclosing Party; (c) rightfully received from a third-party without an obligation of confidentiality; or (d) independently developed without use of or reference to the disclosing Party's Confidential Information. If the Parties have entered into a separate nondisclosure agreement ("**NDA**"), the terms of the NDA shall prevail.

7.2 Disclosure and Use. Neither Party will disclose the Confidential Information of the other Party to any person, other than the employees and contractors of the receiving Party or the employees of the receiving Party's Affiliates who need to know such information to carry out the purposes of this Agreement; provided that any such employees and contractors shall be obligated to protect such Confidential Information under an agreement containing confidentiality obligations that are at least as restrictive as those contained herein, such contractors may not be employed by or work at or on behalf of any entities that develop, market or sell software, solutions, equipment or services that compete with the software, solutions, equipment or services offered by symplr. Neither Party will use the Confidential Information of the other Party except for purposes of this Agreement. Each Party will be responsible for any prohibited disclosure or use of the other Party's Confidential Information by the receiving Party's employees and contractors. Each Party shall protect the other Party's Confidential Information using not less than the same degree of care with which it treats its own Confidential Information, but at all times shall use at least reasonable care.

7.3 Disclosure Exceptions. A Party may disclose the other Party's Confidential Information to the extent required to comply with a law or court order, *provided that*, if permitted by applicable law, the receiving Party promptly notifies the disclosing Party of the requirement to disclose such information, cooperates with the disclosing Party in any attempt by the disclosing Party to obtain an injunction preventing such disclosure or assurances that confidential treatment will be afforded any Confidential Information so disclosed, and discloses only that portion of Confidential Information that is necessary to comply with such law or court order. symplr 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.

7.4 Equitable Remedies. Each Party acknowledges that any threatened or actual breach of this Section 7 shall constitute irreparable harm to the disclosing Party for which equitable remedies may be awarded by a court of competent jurisdiction.

8. Indemnification.

8.1 General Indemnity. Each Party shall indemnify, defend and hold harmless the other Party, its Affiliates, and the respective officers, directors, employees, agents, contractors and owners of each of the foregoing from and against any and all losses, liabilities, costs, damages and expenses, including attorneys' fees and other costs of legal defense ("**Losses**") arising out of any claim, action or demand by a third-party (each, a "**Claim**") to the extent based on: (a) personal injury, death or property damage to the extent attributable to such Party or any of its Affiliates; (b) the sole negligence or willful misconduct of such Party or any of its Affiliates. In addition, Customer shall indemnify, defend and hold harmless symplr and its Affiliates from and against any Claims to the extent based on: (i) Customer Data or Third-Party Material (excluding negligence or willful misconduct of symplr) (ii) violations of the export restrictions set forth in Section 1.4 above; (iii) any Excluded Claim; and (iv) if Customer licenses from symplr its scheduling and time and attendance Software, for violations of federal or state wage and hour laws or failure to satisfy staffing ratios required by applicable law arising out of Customer's, its Affiliates or Users configuration and use of such Software.

8.2 Infringement Indemnity.

(a) symplr shall indemnify, defend, and hold harmless Customer, its Affiliates, and the respective officers, directors, employees, agents, contractors, and owners of each of the foregoing from and against any and all Losses arising out of any Claim to the extent based on infringement or misappropriation of any U.S. patent or any non-patent intellectual property or proprietary right of any third-party by any Products that infringe or misappropriate any U.S. patent or any non-patent intellectual property or proprietary right of any third-party ("**Infringing Materials**") as provided by symplr to Customer. symplr shall have sole control of the defense of each such Claim.

(b) If such a Claim has been made, or in symplr's opinion is likely to be made, Customer agrees to permit symplr, at its option and expense, to: (i) procure for Customer the right to continue using the Infringing Materials; (ii) replace or modify the Infringing Materials so that they become non-infringing; or (iii) terminate Customer's use of the Infringing Materials, in which case Customer will destroy the Infringing Materials and, upon symplr's receipt of written attestation of such destruction, symplr will refund to Customer Fees prepaid for such Infringing Materials that are allocable to the period after such destruction.

(c) Notwithstanding the foregoing, symplr has no liability for any such Claim to the extent arising from any Excluded Claim. "**Excluded Claim**" means any Claim to the extent arising from: (i) the combination or use of any Products with any materials not supplied by symplr; (ii) the alteration or modification of any Products by any Party other than symplr; (iii) Customer's use of any Products after symplr has informed Customer of modifications or changes in such Products intended or required to avoid a Claim (provided symplr offered such modifications or changes without charges not otherwise required pursuant to this Agreement); (iv) symplr's compliance with Customer's designs, specifications or instructions; or (v) breach of this Agreement, including any use of any Products in a manner not authorized by this Agreement.

(d) THIS SECTION 8.2 SETS FORTH SYMPLR'S ENTIRE OBLIGATION AND LIABILITY, AND CUSTOMER'S SOLE REMEDY, IN CONNECTION WITH ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION BY THE PRODUCTS.

8.3 Prompt Notice. All obligations of each Party to defend or indemnify the other Party under this Agreement are conditioned upon the Party seeking defense or indemnification (the "**Indemnified Party**") providing the other Party with: (a) prompt notice of any such claim for indemnification or defense after receiving notice thereof; (b) sole control over the defense and settlement of such claim, provided that any settlement that will require the other Party to assume any liability other than the payment of monies will be subject to the other Party's prior written consent; and (c) reasonable assistance in such defense or settlement (at the indemnifying or defending Party's expense).

9. Waivers; Limitations.

9.1 WAIVER OF DAMAGES. EXCEPT FOR BREACHES OF SECTION 1.3 IN NO EVENT SHALL EITHER PARTY OR ANY AFFILIATE OF EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY SPECIAL, INDIRECT, RELIANCE, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, LOST PROFITS, LOST DATA,

OR LOST REVENUE, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. THE LIMITATIONS IN THIS SECTION 9.1 SHALL APPLY EVEN IF ANY OTHER REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

9.2 LIMITATION OF LIABILITY. EXCEPT FOR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, BREACHES OF SECTION 1.3, A PARTY'S OBLIGATIONS UNDER SECTION 7, ACTUAL DAMAGES RESULTING FROM A BREACH OF SECTION 8.2, AND THE PAYMENT OBLIGATIONS OF CUSTOMER, IN NO EVENT SHALL THE AGGREGATED LIABILITY OF EITHER PARTY OR ITS AFFILIATES UNDER THIS AGREEMENT (INCLUDING ALL ORDER FORMS AND SOWS) EXCEED THE FEES PAID BY CUSTOMER TO SYMPLR (EXCLUDING PAYMENTS FOR SERVICES) DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE THE CLAIM AROSE. THIS LIMITATION SHALL APPLY EVEN IF ANY OTHER REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

10. Term, Termination, Suspension, and Transition Services.

10.1 Term. The initial term of this Agreement shall commence upon the Agreement Effective Date and shall continue for three (3) years ("**Initial Term**"). Upon expiration of the Initial Term, this Agreement will automatically renew for successive one (1) year renewal terms (each a "**Renewal Term**") unless either Party delivers written notice of termination to the other Party at least ninety (90) days prior to the end of the Initial Term or then current Renewal Term. The Initial Term and any Renewal Terms are collectively referred to herein as the "**Term**".

10.2 Termination. Either Party may terminate this Agreement or any affected Order Forms or SOWs (or any Products or services provided under any such Order Forms or SOWs) by giving written notice to the other Party (a) in the event the other Party is in material breach of an Order Form or SOW and fails to cure such breach within thirty (30) days of receipt of written notice thereof from the non-breaching Party or (b) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors that is not dismissed within thirty (30) days after it is filed or commenced. Any symplr Affiliate that has executed a then-active Order Form or SOW may terminate this Agreement by giving written notice to Customer in the event Customer is in material breach of this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice thereof from such symplr Affiliate.

10.3 Termination for Insufficient Funding. Customer, due to being a government entity, may terminate this Agreement with thirty (30) day prior written notice to symplr in the event that sufficient funds are not appropriated or budgeted for this Agreement in government-approved budgets of the Customer or reasonably available or expected to become available from other sources for any fiscal year, provided that Client evidences to symplr such insufficient funding.

10.4 Effect of Termination. Upon termination of this Agreement, any Order Form, SOW, Product or Service, (a) Customer, its Affiliates and all Users shall immediately cease using the relevant Licensed Materials, Products and Services and symplr shall remove Customer's access to the Software if Customer has purchased remote hosting Services, (b) Customer shall promptly destroy all copies of the relevant Licensed Materials and its database and certify to symplr in writing that such destruction has occurred, and (c) Customer shall return, or else destroy and certify to such destruction, all Confidential Information of symplr to symplr (except to the extent Customer needs to retain such Confidential Information for performance of any other Order Form or SOW or to the extent the Confidential Information cannot be returned or destroyed; provided that all retained Confidential Information shall remain subject to Section 7 hereunder). Termination of any Order Form, SOW, Product or Service shall not entitle Customer to a refund of any Fees, except that in the event Customer terminates such Order Form, SOW, Product or Service or this Agreement under Section 10.2 for symplr's material breach or Section 10.3 for insufficient funding, symplr shall refund to Customer Fees for the terminated Products and Services (other than Fees for Software) that are prepaid, unearned, and allocable to the period after termination. Expiration or termination of this Agreement shall result in automatic termination of all Order Forms and SOWs.

10.5 Surviving Provisions. Sections 1.3, 1.4, 1.5, 1.6, 2.4, 3.1, 3.2, 5, 6, 7, 8, 9, 10.3, 10.4, 10.5, 10.6 and 11 of this Agreement shall survive the expiration or termination of this Agreement.

10.6 Suspension. Without prejudice to any of its other remedies under this Agreement or at law, symplr may suspend provision of Products, Services, Licensed Materials and Customer's or any of its Affiliates' or Users' access to and use of any and all Products, Services, and Licensed Materials in the event of any breach by Customer of Section 1.3, Section 1.4, or Section 5 of this Agreement. Any such suspension shall not be deemed a violation of this Agreement. Any such suspension does not relieve Customer from its payment obligations under this Agreement. symplr shall use reasonable efforts to provide Customer with notice prior to any such suspension, and symplr will restore access as soon as the event giving rise to such suspension has been resolved.

10.7 Transition Services. If the Parties agree in writing that symplr shall provide transition Services ("**Transition Services**") to Customer after any expiration of this Agreement or any Order Form (including extraction, de-encryption, conversion, provision

of Customer records or other information), then notwithstanding the termination of this Agreement or Order Form, the terms and conditions of this Agreement shall remain in effect during the term of such Transition Services.

11. General Provisions.

11.1 Feedback. Customer agrees that any feedback, suggestions, recommendations, and other similar comments pertaining to the Products, Services, or symplr Materials, including feedback provided within any symplr mobile applications or Products provided by Customer or any Customer Affiliate or User (“**Feedback**”) is the property of symplr and symplr may use Feedback and any know-how, experience, or skills that it generates for any purpose.

11.2 Use of Subcontractors. symplr may use subcontractors to perform its obligations under this Agreement so long as symplr remains responsible for its obligations hereunder, and symplr may use its Affiliates to support symplr’s performance and provision of Products and Services.

11.3 Excluded Provider. To symplr’s knowledge, symplr and its employees performing under this Agreement are not currently excluded from participation in a Federal health care program, as defined in U.S.C. § 1320a-7b(f). If symplr becomes aware that any of its employees are excluded from participation in such a Federal health care program, symplr will replace such employee.

11.4 Medicare Access Reporting. Until four (4) years after the termination of this Agreement, the Parties will upon request make available to the Secretary of the United States Department of Health and Human Services and the United States Comptroller General, and their respective duly authorized representatives (“**Secretary**”) this Agreement and all books, documents, and records necessary to certify the nature and extent of the costs of Services provided hereunder. If symplr engages a subcontractor to perform symplr’s obligations hereunder via a subcontract worth \$10,000 or more over a twelve (12) month period, the subcontract shall contain a clause requiring the subcontractor to make available, upon written request of the Secretary, the subcontract and books, documents, and records necessary to verify the nature and extent of the costs of the Services provided hereunder.

11.5 Insurance. Throughout the Term, each party shall maintain, and make available, (a) commercial general liability insurance and errors and omissions insurance, each with coverage limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and (b) workers’ compensation and employer liability insurance within statutory limits.

11.6 Non-Solicitation. During the Term and for one (1) year thereafter, Customer shall not knowingly solicit, offer employment to, employ, engage as an independent contractor, or otherwise obtain the services of any person employed or engaged as a full-time independent contractor then or within the preceding one year by symplr. It is not a breach of this section, however, for Customer to hire or engage such a person who independently responds to a non-targeted advertisement or otherwise voluntarily applies to work for Customer, provided that Customer did not take any action, directly or indirectly, to intentionally solicit or recruit such person prior to such person answering such advertisement or voluntarily applying.

11.7 Independent Contractor; No Third-Party Beneficiaries. symplr enters into this Agreement as an independent contractor. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. There are no third-party beneficiaries of this Agreement.

11.8 Force Majeure. Excluding Customer’s payment obligations hereunder, each Party’s failure to perform under this Agreement shall be excused to the extent an act of God, act of government, civil commotion, earthquake, epidemic, pandemic, explosion, fire, flood, labor strike, national emergency, quarantine, riot, terrorist attack, war, strikes, or any other occurrence or emergency beyond the Party’s control makes such performance (in whole or in part) impossible, illegal or commercially impracticable. If the period of non-performance continues for more than thirty (30) days, the Party not affected may terminate any or all affected Order Forms or SOWs by giving fifteen (15) days’ written notice to the affected Party.

11.9 Audit. Customer shall maintain complete and accurate records of payments made by Customer to symplr and of Customer’s and its Affiliates’ and Users’ uses of the Licensed Materials (“**Records**”). Periodically during the Term and for twelve (12) months after the end of each Order Form, upon reasonable prior notice to Customer, symplr or its authorized designees may audit such Records, including remotely auditing Customer’s compliance with this Agreement. Upon symplr’s request, Customer shall reasonably cooperate with symplr in performing such audit, including providing symplr with the necessary access. If any such audit reveals any underpayments by Customer, Customer shall promptly pay to symplr any additional Fees consistent with Customer’s actual use of such Licensed Materials. The payment by Customer of such additional Fees will be in addition to any other remedies symplr may have. If Customer does not pay such additional Fees, symplr shall have the right to terminate Customer’s license to the Licensed Materials or, if remote hosting Services have been purchased by Customer, to remove Customer’s access to use the Software.

11.10 Waiver and Cumulative Remedies. The waiver by either Party of any right provided under this Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement. The remedies provided herein are in addition to, and not exclusive of, any other remedies a Party may have at law or in equity.

11.11 Severability. In the event one or more terms of this Agreement becomes or is declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such term shall to the extent of such illegality or unenforceability be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect.

11.12 Compliance with Laws; Limitation on Time to Bring Suit. Each Party shall comply with all applicable laws, rules and regulations in its performance under this Agreement. Any suit, cause of action, claim or demand which either Party has against the other Party for any reason arising under or relating to this Agreement must be brought no later than one (1) year from the date it becomes known or should have been known by the asserting Party.

11.13 Assignment. Customer may not assign this Agreement (including without limitation in connection with a change of control of Customer) in whole or in part without the prior written consent of symplr. symplr may assign this Agreement to any of its Affiliates or in connection with a change of control (whether resulting from merger, consolidation, stock transfer, asset sale or otherwise) without the prior written consent of Customer. Any assignment in contravention of this provision shall be void. This Agreement shall be binding upon the successors and permitted assigns of the Parties.

11.14 Governing Law and Venue. This Agreement shall be governed by the internal laws of the State of California, without regard to conflicts of laws rules. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any disputes arising under this Agreement shall be brought exclusively in the state and federal courts located in Kern County, California, and the Parties waive any objections to jurisdiction or venue of any such court. In the event of any dispute under this Agreement, the prevailing Party shall be entitled to an award of its reasonable attorney's fees.

11.15 Notices. Notices hereunder must be in writing and given by certified, registered or overnight mail, postage prepaid and return receipt requested, to the receiving Party at the following address (or such other address as a Party may designate to the other Party in a notice given in accordance with this section):

symplr:
315 Capitol Street, Suite 100
Houston, Texas 77002
Attn: Chief Financial Officer
With copy to: legal@symplr.com

Customer:
1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn: Chief Executive Officer
[With copy to: contracts@kernmedical.com](mailto:contracts@kernmedical.com)

11.16 Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, proposals, negotiations, representations or warranties of any kind, whether oral or written, with respect to the subject matter hereof. Each Party acknowledges it has not relied on any previous or implied representation, warranty, agreement or statement not expressly set out in this Agreement and it will have no right or remedy arising out of any such representation, warranty, agreement or statement. In the event of a conflict with the terms of this Agreement, the following order of precedence shall apply (terms and conditions listed earlier shall control over terms and conditions listed later): (a) any Business Associate Agreement, (b) General Terms; (c) Solution Terms; (d) Order Forms; and (e) SOWs. The terms of this Agreement shall prevail over any terms set forth in any purchase order or other document submitted by Customer. Any Additional Orders shall also be governed by the terms and conditions of this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by authorized representatives of both Parties. This Agreement may be signed in counterparts, each of which shall be considered an original and together shall constitute one agreement. Signed electronic copies of this Agreement shall be legally binding to the same extent as original documents.

11.17 No Legal Advice. Customer acknowledges and agrees that symplr does not render legal advice or offer legal assistance, and no product, service, information or materials provided to Customer or any Customer Affiliate or User hereunder shall be construed or relied upon as the provision of legal advice or assistance.

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

EXHIBIT A-1
SOLUTION TERMS:
SYMPLR CARE MANAGEMENT SYSTEM TERMS & CONDITIONS

1. In addition to the terms and conditions in the Agreement, these symplr Care Management System Terms and Conditions shall govern Customer's access and use of the Care Management System.
2. **Definitions.** Capitalized terms used herein and not defined elsewhere in the Master Services and License Agreement shall have the following meaning:

"Care Management System" means the integrated unit consisting of the Care Management software, the interface(s), the Database Management System, and the Documentation; "Database Management System" means the InterSystems Cache software licensed in Schedule A; "Integrated Delivery Network ("IDN")" means a Licensed Facility's clinics, surgery centers, urgent care centers, and similar outpatient facilities; "Licensed Facility" means each facility listed on an Order Form.
3. **InterSystems.** The End User License Agreement with InterSystems for the licensing of the Database Management System is included as Schedule A. The Database Management System is included as part of the Care Management System, and is not considered a Third-Party Material.
4. **AMA.** The End User License Agreement with the American Medical Association for the licensing of the CPT Data File is included as Schedule B.
5. **IDN.** If specifically licensed in an Order Form, a Licensed Facility's IDN may also use the Care Management System. If Customer licenses the Statit product from symplr in conjunction with the Care Management System, then the Statit license for the Licensed Facility shall be expanded to include use by the Statit Licensed Facility's IDN.

SCHEDULE A
INTERSYSTEMS END USER LICENSE & SERVICES AGREEMENT

1. This Exhibit Agreement (“this Exhibit Agreement”) is between InterSystems Corporation (“InterSystems”) and Kern County Hospital Authority (hereinafter “you”) that has ordered license(s) to use InterSystems’ proprietary software (the “Licensed Software”) and/or services (“Support Services”) from InterSystems pursuant to symplr’s order form, and in connection with the Agreement to which this Exhibit Agreement is attached, and the definitions of the Agreement shall apply to this Exhibit Agreement.
2. You may only use the Licensed Software and Support Services in conjunction with symplr’s software.
3. To enter into a License, you must sign symplr’s agreement which contains this Exhibit Agreement as a schedule. Upon symplr’s acceptance of your order (the “Effective Date”) and the payment of the appropriate fee (the “License Fee”) to symplr, InterSystems shall grant to you a nontransferable and nonexclusive 30-year license to use the Licensed Software internally solely in the conduct of your business (the “License”).
4. InterSystems hereby warrants to you that during the one (1) year following the grant of your License and so long as you subscribe to Software Maintenance services the Licensed Software will operate substantially in accordance with InterSystems’ documentation. The foregoing warranty is 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 SUPPORT SERVICES. Your exclusive remedy for a breach of the above warranties shall be for InterSystems or symplr to use reasonable efforts to repair, replace or re-perform any non-conforming Licensed Software or Support Services, as applicable. THE LIMITED WARRANTY HEREIN DOES NOT INCLUDE SUPPORT SERVICES AND IS NOT A SUBSTITUTE FOR SUCH SERVICES, WHICH IN THE CASE OF A PAID-UP LICENSE, ARE AVAILABLE FOR A SEPARATE FEE.
5. 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 Support Services 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.
6. 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.
7. The Licensed Software and related documentation are and shall remain the sole property of InterSystems. You may make copies of the Licensed Software for backup and archival purposes only. You agree not to (i) decompile, disassemble, or reverse engineer the Licensed Software or (ii) disclose to others the Licensed Software or any data or information relating to the Licensed Software. In addition, you agree not to use or disclose any confidential information provided to you by InterSystems or its affiliates relating to the Licensed Software, Support Services or this business relationship. You agree to allow InterSystems or its representatives to audit your use of the Licensed Software upon five (5) days’ notice by InterSystems, including providing access to your premises.
8. This Exhibit Agreement between InterSystems and you shall be construed in accordance with and governed by the laws and regulations of the Commonwealth of Massachusetts. Any litigation arising herein shall be initiated and conducted exclusively in the state or federal courts in Boston, Massachusetts.
9. The parties are and shall be independent contractors to one another, and this Exhibit 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.
10. Sections 5, 7, 8, 9, and 10 hereof shall survive termination or expiration of this Exhibit Agreement. Your rights to use the Licensed Software cease immediately upon termination or expiration of this Exhibit Agreement.

11. With respect to the provisions of this Exhibit Agreement, you agree to comply with all applicable laws, including, but not limited to, U.S. export control or similar laws with respect to use of the Licensed Software, Support Services, and technical data. The English version of this Agreement shall control unless otherwise required by local law.
12. This document as well as the product terms in effect as of the Effective Date (or, in the case of Support Services, as of the date such Support Services are provided), constitute the entire agreement between you and InterSystems relating to your use of the Licensed Software and receipt of Support Services 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 this Exhibit Agreement without your consent or prior notice to you. You may not assign this Exhibit Agreement without InterSystems' prior written consent and such consent will not be unreasonably withheld. This Exhibit Agreement may only be modified or amended by a writing signed by both InterSystems and you. If there is any conflict between the terms and conditions of the Agreement and this Exhibit Agreement, the terms and conditions of this Exhibit Agreement will control with respect to InterSystems and you.

**SCHEDULE B
AMERICAN MEDICAL ASSOCIATION END USER AGREEMENT**

- (a) Licensed Content is copyrighted by the American Medical Association and CPT is a registered trademark of the AMA.
- (b) Licensee, as a party to a license agreement with the AMA is authorized to grant in the EULA to End User a limited, non-exclusive, non-transferable, non-sublicensable license for End User to use Licensed Content in Licensee's Licensed Product(s), for the sole purpose of internal use by End User within the Territory. The sublicense granted hereunder shall automatically terminate upon termination of the Agreement between Licensee and AMA unless prior written consent of AMA is obtained by Licensee or a direct license between End user and AMA is entered into with the AMA.
- (c) The provision of updated Licensed Content in the Licensed Product(s) is dependent on a continuing contractual relationship between Licensee and the AMA.
- (d) Licensee is required by the AMA to inform End User that End User is prohibited from making Licensed Content publicly available, creating derivative works (including translating), transferring, selling, leasing, licensing, or otherwise making available to any unauthorized party the Licensed Product(s), or a copy or portion of Licensed Content to any unauthorized party, including a subsidiary, affiliate, or other legal entity, however designated, for any purpose whatsoever except as expressly permitted in this Agreement.
- (e) **The AMA warrants that the Licensed Content does not violate any commercial technical data, database right, copyright, or trademark rights of any third party and will not knowingly violate any law. Except for the forgoing, End User expressly acknowledges and agrees to the extent permitted by applicable law, use of the Licensed Content is at End User's sole risk and the Licensed Content is provided "as is" without warranty of any kind. The AMA does not directly or indirectly practice medicine or dispense medical services. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The Licensed Content does not replace the AMA's *Current Procedural Terminology* book or other appropriate coding authority. The coding information contained in the Licensed Content should be used only as a guide.**
- (f) Upon request by Licensee or the AMA, End User is required to provide records and submit reports including information necessary for the calculation of royalties payable to the AMA by the Licensee. All records and reports required under this Section shall be subject to audit by AMA.
- (g) The following *U.S. Government End Users* notice shall be included:

U.S. Government End Users. CPT is commercial technical data, which was developed exclusively at private expense by the American Medical Association (AMA), 330 North Wabash Avenue, Chicago, Illinois 60611. This agreement does not grant the Federal Government a direct license to use CPT based on FAR 52.227-14 (Data Rights - General) and DFARS 252.227-7015 (Technical Data - Commercial Items).
- (h) End User must ensure that anyone with authorized access to the Licensed Product(s) will comply with the provisions of the End User Agreement.
- (i) AMA shall be named as a third-party beneficiary of the End User Agreement.
- (j) End User expressly consents to the release of its name by Licensee to the AMA for purposes of ensuring compliance with the terms of this EULA.

**EXHIBIT A-2
SOLUTION TERMS:
SYmplr DATAVISION SYSTEM TERMS & CONDITIONS**

1. In addition to the terms and conditions in the Agreement, these symplr DataVision System Terms and Conditions shall govern Customer's access and use of the DataVision System.
2. **Definitions.** Capitalized terms used herein and not defined elsewhere in the Master Services and License Agreement shall have the following meaning:

“**Aggregate DataVision Data**” means comparative hospital or provider level performance data for all hospitals and healthcare systems that participate in the comparative data pool; “**CPMS Report**” means the comparative performance data report for the comparative performance measures provided by symplr and made available to Customer; “**Data Analysis Report**” means the comparative performance analyses prepared by symplr and made available to Customer; “**Data Elements**” means the elements retrieved by symplr from the Licensed Facility in order for symplr to create Aggregate DataVision Data and to provide QNet Submission Services to the Licensed Facility; “**Database Management System**” means the InterSystems Cache software (if not already purchased as part of the Care Management System); “**GWTG Recognition Program**” means Midas™ Outcome PMT® Web Service for AHA's Get With the GuidelinesSM (“**Web Service**”) to submit required data elements to Outcome Sciences, Inc. (“**Outcome**”), for participation in the American Heart Association's Get With the Guidelines (“**GWTG**”) Recognition Program for Heart Failure and/or Stroke; “**Licensed Facility**” will mean each facility listed in an associated Order Form as licensed for the DataVision system; “**QualityNet**” is the Web-based data transmission process and file specifications required for submission of data to the CMS national clinical data repository; “**Summary DataVision Data**” means data representing hospital or provider level performance for a particular population of interest.
3. **Summary DataVision Data.**
 - 3.1 Summary DataVision Data is produced in a nightly job by the DataVision System and is typically displayed in a report in the DataVision System as a rate, count, or sum. Summary Data is facility-specific.
 - 3.2 Summary DataVision Data is Customer Data. Individual patient data may be accessed from the Summary DataVision Data in the DataVision System.
 - 3.3 Any electronic files that contain encounter level data will be encrypted by symplr prior to transferring in an electronic medium to client or CMS.
4. **Aggregate DataVision Data.**
 - 4.1 Aggregate DataVision Data is derived from Data Elements on Customer's DataVision System server, which are harvested and housed by symplr, and is used to compile CPMS Reports or Data Analysis Reports.
 - 4.2 Aggregate DataVision Data does not identify individuals, individual hospitals, or individual healthcare systems.
 - 4.3 Aggregate DataVision Data and any resulting CPMS Reports or Data Analysis Reports are no longer considered Customer Data, as specified in Article 6 of the Agreement.
5. **CPMS Reports and Data Analysis Reports.**
 - 5.1 A Licensed Facility must accumulate a full calendar quarter of accurate data into the DataVision System before receiving their first CPMS Report or Data Analysis Report. Each Licensed Facility is responsible for ensuring the availability of accurate and complete data within ten (10) weeks after the close of each quarterly reporting period, at which time Licensed Facility can begin to electronically upload data to the Clients Only Website. Approximately four (4) to six (6) weeks thereafter, a Licensed Facility may access electronic CPMS Reports or Data Analysis Reports from the Clients Only Website. Such CPMS Reports or Data Analysis Reports may be duplicated for internal purposes only.
 - 5.2 Symplr may modify the content, format, and frequency of CPMS Reports or Data Analysis Reports as reasonably necessary in order to meet ongoing criteria established by applicable regulatory agencies.

6. QualityNet Submission Service.

- 6.1** Customer may elect symplr to submit Data Elements to QualityNet for each Licensed Facility by providing written notification to symplr. If QNet Submission Service is elected, each Licensed Facility will provide symplr with an electronic file of Data Elements provided quarterly from the Licensed Facility's server, which will be stored in symplr's DataVision database. For each Licensed Facility, Customer will select the clinical topics and time periods in which symplr is authorized to submit Data Elements to the QualityNet Exchange for the Licensed Facility. Customer will obtain the appropriate registrations and authorizations from its State Quality Improvement Organization (QIO) agency to allow symplr to submit Data Elements to the QualityNet Exchange on behalf of the Licensed Facility.
- 6.2** The Data Elements required for QNet submission are subject to change in accordance with national regulatory guidelines. Customer may revise the clinical topics and time periods for a Licensed Facility by sending symplr a revised form at any time.

7. Get With the Guidelines ("GWTG") Recognition Program

- 7.1** symplr will provide and maintain: (i) data fields in the Core Heart Failure Focus and/or the Core Stroke Focus studies, which are required for participation in the GWTG Recognition Program; and (ii) a Web Service interface from the Midas Customer server to the Outcome database so that data elements entered by the Customer into the Core Heart Failure Focus and/or Core Stroke Focus studies are transmitted to the Patient Management Tool supported by Outcome.
- 7.2** Customer will maintain a current contract with Outcome for participation in the GWTG Recognition Program during the term of the GWTG services.
- 7.3** Customer agrees that symplr is only providing the tools necessary to store and transmit data to the Outcome database. Symplr is not responsible or liable in any way for either Outcome or the American Heart Association in their performance or lack thereof: (i) for any of their activities related to GWTG or the services provided by symplr hereunder; and (ii) the effect of the activities of Outcome or the American Heart Association on the performance by symplr of its services under this Agreement.

EXHIBIT B ORDER FORM

	Annual Subscription Fee
<u>Software Subscriptions:</u>	
CPMS – Acute for Kern Medical Center	\$17,500.00
CPMS – Behavioral Health for Kern Medical Center	\$4,500.00
GWTG – Stroke for Kern Medical Center	<u>\$2,500.00</u>
Total Software Subscriptions:	\$24,500.00
	Annual Software Maintenance Fee
<u>Licensed Software Support & Maintenance:</u>	
Care Management System	\$19,508.00
HIS Interface	\$3,600.00
Lab Integration	\$4,860.00
Pharmacy Integration	\$2,700.00
Surgery Interface	\$2,700.00
InterSystems Cache 68-Concurrent Users with 4KB-SQL	<u>\$12,900.00</u>
Total Licensed Software Annual Maintenance:	\$46,268.00

TERMS AND CONDITIONS

This Order Form, effective as of the Agreement Effective Date (“Order Form Effective Date”) is governed by the prevailing Agreement between symplr and Customer that governs the Software, Equipment, or Services that is the subject of this Order Form. Capitalized terms used in this Order Form and not otherwise defined herein shall have the meanings assigned to them in the related Agreement.

SOFTWARE DELIVERY

symplr, or its agent, will deliver non-customized On-Premise Software and/or SaaS electronically following the Order Form Effective Date either (i) via secure file transfer, (ii) by providing access codes, or (iii) by creating Customer’s initial global admin user account, that allows Customer to access or download the Software or SaaS (“Delivery”).

SOFTWARE LICENSE LIMIT

The On-Premise Software is licensed by “Licensed Facilities” which means those facilities specifically identified in an Order Form and whose Users are licensed to use the On-Premise Software.

SOFTWARE/SERVICE SUBSCRIPTIONS

The term of recurring On-Premise Software, SaaS, Remote Hosting, Managed Services, Services subscriptions, Software Support and Maintenance, and Equipment Maintenance will be coterminous with the Agreement Term. Fees for incremental On-Premise Software, SaaS, Remote Hosting, Managed Services, Services subscriptions, Software Support and Maintenance, and Equipment Maintenance purchased under Additional Order Forms will be prorated based on the remaining portion of the Agreement Term.

SOFTWARE BILLING TERMS

Customer shall be billed for the On-Premise Software upon the Order Form Effective Date. Customer shall be billed for the initial period of the On-Premise Software subscriptions upon the earlier of: (i) the first day of the calendar month following the date the On-Premise Software is available for Client to use in a production environment (“Live Operation”), or (ii) six (6) months following the Order Form Effective Date. The On-Premise Software subscriptions shall be billed in advance, pursuant to the billing frequency stated in the applicable Order Form and thereafter at least thirty (30) days in advance of the renewal date.

LICENSED SOFTWARE SUPPORT AND MAINTENANCE BILLING TERMS

Customer shall be billed for the first year of Software Support and Maintenance Services upon the Order Form Effective Date, and thereafter, at least thirty (30) days in advance of each annual support term.

EXHIBIT C
BUSINESS ASSOCIATE AGREEMENT

(attached)

EXHIBIT D

KERN COUNTY HOSPITAL AUTHORITY

Reimbursable Travel Expense Guidelines

As a Government Entity, Kern County Hospital Authority (KCHA) follows the U.S. General Services Administration (GSA) per diem rates for lodging, meals, and incidental expenses.

KCHA **shall** reimburse Consultant for all necessary and reasonable actual costs or travel expenses incurred on behalf of KCHA in an amount not to exceed \$ _____.

The travel expenses must be reasonable and necessary, approved in advance by the Responsible KCHA Department, and shall not exceed the GSA per diems for the County of Kern, City of Bakersfield delineated rates for the applicable year.

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 Vendor Credentialing Service LLC d/b/a symplr, a Texas limited liability company ("**Business Associate**") (each a "**Party**" and collectively the "**Parties**"), effective as of date last signed below (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 and Covered entity are parties to certain agreements under which 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 under the Underlying Agreement 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 or expressly permitted 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 three (3) calendar days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, 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. Business Associate shall cooperate with Covered Entity to provide notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Subject to Section 5.9 of this Agreement – Limitation of Liability, 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) if applicable, for affected individuals whose PHI has or may have been compromised as a result of the Breach.

2.3.3 Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Sections 2.3.1 and 2.3.2, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, would trigger an obligation under applicable state security breach notification laws ("State Breach") to notify the individuals who are the subject of the information. 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) cooperate with Covered Entity in determining the actions to mitigate to the extent practicable any potential harm to the individuals

impacted by the State Breach; and (iv) collaborate with Covered Entity 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 agree to 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) business days of receipt of a request by an Individual or other requesting party for an accounting of disclosures of PHI from an Individual.

2.9 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 available for inspection and copying to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the HIPAA Rules.

2.11 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 material 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.

4.3 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 thirty (30) 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 of the breach 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, unless expressly set forth in the Underlying Agreement. 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.

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, 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, each Party hereby agrees to indemnify and hold harmless the other Party and its respective officers, directors, managers, members, employees and agents from and against any and all 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 the other Party's (including its employees, directors, officers, agents, or other members of its Workforce, and its SubContractors) breach of PHI or violation of the terms of this BAA, including but not limited to failure of the other Party to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.

5.9 Limitation of Liability. IN NO EVENT SHALL THE AGGREGATED LIABILITY OF BUSINESS ASSOCIATION AND ALL AFFILIATES OF BUSINESS ASSOCIATE COLLECTIVELY UNDER THE AGREEMENT (FOR THE AVOIDANCE OF DOUBT, INCLUDING UNDER ALL ORDERS AND SOWS ENTERED INTO IN CONNECTION WITH THE AGREEMENT) EXCEED THE FEES PAID BY COVERED ENTITY TO BUSINESS ASSOCIATE (EXCLUDING PAYMENTS FOR SERVICES) DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE THE CLAIM ARISES. THE LIMITATIONS PROVIDED IN THIS SECTION SHALL APPLY EVEN IF ANY OTHER REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

5.10 Legal Actions. Promptly, but no later than ten (10) business days after notice thereof, Business Associate shall advise Covered Entity of any actual action, proceeding, or regulatory or governmental orders or actions that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA.

5.11 Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than ten (10) 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.

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

5.13 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:

symplr
315 Capitol Street, Suite 100
Houston, Texas 77002
Attn: Chief Financial Officer
With copy to: legal@symplr.com

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

5.15 Survival. To the extent that Business Associate retains PHI, the respective rights and obligations of the Parties set forth in Sections 2.3, 4.4, 5.8, and 5.11 of this BAA shall survive the termination, expiration, cancellation, or other conclusion of the BAA or any Underlying Agreement.

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

5.17 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 state and federal courts in Kern County, California, which shall have jurisdiction over all such claims.

5.18 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.

5.19 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.

5.20 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 Security Questionnaire. Business Associate, at Covered Entity's reasonable request, but not more than once per calendar year, shall respond to security questionnaires with reasonable requests for information regarding Business Associate's systems, procedures, and records related to services provided under the Underlying Agreement to ensure 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:

Kern County Hospital Authority

Title: Chairman, Board of Governors

Date: _____

BUSINESS ASSOCIATE:

Vendor Credentialing Service d/b/a symplr

DocuSigned by:


Title: Sr. VP, Finance & Planning

Date: 4/11/2023 | 10:39 AM CDT

Approved
symplr Legal
M. Gilliland
04/11/2023

REVIEWED ONLY
NOT APPROVED AS TO FORM

By 

Legal Services Department



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

April 19, 2023

Subject: Proposed acceptance of donation of travel and related expenses from Health Connect Partners for HCP23 Hospital Pharmacy Spring 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.

Health Connect Partners is a trade group that connects providers and suppliers through educational meetings and conferences, whose mission is to provide the best in healthcare education and networking so providers learn real solutions and suppliers understand their needs. Health Connect Partners has offered to donate to the Authority all travel and related expenses for one Authority employee to attend HCP23 Hospital Pharmacy Spring Conference, sponsored by Health Connect Partners, in Indianapolis, Indiana, from May 22-24, 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 Health Connect Partners 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 HEALTH
CONNECT PARTNERS FOR HCP23 HOSPITAL
PHARMACY SPRING 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 19th day of April, 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) Health Connect Partners is a trade group that connects providers and suppliers through educational meetings and conferences, whose mission is to provide the best in healthcare education and networking so providers learn real solutions and suppliers understand their needs; and

(c) Health Connect Partners has offered to donate to the Authority all travel and related expenses for one Authority employee to attend HCP23 Hospital Pharmacy Spring Conference, sponsored by Health Connect Partners, in Indianapolis, Indiana, from May 22-24, 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 Health Connect Partners to the Authority and will retain full control over the use of the donation; and

(g) Health Connect Partners has not 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 Health Connect Partners the donation of travel and related expenses to cover all costs for one Authority employee to travel to Indianapolis, Indiana, to attend HCP23 Hospital Pharmacy Spring Conference from May 22-24, 2023.

3. This Board authorizes the Chief Executive Officer to designate one Authority employee to attend HCP23 Hospital Pharmacy Spring Conference in Indianapolis, Indiana, from May 22-24, 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**

April 19, 2023

Subject: Proposed Agreement with Arturo Gomez, M.D., a contract employee, for professional medical services in the Department of Surgery, Division of Orthopedic Surgery

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical recommends your Board approve an agreement with Arturo Gomez, M.D., a contract employee, for professional medical services in the Department of Surgery. Dr. Gomez, who is fellowship trained as an orthopedic trauma surgeon, has been employed full-time by Kern Medical since 2005, and serves as the Chief, Division of Orthopedic Surgery.

The proposed agreement is for a term of three years from April 22, 2023 through April 21, 2026. The maximum payable not to exceed amount of the agreement is \$4,500,000 over the three-year term of the Agreement.

Dr. Gomez's annual salary 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. Gomez's annual compensation is comprised of: (i) a base salary for teaching and administrative duties as Chief, Division of Orthopedic Surgery in the amount of \$55,824 per year; (ii) payment for care of Kern Medical patients based on his productivity; and, (iii) excess call coverage that exceeds one in four weekdays and weekends. Dr. Gomez will continue to receive the same complement of benefits, including eligibility to participate in the physicians' pension plan, health care coverage, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical.

Therefore, it is recommended that your Board approve the agreement with Dr. Gomez for professional medical services in the Department of Surgery, Division of Orthopedic Surgery from April 22, 2023 through April 21, 2026, in an amount not to exceed \$4,500,000, plus applicable benefits, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Arturo Gomez, 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 Arturo Gomez, 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 Surgery at KMC (the “Department”), as such services are unavailable from Authority resources, and Physician desires to accept employment on the terms and conditions set forth in this Agreement; and

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

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical services in the Department and teaching services to resident physicians employed by Authority (Agt. #008-2021, dated February 17, 2021), for the period March 16, 2021 through March 15, 2024; and

(e) Each party expressly understands and agrees that Agt. #008-2021 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 three (3) years, commencing as of April 22, 2023 (the “Commencement Date”), and shall end April 21, 2026 (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 Chief, Division of Orthopedic Surgery 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 Orthopaedic Surgery in orthopedic surgery-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 comprised of the following: (i) a base salary for teaching and administrative services as Chief, Division of Orthopedic Surgery in the amount of \$55,824 per year; and (ii) payment for care of KMC patients using the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") full-time physician compensation with more than one year in the specialty for all physicians section. A conversion factor will be established by taking each category and dividing the physician compensation in that category by the worked relative value unit ("Worked RVU") in that category. Physician will be compensated at the current rate of \$69.74 for each Worked RVU ("RVU Effort").

5.1.2 Salary Adjustment. KMC will establish an estimate ("Estimate") of Physician's RVU Effort using Physician's RVU Effort for the immediately preceding twelve (12) month period annualized. The Estimate will be divided by the number of Authority payroll periods in a calendar year in order to calculate the amount of RVU Effort to be paid to Physician each payroll period (the "Paycheck Amount"). Within thirty (30) days after the end of each quarter, KMC will calculate the RVU Effort for such immediately preceding quarter, and adjust the payment for RVU Effort accordingly (the "Actual Amount"). If the Estimate is lower than the Actual Amount, then such difference shall be paid to Physician within thirty (30) days after such calculation has been completed, or as of the effective date of any termination of this Agreement, whichever occurs sooner. If the Estimate exceeds the Actual Amount, then Physician shall pay such difference to KMC: (i) in a lump sum within thirty (30) days after such calculation has been completed; or (ii) through a reduction in the Paycheck Amount during the next quarter; or (iii) in a lump sum as of the effective date of any termination

of this Agreement, whichever occurs sooner. The Estimate shall be reestablished as of each Employment Year. **Physician hereby expressly grants to KMC the right to offset any amounts owed to KMC against any payment to be made to Physician by KMC pursuant to this paragraph if Physician fails to pay such excess to KMC.**

5.1.3 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.

5.1.4 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 Excess Call Coverage. Authority shall pay Physician for call coverage as follows: (i) Physician shall be paid the greater of a fixed fee amount of \$2,500 or the Worked RVU per twenty-four (24) hour day for weekend² call coverage that exceeds one weekend per month; and (ii) Physician shall be paid the greater of a fixed fee amount of \$2,500 or the Worked RVU per twenty-four (24) hour day for weekday³ call coverage that exceeds one in four weekdays. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.3 Limitations on Compensation. Authority shall exclude from payment for care of KMC patients any Worked RVU that is not reimbursed by Medicare or Medi-Cal, unless authorized in advance by KMC.

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.

² For purposes of weekend call coverage, a "weekend" is defined as Friday at 5:00 p.m. to Monday at 7:00 a.m. or, in the event of a holiday, Thursday at 5:00 p.m. to Monday at 7:00 a.m. or Friday at 5:00 p.m. to Tuesday at 7:00 a.m.

³ For purposes of weekday call coverage, a "weekday" is defined as Monday through Thursday or, in the event of a holiday, Tuesday through Thursday.

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 \$4,500,000 over the three (3) year Term of this Agreement.

6. **Benefits Package.**

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

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

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

6.4 Vacation. Physician shall retain his vacation leave credit balance, if any, as of the Commencement Date. Effective with the Commencement Date, Physician shall be entitled to vacation leave subject to Authority policy, as amended from time to time. Physician shall be paid for accrued and unused vacation leave, if any, upon termination or expiration of this Agreement calculated at Physician's current hourly rate of \$_____ 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 retain his sick leave credit balance, if any, as of the Commencement Date. Effective with the Commencement Date, Physician shall be entitled to sick leave subject to Authority policy, as amended from time to time. Physician will not be paid for accrued and unused sick leave upon termination of employment.

6.6 Education Leave. Physician shall receive eighty (80) hours paid education leave annually. The first eighty (80) hours will accrue on the Commencement Date. On each

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

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

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

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

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

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

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

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

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

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

7. **Assignment.** Physician shall not assign or transfer this Agreement or his obligations hereunder or any part thereof. Physician shall not assign any money due or which becomes due to Physician under this Agreement without the prior written approval of Authority.
8. **Assistance in Litigation.** Upon request, Physician shall support and assist Authority as a consultant or expert witness in litigation to which Authority is a party.
9. **Authority to Incur Financial Obligation.** It is understood that Physician, in his performance of any and all duties under this Agreement, has no right, power or authority to bind Authority to any agreements or undertakings.
10. **Captions and Interpretation.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.
11. **Choice of Law/Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the state of California, with venue of any action relating to this Agreement in the County of Kern, state of California.
12. **Compliance with Law.** Physician shall observe and comply with all applicable Authority, local, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which is hereby made a part hereof and incorporated herein by reference.
13. **Confidentiality.** Physician shall maintain confidentiality with respect to information that he receives in the course of his employment and not use or permit the use of or disclose any such information in connection with any activity or business to any person, firm or corporation whatsoever, unless such disclosure is required in response to a validly issued subpoena or other process of law or as required by Government Code section 6250 et seq. Upon completion of the Agreement, the provisions of this paragraph shall continue to survive.
14. **Conflict of Interest.** Physician covenants that he has no interest and that he will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law (Gov. Code, § 81000 et seq.) or that would otherwise conflict in any manner or degree with the performance of his services hereunder. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, Authority may immediately terminate this Agreement by giving written notice thereof.
15. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
16. **[Reserved].**

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

18. **Indemnification.** Authority shall assume liability for and indemnify and hold Physician harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Physician or for which Physician becomes liable, arising out of or related to services rendered or which a third party alleges should have been rendered by Physician pursuant to this Agreement. Authority's obligation under this paragraph shall extend from Physician's first date of service to Authority and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of services Physician rendered on behalf of Authority; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than designated KMC Practice Sites without approval by the Kern County Hospital Authority Board of Governors, and, provided further, that Authority shall have no duty or obligation to defend, indemnify, or hold Physician harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

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

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

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

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

23. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of Authority. Forbearance or indulgence by Authority in any regard whatsoever

shall not constitute a waiver of the covenant or condition to be performed by Physician. Authority shall be entitled to invoke any remedy available to Authority under this Agreement or by law or in equity despite said forbearance or indulgence.

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

Notice to Physician:

Arturo Gomez, M.D.
3509 Morgan Place
Bakersfield, California 93311

Notice to Authority:

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

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

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

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

28. **Termination.**

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

28.2 **Immediate Termination.** Notwithstanding the foregoing, Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the

following events: (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or Practice Sites is subject; (iv) Physician engages in the commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty against Authority or KMC; (v) the actions of Physician result in the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal; (vi) Physician's license to practice medicine in the state of California lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction; (vii) Physician's medical staff privileges are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation or other restriction; (viii) Physician's Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (ix) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (x) Physician fails to make a timely disclosure pursuant to paragraph 4.4; (xi) Physician engages in conduct that, in the sole discretion of Authority, is detrimental to patient care or to the reputation or operations of Authority and/or KMC; (xii) Physician breaches the confidentiality provisions of this Agreement; (xiii) Physician dies; (xiv) Physician fails to follow Authority's policies and procedures and other rules of conduct applicable to all employees of Authority, including without limitation, policies prohibiting sexual harassment; (xv) insubordination, flagrant tardiness, or interpersonal problems in the workplace with colleagues, patients or associates; or (xvi) Physician breaches any covenant set forth in paragraph 4.11.

29. **Effect of Termination.**

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

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

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

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

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

PHYSICIAN

By _____
Arturo Gomez, 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.Gomez.040723

EXHIBIT “A”
JOB DESCRIPTION
Arturo Gomez, M.D.

Position: Chief, Division of Orthopedic Surgery.

Position Description: Reports to Chair, Department of Surgery; serves as the chief physician responsible for efficient, key program development, day to day operations and resident education within the Department for the orthopedic surgery division at KMC; serves as a full-time faculty member in the Department.

Essential Functions:

1. Clinical Responsibilities.

- Provides service and improves efficiency for orthopedic clinic activities
- Provides service and improves efficiency for orthopedic surgery cases
- Provides faculty call coverage for acute trauma and fresh fracture call coverage

2. Administrative Responsibilities.

- Serves as Chief, Division of Orthopedic Surgery
- Leads clinical and administrative integration efforts across KMC as appropriate for orthopedic surgery ensuring proper program planning, surgeon recruitment and faculty development, resource allocation, analysis, communication and assessment
- Gathers data through best practices and collaborates with other members of the Department to recommend services that will increase productivity, minimize duplication of services, increase workflow efficiency, and provide the highest quality of care to KMC patients
- Prepares, monitors, reviews, and ensures performance of orthopedic budget and clinical activity
- Oversees the management of the QA divisional work; ensures the orthopedic service is monitored and evaluated for quality and appropriateness of care, and that opportunities for continuous improvements are regularly reviewed and implemented
- Supports the Department Chair with development of monitoring tools to measure financial, access, quality and satisfaction outcomes for orthopedic surgery

3. Teaching Responsibilities.

- Provides didactic teaching and KMC resident education
- Sets goals and expectations for orthopedic surgery medical student rotations

4. Clinical Assignments.

- Operating room – three (3) full days per week
- Clinic – one (1) day per week, two (2) clinic sessions per day
- Call coverage – one (1) day per week and one (1) weekend per month

Employment Standards:

One (1) year of post-residency experience in orthopedic surgery

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 Orthopaedic Surgery in orthopedic surgery-general

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

Ability to: Plan, organize, direct and coordinate orthopedic surgery services; perform orthopedic surgery 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

Date



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

April 19, 2023

Subject: Proposed Agreement with Ralph Garcia-Pacheco Suarez, M.D., for professional medical services in the Department of Medicine

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve an Agreement with Ralph Garcia-Pacheco, M.D., a contract employee, for professional medical services in the Department of Medicine. Dr. Garcia-Pacheco serves as Interim Chair, Department of Medicine and Chief, Division of Pulmonary Disease and Critical Care Medicine, and has been employed by Kern Medical since 2015. He is board certified in internal medicine, pulmonary disease, and critical care medicine.

The proposed Agreement is for a term of three-years from April 22, 2023 through April 21, 2026. The maximum payable will not to exceed \$2,100,000 over the three-year term of the Agreement.

Dr. Garcia-Pacheco's annual salary 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 by Dr. Garcia-Pacheco. In addition to his annual salary of \$650,000, Dr. Garcia-Pacheco will be compensation for scheduled after-hours clinic coverage at \$150 per hour, daytime hospitalist shift coverage at \$1,672 per 12-hour shift, and nighttime hospitalist shift call coverage at \$500 per 12-hour shift. Dr. Garcia-Pacheco will continue to receive the same complement of benefits, including eligibility to participate in the physicians' pension plan, health care coverage, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical.

Therefore, it is recommended that your Board approve the Agreement with Ralph Garcia-Pacheco Suarez, M.D., for professional medical services in the Department of Medicine from April 22, 2023 through April 21, 2026, in an amount not to exceed \$2,100,000, plus applicable benefits over the three-year term, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Ralph Garcia-Pacheco Suarez, 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 Ralph Garcia-Pacheco Suarez, 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 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; and

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical services in the Department and teaching services to resident physicians employed by Authority (Agt. #017-2021, dated March 17, 2021), for the period June 1, 2021 through May 31, 2024; and

(e) Each party expressly understands and agrees that Agt. #017-2021 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 three (3) years, commencing as of April 22, 2023 (the “Commencement Date”), and shall end April 21, 2026 (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 Chief, Division of Pulmonary Disease and Critical Care Medicine 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 Internal Medicine in internal medicine-general, pulmonary disease-subspecialty, and critical care medicine-subspecialty, and maintain such certifications at all times during the Term of this Agreement.

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

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

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

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

4.6 Managed Care Contracting. Physician shall cooperate in all reasonable respects necessary to facilitate KMC’s entry into or maintenance of any third-party payer arrangements for the provision of services under any other public or private health and/or hospital care programs, including but not limited to insurance programs, self-funded employer health programs, health care service plans and preferred provider organizations. To enable KMC to participate in any third-party payer arrangements, Physician shall, upon request: (i) enroll as a provider (if required by the third-party payer), separate from KMC, with any third-party payer or intermediate organization (including any independent practice association) (each, a “Managed Care Organization”) designated by KMC for the provision of professional services to patients covered by such Managed Care Organization; (ii) enter into a written agreement with such Managed Care Organization as may be necessary or appropriate for the provision of professional

services to patients covered by such Managed Care Organization; and/or (iii) enter into a written agreement with KMC regarding global billing, capitation or other payment arrangements as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization.

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

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

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

4.10 Proprietary Information. Physician acknowledges that during the Term of this Agreement Physician will have contacts with and develop and service KMC patients and referring sources of business of KMC. In all of Physician's activities, Physician, through the nature of his work, will have access to and will acquire confidential information related to the business and operations of KMC, including, without limiting the generality of the foregoing, patient lists and confidential information relating to processes, plans, methods of doing business and special needs of referring doctors and patients. Physician acknowledges that all such information is solely the property of KMC and constitutes proprietary and confidential information of KMC; and the disclosure thereof would cause substantial loss to the goodwill of KMC; and that disclosure to Physician is being made only because of the position of trust and confidence that Physician will occupy. Physician covenants that, except as required by law, Physician will not, at any time during the Term or any time thereafter, disclose to any person, hospital, firm, partnership, entity or organization (except when authorized in writing by KMC) any information whatsoever pertaining to the business or operations of KMC, any affiliate

thereof or of any other physician employed by KMC, including without limitation, any of the kinds of information described in this paragraph.

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

5. Compensation Package.

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

5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary of \$25,000 biweekly not to exceed \$650,000 annually. The Annual Salary shall be comprised of (i) a base salary for teaching and administrative services and (ii) payment for care of KMC patients. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") for specialty and (ii) Physician will maintain a 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 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 After-hours Clinic Coverage. Authority shall pay Physician an hourly rate of \$150 per hour, less all applicable federal and state taxes and withholdings, for after-hours clinic coverage (defined as scheduled appointments in the outpatient clinics on weekends or after 5:00 p.m. on weekdays).

5.3 Hospitalist Shift Coverage. Authority shall pay Physician a per diem rate of \$1,672, less all applicable federal and state taxes and withholdings, for each daytime, twelve (12) hour scheduled hospitalist shift, Monday through Sunday, 7:00 a.m.-7:00 p.m.

5.4 Hospitalist Shift Call Coverage. Authority shall pay Physician a fixed fee in the amount of \$500, less all applicable federal and state taxes and withholdings, for each nighttime, twelve (12) hour scheduled call shift, Monday through Sunday, 7:00 p.m.-7:00 a.m.

5.5 Signing Bonus.

5.5.1 Bonus. Physician shall receive a signing bonus in the amount of \$20,000, less all applicable federal and state taxes and withholdings, payable within ten (10) business days of the date of the last signature herein below.

5.4.2 Repayment. In the event that Physician voluntarily terminates his employment with Authority for any reason whatsoever before April 21, 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.

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

5.6 Professional Fee Billing.

5.6.1 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.

5.6.2 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.

5.7 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$2,100,000 over the three (3) year Term of this Agreement.

6. **Benefits Package.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. **Authority to Incur Financial Obligation.** It is understood that Physician, in his performance of any and all duties under this Agreement, has no right, power or authority to bind Authority to any agreements or undertakings.
10. **Captions and Interpretation.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.
11. **Choice of Law/Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the state of California, with venue of any action relating to this Agreement in the County of Kern, state of California.
12. **Compliance with Law.** Physician shall observe and comply with all applicable Authority, local, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which is hereby made a part hereof and incorporated herein by reference.
13. **Confidentiality.** Physician shall maintain confidentiality with respect to information that he receives in the course of his employment and not use or permit the use of or disclose any such information in connection with any activity or business to any person, firm or corporation whatsoever, unless such disclosure is required in response to a validly issued subpoena or other process of law or as required by Government Code section 6250 et seq. Upon completion of the Agreement, the provisions of this paragraph shall continue to survive.
14. **Conflict of Interest.** Physician covenants that he has no interest and that he will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law (Gov. Code, § 81000 et seq.) or that would otherwise conflict in any manner or degree with the performance of his services hereunder. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, Authority may immediately terminate this Agreement by giving written notice thereof.
15. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
16. **[Reserved].**
17. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to Authority is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

18. **Indemnification.** Authority shall assume liability for and indemnify and hold Physician harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Physician or for which Physician becomes liable, arising out of or related to services rendered or which a third party alleges should have been rendered by Physician pursuant to this Agreement. Authority's obligation under this paragraph shall extend from Physician's first date of service to Authority and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of services Physician rendered on behalf of Authority; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than designated KMC Practice Sites without approval by the Kern County Hospital Authority Board of Governors, and, provided further, that Authority shall have no duty or obligation to defend, indemnify, or hold Physician harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

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

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

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

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

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

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

deposit. A party may change the address to which notice is to be given by giving notice as provided above.

Notice to Physician:

Ralph Garcia-Pacheco Suarez, M.D.
15701 Tradition Court
Bakersfield, California 93314

Notice to Authority:

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

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

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

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

28. **Termination.**

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

28.2 **Immediate Termination.** Notwithstanding the foregoing, Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events: (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or Practice Sites is subject; (iv) Physician engages in the commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty against Authority or KMC; (v) the actions of Physician result in the loss or threatened loss of

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

29. **Effect of Termination.**

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

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

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


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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

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

PHYSICIAN

By  4/12/23
Ralph Garcia-Pacheco Suarez, 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.Garcia-Pacheco.040723

EXHIBIT “A”
JOB DESCRIPTION
Ralph Garcia-Pacheco Suarez, M.D.

Position Summary: Reports to the Chair, Department of Medicine; serves as Chief, Division of Pulmonary Disease and Critical Care Medicine; serves as Director, Intensive Care Unit; serves as Director, Pulmonary Ambulatory Care; serves as the Specialty Education Coordinator for the Department residency training and medical student programs.

Essential Functions:

1. Clinical Responsibilities:

- Supervises residents while on service
- Provides mutually agreed upon coverage in the intensive care and direct observation units
- Coordinates mutually agreed upon weekday professional staffing of the intensive care unit
- Provides mutually agreed upon weekday and weekend after hours call coverage
- Supervises procedures performed by residents and mid-levels while on service
- Performs therapeutic and diagnostic procedures with the scope of practice for a pulmonary disease and critical care specialist while on service
- Provides mutually agreed upon outpatient clinic services related to pulmonary disease and critical care medicine

2. Medical Education; Academic Responsibilities:

- Provides clinical mentoring to and evaluation of residents and medical students
- Establishes and maintains academic appointment at David Geffen School of Medicine at University of California, Los Angeles

3. Teaching:

- Coordinates and ensures the pulmonary disease and critical care medicine service provides a daily one-hour didactic lecture while on service
- Participates in the daily one-hour pulmonary disease and critical care medicine didactic lecture while on service
- Provides afternoon pulmonary disease and critical care medicine related lectures (minimum of six [6] per year) while on service
- Coordinates faculty participation in pulmonary disease and critical care medicine afternoon lectures
- Serves as Director and faculty of the FCCS course
- Teaches the ACLS course twice annually
- Organizes and schedules the monthly pulmonary disease and critical care medicine grand rounds

4. Administrative Responsibilities:

- Serves as Chair of the Joint ICU Committee and Code Blue Subcommittee

- Oversees all matters related to the intensive care and direct observation units, including without limitation, development of policies and procedures, quality improvement, and oversight of medical care
- Participates in development of Department curriculum
- Participates in recruitment of Department professional staff

5. Hospitalist Shift Coverage:

- Reports to the Chief, Division of Hospitalist Services
- Provides mutually agreed upon inpatient hospitalist shift coverage with scheduled shifts consisting of 12-hours shifts, 7:00 a.m.-7:00 p.m.
- Remains in-house during each assigned 12-hour shift (a hospitalist call room shall be provided)
- Supports the hospitalist service in caring for patients admitted to a resident team or to the faculty hospitalist service
- Supervises residents and medical students while on service
- Manages patients through the continuum of hospital care including seeing patients in the emergency department, following patients through the inpatient units, and organizing post-acute care
- Serves as an intermediary in adjudicating venue of care decisions or coordination of care between the emergency medicine physicians and other medical staff
- Prescribes medications or treatment regimens to inpatients in accordance with Hospital Formulary standards
- Orders or interprets the results of diagnostic tests such as laboratory findings and imaging studies
- Provides inpatient consultations

6. After-hours Clinic Coverage:

- Provides after-hours clinic coverage for scheduled appointments in the KMC outpatient clinics on weekends or after 5:00 p.m. on weekdays as mutually agreed upon

7. Committee Assignments:

- Attends Department staff meetings and the annual medical staff meeting
- Participates in medical staff committee meetings assigned by the President of the Medical Staff

Employment Standards:

Three years post-residency fellowship training in pulmonary and critical care medicine

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 internal medicine-general AND critical care medicine-subspecialty AND pulmonary disease-subspecialty

Knowledge of: The principles and practices of modern medicine; current techniques, procedures, and equipment applicable to pulmonary disease and critical care medicine; principles of effective supervision and program development.

[INTENTIONALLY LEFT BLANK]

EXHIBIT “B”
AUTHORIZATION TO RELEASE INFORMATION

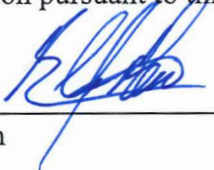
[TO BE ATTACHED]

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.



Physician

4/12/23

Date



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

April 19, 2023

Subject: Proposed Agreement with Ayham Aboeed, M.D., for professional medical services in the Department of Medicine

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve an agreement with Ayham Aboeed, M.D., a contract employee, for professional medical services in the Department of Medicine. Dr. Aboeed, who is board certified in internal medicine, pulmonary disease, and critical care medicine, serves as Assistant Program Director for the Internal Medicine Residency, and has been employed by Kern Medical since 2015.

The proposed Agreement is for a term of three-years from April 22, 2023 through April 21, 2026. The maximum payable will not to exceed \$2,000,000 over the three-year term of the Agreement.

Dr. Aboeed's annual salary 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 by Dr. Aboeed. In addition to his annual salary of \$620,000, Dr. Aboeed will be compensation for scheduled after-hours clinic coverage at \$150 per hour, daytime hospitalist shift coverage at \$1,672 per 12-hour shift, and nighttime hospitalist shift call coverage at \$500 per 12-hour shift. Dr. Aboeed will continue to receive the same complement of benefits, including eligibility to participate in the physicians' pension plan, health care coverage, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical.

Therefore, it is recommended that your Board approve the Agreement with Ayham Aboeed, M.D., for professional medical services in the Department of Medicine from April 22, 2023 through April 21, 2026, in an amount not to exceed \$2,000,000, plus applicable benefits over the three-year term, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Ayham Aboeed, 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 Ayham Aboeed, 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; and

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical services in the Department and teaching services to resident physicians employed by Authority (Agt. #30820, dated June 30, 2020), for the period July 1, 2020 through June 30, 2023; and

(e) Each party expressly understands and agrees that Agt. #30820 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 three (3) years, commencing as of April 22, 2023 (the “Commencement Date”), and shall end April 21, 2026 (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 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 Internal Medicine in internal medicine-general, pulmonary disease-subspecialty, and critical care medicine-subspecialty, and maintain such certifications at all times during the Term of this Agreement.

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

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

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

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

4.6 Managed Care Contracting. Physician shall cooperate in all reasonable respects necessary to facilitate KMC’s entry into or maintenance of any third-party payer arrangements for the provision of services under any other public or private health and/or hospital care programs, including but not limited to insurance programs, self-funded employer health programs, health care service plans and preferred provider organizations. To enable KMC to participate in any third-party payer arrangements, Physician shall, upon request: (i) enroll as a provider (if required by the third-party payer), separate from KMC, with any third-party payer or intermediate organization (including any independent practice association) (each, a “Managed Care Organization”) designated by KMC for the provision of professional services to patients covered by such Managed Care Organization; (ii) enter into a written agreement with such Managed Care Organization as may be necessary or appropriate for the provision of professional

services to patients covered by such Managed Care Organization; and/or (iii) enter into a written agreement with KMC regarding global billing, capitation or other payment arrangements as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization.

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

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

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

4.10 Proprietary Information. Physician acknowledges that during the Term of this Agreement Physician will have contacts with and develop and service KMC patients and referring sources of business of KMC. In all of Physician's activities, Physician, through the nature of his work, will have access to and will acquire confidential information related to the business and operations of KMC, including, without limiting the generality of the foregoing, patient lists and confidential information relating to processes, plans, methods of doing business and special needs of referring doctors and patients. Physician acknowledges that all such information is solely the property of KMC and constitutes proprietary and confidential information of KMC; and the disclosure thereof would cause substantial loss to the goodwill of KMC; and that disclosure to Physician is being made only because of the position of trust and confidence that Physician will occupy. Physician covenants that, except as required by law, Physician will not, at any time during the Term or any time thereafter, disclose to any person, hospital, firm, partnership, entity or organization (except when authorized in writing by KMC) any information whatsoever pertaining to the business or operations of KMC, any affiliate

thereof or of any other physician employed by KMC, including without limitation, any of the kinds of information described in this paragraph.

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

5. Compensation Package.

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

5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary of \$23,846.15 biweekly not to exceed \$620,000 annually. The Annual Salary shall be comprised of (i) a base salary for teaching and administrative services and (ii) payment for care of KMC patients. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") for specialty and (ii) Physician will maintain a 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 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 After-hours Clinic Coverage. Authority shall pay Physician an hourly rate of \$150 per hour, less all applicable federal and state taxes and withholdings, for after-hours clinic coverage (defined as scheduled appointments in the outpatient clinics on weekends or after 5:00 p.m. on weekdays).

5.3 Hospitalist Shift Coverage. Authority shall pay Physician a per diem rate of \$1,672, less all applicable federal and state taxes and withholdings, for each daytime, twelve (12) hour scheduled hospitalist shift, Monday through Sunday, 7:00 a.m.-7:00 p.m.

5.4 Hospitalist Shift Call Coverage. Authority shall pay Physician a fixed fee in the amount of \$500, less all applicable federal and state taxes and withholdings, for each nighttime, twelve (12) hour scheduled call shift, Monday through Sunday, 7:00 p.m.-7:00 a.m.

5.5 Signing Bonus.

5.5.1 Bonus. Physician shall receive a signing bonus in the amount of \$30,000, less all applicable federal and state taxes and withholdings, payable within ten (10) business days of the date of the last signature herein below.

5.5.2 Repayment. In the event that Physician voluntarily terminates his employment with Authority for any reason whatsoever before April 22, 2024, Physician will repay to Authority an amount equal to \$30,000 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.

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

5.6 Professional Fee Billing.

5.6.1 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.

5.6.2 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.

5.7 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$2,000,000 over the three (3) year Term of this Agreement.

6. **Benefits Package.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. **[Reserved]**.

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

18. **Indemnification.** Authority shall assume liability for and indemnify and hold Physician harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Physician or for which Physician becomes liable, arising out of or related to services rendered or which a third party alleges should have been rendered by Physician pursuant to this Agreement. Authority's obligation under this paragraph shall extend from Physician's first date of service to Authority and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of services Physician rendered on behalf of Authority; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than designated KMC Practice Sites without approval by the Kern County Hospital Authority Board of Governors, and, provided further, that Authority shall have no duty or obligation to defend, indemnify, or hold Physician harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

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

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

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

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

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

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

deposit. A party may change the address to which notice is to be given by giving notice as provided above.

Notice to Physician:

Ayham Aboeed, M.D.
9204 Val Di Chiana Drive
Bakersfield, California 93314

Notice to Authority:

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

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

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

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

28. **Termination.**

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

28.2 **Immediate Termination.** Notwithstanding the foregoing, Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events: (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or Practice Sites is subject; (iv) Physician engages in the commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty against Authority or KMC; (v) the actions of Physician result in the loss or threatened loss of

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

29. Effect of Termination.

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

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

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

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

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

PHYSICIAN

By 
Ayham Aboeed, 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.Aboeed.040623

EXHIBIT “A”
JOB DESCRIPTION
Ayham Aboeed, M.D.

Position Summary: Reports to Chair, Department of Medicine and Director, Pulmonary Disease and Critical Care Medicine; serves as Associate Program Director for the internal medicine residency; serves as full-time faculty in the Department and residency program; provides no fewer than eighty (80) hours per pay period in teaching, administrative, and clinical activity, including a minimum of eight (8) hours of dedicated non-clinical time per week for administration of the internal medicine residency; provides professional, comprehensive and safe clinical coverage for operations, timely completion of therapeutic and diagnostic procedures, direct patient care, scholarly research and resident education; works collaboratively with clinic and Department staff and hospital administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience.

Essential Functions:

1. Clinical Responsibilities.
 - Supervises residents and medical students while on service
 - Performs therapeutic and diagnostic procedures within the scope of practice for an internal medicine and critical care specialist while on service
 - Provides mutually agreed upon coverage in the intensive care and direct observation units
 - Provides mutually agreed upon weekday and weekend after hours call coverage for the intensive care and direct observation units
 - Supervises procedures performed by residents and mid-levels while on service
 - Provide mutually agreed upon outpatient clinic services related to pulmonary disease and critical care medicine
2. Medical Education; Academic Responsibilities.
 - Provides clinical mentoring to and evaluation of residents and medical students
 - Establishes and maintains academic appointment at David Geffen School of Medicine at University of California, Los Angeles
3. Teaching.
 - Participates in the daily one-hour pulmonary disease and critical care medicine didactic lectures while on service
 - Provides afternoon pulmonary disease and critical care medicine related lectures (minimum of three [3] per year) while on service
 - Teaches the ACLS course twice annually
 - Participates in monthly pulmonary disease and critical care medicine grand rounds, as mutually agreed upon
4. Administrative Responsibilities.
 - Participates as requested in the joint ICU committee and code blue subcommittee

- Participates as requested in the oversight of matters related to the intensive care and direct observation units, including without limitation, development of policies and procedures, quality improvement, and oversight of medical care
 - Participates in development of Department curriculum
 - Participates in recruitment of Department professional staff
5. Committee Assignments.
- Attends Department staff meetings and the annual medical staff meeting
 - Participates in medical staff committees as assigned by the President of the Medical Staff
6. Associate Program Director Responsibilities. As Associate Program Director, fulfills a defined management and leadership role for the internal medicine residency. The Associate Program Director is responsible for managing program resources to fulfill the program mission in accordance with priorities, time and Graduate Medical Education requirements. This position is responsible for performing the work of an administrative, academic, and professional nature under general supervision of the Program Director. Responsibilities include but are not limited to the following:
- Supporting the planning implementation of the program goals to fulfill the mission of the program and KMC
 - Assisting the Program Director in the resident/fellow evaluation process, as required by the program and Residency Review Committee
 - Assisting the Program Director in monitoring duty hours of residents/fellows and counsel residents when needed
 - Resolving residency-/fellowship-related problems through written or oral communication, under the guidance of the Program Director
 - Assisting the Program Director in recruitment of trainees
 - Organizing preparations for the arrival of new interns including assisting with scheduling issues, ensuring contracts are signed and necessary documentation received, and ensuring any required training (e.g., online modules) are completed prior to intern arrival
 - Assisting the Program Director in setting up a mentoring system for residents with faculty
 - Ensuring residents are not violating duty hour rules, and address and resolve if identified
 - Assisting the Program Director in ensuring that residents/fellows are meeting program and Residency Review Committee requirements to be eligible to sit for the board examination upon residency/fellowship completion
 - Dedicating a minimum of eight (8) hours of non-clinical time per week for administration of the internal medicine residency
 - Undertaking other duties, as assigned by the Program Director

Employment Standards:

Three years of post-fellowship training in pulmonary disease and critical care medicine

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 internal medicine-general AND pulmonary disease-subspecialty AND critical care medicine-subspecialty

Knowledge of: The principles and practices of modern medicine; current techniques, procedures, and equipment applicable to pulmonary and critical care medicine; 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.



Physician

04/13/2023

Date



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

April 19, 2023

Subject: Proposed Amendment No. 2 to Agreement 07820 with Paola A. Rosa, D.O., for professional medical services in the Department of Obstetrics and Gynecology

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve Amendment No. 2 with Paola A. Rosa, D.O., for professional medical services in the Department of Obstetrics and Gynecology.

Dr. Rosa submitted a letter of resignation, consistent with the terms of her Agreement, effective June 5, 2023. She has requested to stay on for an additional period of approximately one month. The proposed Amendment is extending the term of her employment through July 7, 2023.

Therefore, it is recommended that your Board approve Amendment No. 2 to Agreement 07820 with Paola A. Rosa, D.O., for professional medical services in the Department of Obstetrics and Gynecology, extending the term from June 6, 2023 through July 7, 2023, increasing the maximum payable by \$40,000, from \$1,300,000 to \$1,340,000, to cover the term, and authorize the Chairman to sign.

**AMENDMENT NO. 2
TO
AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Paola A. Rosa, D.O.)**

This Amendment No. 2 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 Paola A. Rosa, D.O. (“Physician”).

RECITALS

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Agt. #07820, dated February 19, 2020) and Amendment No. 1 (Agt. #59122, dated September 28, 2022) (the “Agreement”), for the period June 6, 2020 through June 5, 2023, whereby Physician provides professional medical services in the Department of Obstetrics and Gynecology and teaching services to resident physicians employed by Authority; and

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

(c) The Agreement is amended effective April 19, 2023;

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

1. Section 1, Term, shall be deleted in its entirety and replaced with the following:

“1. **Term.** The initial term of this Agreement shall commence as of June 6, 2020 (the “Commencement Date”), and shall end July 7, 2023 (“Initial Term”). 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.”

2. Section 5, Compensation Package, paragraph 5.10, Maximum Payable, shall be deleted in its entirety and replaced with the following:


“5.10 **Maximum Payable.** The maximum compensation payable under this Agreement shall not exceed \$1,340,000 over the Initial Term of this Agreement.”

3. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the Agreement.
4. This Amendment shall be governed by and construed in accordance with the laws of the state of California.
5. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which take together shall constitute one and the same instrument.
6. Except as provided herein, all other terms, conditions and covenants of the Agreement and any and all amendments thereto shall remain in full force and effect.

[Intentionally left blank]

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

PHYSICIAN

By 
Paola A. Rosa, D.O.

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:

By _____
Scott Thygerson
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By _____
Vice President & General Counsel
Kern County Hospital Authority

Amend2.Rosa.033023



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

April 19, 2023

Subject: Proposed Agreement with Mark Wattenbarger Construction, Inc.

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 Mark Wattenbarger Construction, Inc., for modifications to the laboratory to accommodate new equipment.

The Agreement is effective as of April 19, 2023 and construction is anticipated to be completed within 2 months, once construction commences, at a total potential cost of \$75,053, which includes future change orders up to 10% of the original contract price of \$68,230.

Therefore, it is recommended that your Board make a finding that this proposed 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 00501
PROPOSED CONTRACT DOCUMENTS TRANSMITTAL**

Mark Wattenbarger Construction, Inc
16824 Johnson Road
Bakersfield, CA 93314

Date: 3/13/2023

SUBJECT Lab Equipment Replacement

The Contract Sum of your proposed contract is \$68,229.44.

1. The proposed Contract Documents listed below accompany this Document 00501.
2. Contractor shall return the required documents to the Hospital no later than April 5, 2023 in order to meet the Board of Governors agenda requirements.
 - a. Document 00500 (Agreement)
 - b. Document 00601 (Construction Performance Bond), executed by you and your surety. **BE CERTAIN TO HAVE A POWER OF ATTORNEY AND NOTARY FOR EACH OF THE PERFORMANCE BONDS**
 - c. Document 00602 (Construction Labor and Material Payment Bond), executed by you and your surety. **BE CERTAIN TO HAVE A POWER OF ATTORNEY AND NOTARY FOR EACH OF THE LABOR AND MATERIAL PAYMENT BONDS**
 - d. Insurance certificates (INCLUDE ENDORSEMENTS AND WAIVER OF SUBROGATION), as required under Document 00800 (Supplementary Conditions – Insurance).
 - e. Document 00603 (Guaranty)
 - f. Corporate Resolution, if applicable
 - g. Fictitious Business form, if applicable (must be copy of recorded document)
3. Failure to comply with these conditions will entitle Owner to consider your Bid abandoned, and to declare your Bid security forfeited.
4. Upon commencement of the Work, you and each of your Subcontractors shall certify copies of payroll records on forms provided by the Division of Labor Standards Enforcement, in accordance with California Labor Code §1776. Contractor and Subcontractors shall provide copies of certified payroll records upon request by the Authority.
5. Construction Division will recommend the Board of Governors execute the Agreement during the meeting of February 15, 2017.
6. General Services Division has identified the following staff for this project:
 - a. Project Manager - Nanette Crawford
 - b. Project Inspector - Derek Farmer

END OF DOCUMENT

DOCUMENT 00500

AGREEMENT

THIS AGREEMENT, dated this **19th** day of April 2023, is by and between **Mark Wattenbarger Construction, Inc.**, whose place of business is located at **16824 Johnson Road, Bakersfield, CA 93314** ("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:

Lab Equipment Replacement 10104

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 Specifications, Drawings, and all other terms and conditions of the Contract Documents (**Work**).

1.02 Price for Completion of the Work

- A. Owner shall pay Contractor the following Contract Sum **sixty-eight thousand, two hundred twenty-nine dollars and forty-four cents (\$68,229.44)** 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 **forty five (45) Working Days**, as defined in Document 01422, 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:

Document 00001	Title Page
Document 00100	Notice to Contractors
Document 00200	Instruction to Bidders
Document 00300	Geotechnical Data and Existing Conditions
Document 00410	Bid Form
Document 00412	Bidder Registration Form
Document 00431	Subcontractors List
Document 00452	Non-Collusion Declaration
Document 00455	Bidder Certifications
Document 00500	Agreement
Document 00501	Proposed Contract Documents Transmittal
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
Master Specifications	Divisions 1 through 16
Drawings	

- 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"

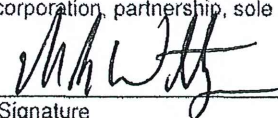
APPROVED AS TO CONTENT:
KERN MEDICAL HOSPITAL

Contractor's Name

By _____
Scott Thygeson, Chief Executive Officer

Type of Entity
(corporation, partnership, sole proprietorship)

By 
Michael Fink, Senior Facility Director

By 
Signature

Mark Wattenbarger

Typed Name

Owner

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

Rev. 0
April 12, 2014

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 county hospital authority, which owns and operates Kern Medical Hospital, has awarded to Mark Wattenbarger Construction, Inc., as Principal, a contract dated the 19th day of April 2023 (the "**Contract**"), in the amount of \$68,229.44. The Contract is by this reference made a part hereof, for the work of the following project:

Lab Equipment Replacement 10104

- 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 _____, 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 _____ day of _____, 20____.

CONTRACTOR AS PRINCIPAL

(Corp. Seal)

Mark Wattenbarger Construction Inc.

Company

Signature

Mark Wattenbarger Owner

Name & Title

16824 Johnson Road

Address

Bakersfield, Ca. 93314

City, State, Zip Code

SURETY

(Corp. Seal)

Company

Signature

Name & Title

Address

City, State, Zip Code

Phone:

END OF DOCUMENT

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 public agency of the State of California, has awarded to **Mark Wattenbarger Construction, Inc.**, as Principal, a contract dated the 19th day of April 2023 (the "Contract"), in the amount of \$68,229.44. The Contract is by this reference made a part hereof, for the work of the following project:

Lab Equipment Replacement 10104

- 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 _____, an admitted California surety, as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT PRICE (\$68,229.44), 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 _ day of _____, 20__.

CONTRACTOR AS PRINCIPAL

Mark Wattenbarger Construction Inc. (Corp. Seal)

Company



Signature

Mark Wattenbarger Owner

Name & Title

16824 Johnson Road

Address

Bakersfield, Ca. 93314

City, State, Zip Code

SURETY

(Corp. Seal)

Company

Signature

Name & Title

Address

City, State, Zip Code

Phone:

END OF DOCUMENT

DOCUMENT 00603

GUARANTY

TO: THE KERN COUNTY HOSPITAL AUTHORITY (hereinafter "Owner"), for construction of Lab Equipment Replacement (10104), 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.

March 23, 2023
Date
Mark Wattenbarger Construction Inc.
Contractor

Mark Wattenbarger Owner
Name/Title

Signature

For maintenance, repair or replacement service contact:

Mark Wattenbarger
Name
16824 Johnson Road
Address
Bakersfield, Ca. 93314
City, State, and Zip

661.978.9089
Telephone
Alt. Telephone

END OF DOCUMENT



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

April 19, 2023

Subject: Proposed Master Agreement with TELCOR Inc for the purchase of an interface system for the point of care devices

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests that your Board approve the Master Agreement with TELCOR Inc that includes Quote #P22-10174-D7W2, a Software Support Agreement, and Business Associate Agreement to purchase the necessary interface system for our point of care devices. This interface will improve patient safety, compliance, nursing workflow, accuracy of test result reporting, and enhance productivity.

The term of the Software Support Agreement is for one (1) year with auto-renewal of the term unless terminated per the Agreement beginning 90 days after Software Load. The Master Service Agreement is effective April 19, 2023 and shall continue until terminated per the Agreement. The total maximum payable of the hardware, software, and maintenance is not to exceed \$82,000.

This Agreement contains nonstandard terms and cannot be approved as to form by Counsel due to TELCOR Inc's inability to accept Counsel's edits. The nonstandard terms include limitation of liability to the cost of the agreement and no indemnification of the Kern County Hospital Authority and/or Kern Medical Center. Efforts were made to negotiate these nonstandard terms to no avail. Kern Medical believes the benefits of this purchase outweigh the risk of moving forward with the Master Agreement, despite the nonstandard terms.

Therefore, it is recommended that your Board approve Master Agreement with TELCOR Inc, effective April 19, 2023 for a one (1) year term that auto-renews, with a maximum payable not to exceed \$82,000, and authorize the Chairman to sign.



MASTER AGREEMENT

This Master Agreement (the "Agreement") is made and entered into as of _____ (the "Effective Date") by and between TELCOR Inc, a Nebraska corporation with its principal place of business at 7101 A Street, Lincoln, NE 68510 ("TELCOR"), and Kern County Hospital Authority, a local unit of government which owns and operates Kern Medical Center having its principal place of business at 1700 Mount Vernon Avenue, Bakersfield, CA 93306 ("Licensee").

1. This Agreement sets forth the terms and conditions applicable to the licensing and provision of the Software to Licensee. Fee details specific to Licensee are set forth in the applicable Quotation. In the event of a conflict between the terms of this Agreement and its Attachments, the following will be the order of precedence, unless specified otherwise: (1) the Attachments, (2) the Agreement.
2. **Definitions.**
 - a. "Attachments" means any attachments, exhibits, schedules, addenda, work orders, proposals, Quotations or any other equivalent term that would reasonably be understood to have the same meanings as set forth in this definition. All Attachments are part of this Agreement and incorporated herein by reference, unless specifically stated otherwise within such Attachment.
 - b. "Confidential Information" means proprietary and sensitive information which includes: the Software (including object code and source code) and all other materials furnished hereunder (including but not limited to Documentation, third-party documents and oral or written price quotations and lists); Licensee's Hardware and software; patient information or data; trade secrets; know-how; the substantive terms of this Agreement or any other agreement between the Parties; a Party's non-public business and financial information; patient, Employee, marketing, vendor, customer or other similar lists and data; any written materials marked as confidential and any other information, communicated orally or in writing, which reasonably should be understood to be confidential.
 - c. "Configuration Requirements" means the minimum specifications provided by TELCOR and that may be changed from time to time detailing the Hardware and software necessary to properly run and maintain the Software.
 - d. "Documentation" means all Configuration Requirements and user manuals associated with the Software, which TELCOR may update from time to time.
 - e. "Employee" means the same as a common-law employee defined by the Internal Revenue Service and/or an agent and/or contractor of Licensee or a Facility.
 - f. "Facility" or "Facilities" means an acute care healthcare entity with at least one (1) overnight, staffed bed or any of its associated grouped or named ambulatory, long-term care (LTC), and/or long-term acute care (LTAC) (including sub-acute care) locations. A Facility or Facilities may be added by Licensee under this Agreement and may utilize the Software as outlined and authorized herein upon execution of the appropriate Quotation and payment of all applicable Fees by Licensee.
 - g. "Fee" or "Fees" means all amounts set forth on the applicable Quotation or specified on an invoice for the renewal term of a Subscription and/or Support Services for the Software and/or third-party software and/or maintenance and/or support.
 - h. "First Productive Use" or "FPU" means the date on which Licensee's authorized Facility's live data is first processed through the Software.
 - i. "Hardware" means the hardware provided by Licensee that meets the minimum requirements set forth in the Configuration Requirements.
 - j. "Implementation Task Plan" means a schedule of tasks mutually developed by the Parties relating to the installation and implementation of the Software, and as applicable third-party software, provided under this Agreement.
 - k. "Licensed Information" means the Software, including Documentation licensed under this Agreement to Licensee, as listed on a Quotation.
 - l. "Placement of Order" means TELCOR's receipt of all of the following from or on behalf of Licensee: (i) purchase order or payment agreement for the items listed in a Quotation; (ii) fully



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executed agreement(s) covering the licensing and provision of Support Services for the Software and/or other third-party software provided by TELCOR, if such agreement(s) are not already executed; and (iii) sales tax exemption certificate or other evidence certifying sales tax-exempt status for Licensee where applicable.

- m. "QML System" means each authorized base instance of the Software.
- n. "Quotation" or "Attachment B" means a quotation issued by TELCOR, and includes all subsequent quotations issued to Licensee or on behalf of Licensee pursuant to this Agreement and attached hereto as Attachment B. All Software and/or Support Services and/or third-party software and/or maintenance and/or support included on subsequently executed Quotations shall be in addition to the Software and/or Support Services currently being provided by TELCOR unless canceled or terminated as provided herein.
- o. "Software" means the TELCOR software listed on a Quotation, which may be amended from time to time.
- p. "Software Load" means the date on which any item of Software and/or third-party software is initially loaded onto Licensee's Hardware. All Software and third-party software provided under this Agreement will be installed electronically.
- q. "Subscription" means the Software and Support Services provided on a time-limited basis for so long as Licensee pays the applicable Fees for the usage period.
- r. "Support Services" means those maintenance and support services purchased by Licensee and provided by TELCOR, on a time-limited basis for so long as Licensee pays the applicable Fees for the usage period, for the Software and/or third-party software as outlined in the Software Support Agreement attached hereto as Attachment C and incorporated herein by reference.

3. Grant of License.

- a. In consideration of the payment of the applicable license Fee(s), Licensee, and on behalf of its authorized Facility(ies), is hereby granted a perpetual, nonexclusive, revocable (as outlined herein this Agreement), nontransferable license to the Software for the Licensed Information, as applicable, which will begin upon Placement of Order.
- b. In consideration of the payment of the applicable Subscription Fee(s), Licensee, and on behalf of its authorized Facility(ies), is hereby granted a non-perpetual, time-limited (except as otherwise provided herein), nonexclusive, revocable, nontransferable license to the Software which will begin upon Placement of Order.
- c. Licensee may transfer a Facility's Subscription and/or license hereunder only to another authorized Licensee Facility so long as Licensee does not exceed the quantity of Subscriptions and/or licenses purchased. In the event that Licensee wishes to transfer a Facility's Subscription and/or license hereunder to (i) an authorized like Facility of the same type, size, etc., such transfer will be subject to a nominal transfer Fee, or (ii) an authorized Facility of a different type, size, etc., such transfer may be subject to additional Fees at TELCOR's discretion.
- d. The license granted herein is not an agreement for sale or transfer of ownership of the Software, and may only be used as expressly permitted under this Agreement.

e. Limitations on Use.

- i. Licensee and Facility are expressly prohibited from sublicensing the Software to third-parties and/or permitting direct or indirect access to or for use in a way that circumvents the grant of license or to access or use any of the Licensed Information except as permitted under this Agreement.
- ii. Licensee and Facility shall only operate the Software for which it has paid the Fees.
- iii. Licensee and Facility may disclose to Employees, TELCOR's Confidential Information as is necessary to perform their duties as permitted under this Agreement.
- iv. Documentation is provided solely to support the authorized use of the Software. The Software, or any copy, adaptation, transcription, or portion thereof, may not be used, copied, modified or distributed except as expressly authorized herein. Notwithstanding the foregoing, Licensee may make a reasonable number of copies of the Software for



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- backup and/or disaster recovery purposes, provided that all copies shall contain TELCOR's trademarks, copyright notices, restrictive and proprietary information.
- v. Neither the Software, nor any part of it, may be reverse engineered, decompiled, disassembled or used to create derivative works.
 - vi. Neither the Software, nor any Licensed Information shall be sold, assigned, disclosed, furnished or redistributed to any other person, firm, corporation or entity.
 - vii. Licensee's and Facility's use of the Software in conjunction with SAP® SQL Anywhere® shall be in accordance with those terms and conditions set forth on the "SAP Software License & Support Agreement: General Terms and Conditions" document ("GTC"), which can be found on the TELCOR website at <https://telcor.com/wp-content/uploads/SAP-GTC-v.-2.0.2-21-0203.pdf>, and are hereby incorporated into this Agreement by reference. By executing this Agreement, Licensee acknowledges that it has read, agrees to and intends to be bound by the GTCs. Physical copies of the GTC document are available upon request.
- f. Licensee will not make any Software or Support Services available to any other entity or individual or for the benefit of anyone or any entity other than a Facility or an Employee and only as purchased and authorized herein.
 - g. Notwithstanding anything to the contrary in this Agreement, Licensee will be responsible for its Facilities' compliance with the terms of this Agreement, and shall remain unconditionally liable for any breach or violation of this Agreement by its Facilities.
4. **Subscriptions.** Unless otherwise provided in the applicable Quotation, access to Software and Support Services are purchased for the usage period stated and such usage period begins upon FPU. Subscriptions may be prorated for the portion of the applicable underlying current term associated with Attachment C and will automatically renew for a usage period of one (1) year thereafter, or as otherwise mutually agreed to by the Parties, unless canceled pursuant to Section 9 herein. Subscription Fees are subject to the Fees section of Attachment C.
 5. **Support Services.** TELCOR shall provide Licensee and Facility with the Support Services set forth in Attachment C and Licensee shall pay to TELCOR the Fees specified in a Quotation for such Support Services.
 6. **Ownership.** TELCOR retains all rights not expressly granted in this Agreement. The Licensed Information is protected by trademark and copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.
 7. **Suggestions.** If Licensee and/or Facility provides TELCOR with any suggested improvements to the Software or Support Services, such suggestion is provided as is, and Licensee and/or Facility grants TELCOR a nonexclusive, perpetual, irrevocable, royalty free, worldwide license, with rights to transfer, sublicense, sell, use, reproduce, display, and make derivative works of such suggested improvements. Notwithstanding the foregoing, nothing in this Section grants TELCOR a license to use any inventions covered by a registered patent owned by Licensee and/or Facility.
 8. **Validation.** Prior to FPU, Licensee and Facility are responsible for validation of the Software in Licensee's and Facility's technological environment according to their policies and procedures. In the event that Licensee or Facility achieves FPU without first having validated the Software, the Software will automatically be deemed accepted by Licensee.
 9. **Term and Termination.** This Agreement shall be effective as of the Effective Date and shall continue in effect unless terminated earlier as provided within this Agreement ("Term").
 - a. **Termination.**
 - i. Licensee may terminate this Agreement by providing TELCOR ninety (90) days' prior written notice.
 - ii. The license granted under this Agreement shall terminate upon Licensee or Facility's material breach of this Agreement, provided such breach has not been cured within thirty (30) days after receiving notice thereof.



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- iii. Upon termination of this Agreement and/or the license(s) granted hereunder, Licensee and Facility shall immediately cease using the Software and Documentation, and immediately remove all copies of the Software and Documentation from Licensee's Hardware unless utilizing a Legacy System as defined and outlined below.
 - iv. Within thirty (30) days of termination, Licensee and/or Facility shall return to TELCOR the Software and Documentation, as well as any copies thereof, currently in Licensee's and/or Facility's possession and/or certify destruction and/or permanent deletion unless utilizing a Legacy System as defined and outlined below.
 - v. **Transition Assistance.** Following the termination of this Agreement for any reason, except for material breach by Licensee or Facility, and upon Licensee's request, TELCOR shall allow Licensee to retain a legacy version of the Software (QML base only) ("Legacy Software") and use commercially reasonable efforts to provide transition assistance to Licensee, until notified in writing by Licensee that an alternative provider of services is able to take over the provision of service. TELCOR's provision of Support Services specific to the Legacy Software shall be contingent upon Licensee's payment of the corresponding Legacy Software support Fees, and the duration of such services shall not exceed two (2) years. TELCOR will bill any transition services provided that differ from the Support Services described in this Agreement and Attachment C at TELCOR's then-current non-warranty support rate.
 - vi. Notwithstanding anything to the contrary herein, TELCOR will retain all rights in the Software and Documentation subsequent to any termination of this Agreement.
 - vii. TELCOR shall have the right to terminate this Agreement: (i) upon the institution of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlements of debts of Licensee; (ii) upon making a general assignment for the benefit of creditors by Licensee; or (iii) upon the dissolution of Licensee.
10. **Fees and Payment.** As a condition to the license granted hereunder, Licensee agrees to pay TELCOR, upon invoice, all Fees described on the applicable Quotation.
- a. All Fees are in U.S. Dollars and all payments must be remitted in U.S. Dollars.
 - b. Unless stated otherwise in this Agreement or the Attachments, payment obligations are non-cancelable and all amounts paid to TELCOR are non-refundable.
 - c. Licensee agrees that all future invoices and Quotations will be subject to the terms of this Agreement, unless explicitly stated otherwise on the invoice or Quotation.
 - d. This Section 10 will not apply to purchases of Software and/or Support Services through an authorized third-party.
 - e. **Invoice Disputes.** Licensee must assert any payment dispute in writing by email, with delivery receipt tracking applied, to TELCOR's accounting department at accounting2@telcor.com or to Licensee's TELCOR account representative within fifteen (15) days after the due date of the invoice that has given rise to such dispute.
 - i. TELCOR shall not exercise its rights in Section 10(f) below if Licensee disputes the applicable Fees reasonably and in good faith and provides reasonable cooperation to resolve such dispute.
 - f. **Effect of Nonpayment.** If Licensee fails to pay any undisputed invoice(s) when due, TELCOR shall consider such nonpayment a material breach of this Agreement and TELCOR in its sole discretion may immediately: (i) withhold Support Services until such Fees are paid in full; (ii) terminate the Agreement pursuant to Section 9(a)(ii); and/or (iii) if Licensee has not paid 100% of the license or Subscription Fee(s), terminate Licensee's and Facility's use of the Software as provided herein.
11. **Taxes.** Licensee is responsible for any applicable taxes, including without limitation, any sales, use, levies, duties, or any value added or similar taxes payable, interest and/or penalties assessed by any taxing authority for any services performed or products delivered under the terms of this Agreement.
- a. Licensee agrees to indemnify TELCOR for all taxes described herein, including without limitation those which may subsequently become due as a result of any:



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- i. Tax law changes;
 - ii. Changes in interpretation of existing tax law;
 - iii. Actions taken by either Party resulting in TELCOR having nexus to a particular taxing jurisdiction so as to require TELCOR to collect taxes in that jurisdiction; or
 - iv. Tax audits other than any taxes imposed on the net income of TELCOR.
 - b. Licensee shall provide to TELCOR an appropriate tax exemption certificate or other evidence certifying tax-exempt status, where appropriate.
 - c. All TELCOR Software will be provided electronically via FTP services. If FTP services are not available, the Software may be placed on a CD for shipment, which may expose Licensee to state and local sales/use taxes, which TELCOR may be required to collect.
 - d. Licensee and its authorized Facility(ies) agree and understand that, for purposes of this Section 11, the applicability of any taxes, levies, or duties, including, without limitation, any sales, use, or any value added or similar taxes payable, are to be determined based upon the Licensee's address identified as the principal place of business in this Agreement.
 - e. For purposes of this Section 11, Licensee is the sole entity granted with the license for the Software. Further, for purposes of this Section 11, any reference to "Facility", "facility", "Location", "location", "Entity" or "entity" does not indicate a separate or distinct use, instance or operation of the Software.
 - f. Licensee agrees that the amounts provided on the Quotation generally do not include sales, use or other applicable taxes.
12. **Warranties.** TELCOR warrants that each item of Software is free from material defects in design, materials and workmanship until FPU or ninety (90) days from Software Load, whichever is sooner.
- a. This warranty will be extended for so long as Licensee maintains a fully-paid Software Support Agreement.
 - b. TELCOR will use commercially reasonable efforts to either fix any problem or return the corresponding Fees (as set forth in the Quotation) at TELCOR's option.
 - i. This is Licensee's only remedy for any breach of warranty.
 - c. **EXCEPT AS SPECIFICALLY PROVIDED HEREIN, TELCOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE LICENSED SOFTWARE.**
13. **Licensee's Warranties.** Licensee represents and warrants that the information that Licensee and its Facility(ies) provide in connection with the Agreement, including billing information and purchase orders, is current, accurate and complete.
14. **Mutual Warranties.** Each Party represents and warrants that it is not on the United States Department of Treasury or the Office of Foreign Asset Control's list of Specially Designated National and Blocked Persons.
15. **Indemnification. LICENSEE AND FACILITY AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS TELCOR AGAINST ANY CLAIM, DEMAND, LOSS OR ACTION RESULTING FROM ITS UNAUTHORIZED USE OF THE SOFTWARE. TELCOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS LICENSEE AND FACILITY FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, JUDGMENTS, DAMAGES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES), FINES, LIENS, LIABILITIES OR LOSSES ARISING FROM TELCOR'S NEGLIGENT ACTS OR OMISSIONS UNDER THIS AGREEMENT.**
16. **Limitation of Liability. IN NO EVENT SHALL TELCOR BE LIABLE TO LICENSEE, FACILITY OR ANY THIRD-PARTY FOR LOSS OF PROFITS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. TELCOR'S TOTAL LIABILITY FOR ANY CAUSE ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY LICENSEE DURING THE PRECEDING TWELVE (12) MONTHS.**
17. **Dispute Resolution.** Except for a material breach by nonpayment and disputes over invoicing and/or payment, for all disputes of every kind and nature arising out of or in connection with this Agreement, (including without limitation, the negotiation, existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination thereof),



MASTER AGREEMENT

the Parties to this Agreement shall each use reasonable good-faith efforts to settle the dispute prior to resorting to commencing a proceeding in respect of such dispute. The disputing Party must provide written notice of the dispute to the other Party. Notwithstanding the foregoing, if the dispute is not resolved within thirty (30) business days from the date of receipt of the written notice, any Party may, following delivery of written notice to the other Party, commence an action in respect of such dispute.

18. **Governing Law.** Intentionally omitted.
19. **Assignment.** This Agreement will not be assigned in whole or in part, whether by acquisition, merger, asset sale, change of control or operation of law, without the prior written consent of TELCOR. TELCOR may assign this Agreement, without Licensee's prior consent but with written notice to Licensee, to any entity that controls, is controlled by or is under common control with TELCOR.
20. **Confidentiality.** Each Party, including but not limited to its Employees, agrees not to use or disclose the other Party's Confidential Information except as may be provided for herein or as required by law. Each Party shall take commercially reasonable measures to protect the Confidential Information of the other Party, and shall take at least those measures used to protect its own Confidential Information, but in no event less than a standard of reasonable care, in order to protect any of the other Party's Confidential Information that may be provided hereunder. Neither of the Parties shall be liable to the other for any disclosure of the other's Confidential Information, provided the disclosing Party exercised the same degree of care that a reasonable person would take to preserve or safeguard their own Confidential Information. Further, neither Party shall be liable to the other if the Confidential Information: (i) is or becomes publicly available other than as a result of disclosure by the receiving Party, its Employees or representatives; or (ii) becomes available to the receiving Party on a non-confidential basis from a third-party that is not bound by a similar duty of confidentiality. Notwithstanding any other contrary terms in this Agreement, the terms of this Section 20 shall survive termination of the Agreement. TELCOR is aware that Licensee 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 for Licensee to comply with that legal obligation.
21. **Notices.** Any communication provided or permitted hereunder shall be in writing and shall be deemed duly given or made if delivered in person or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the Party for which it is intended at its address below. Electronic mail with delivery receipt tracking applied will also satisfy these notice requirements.

If to TELCOR:	TELCOR Inc
	Attn: Contracts
	7101 A Street
	Lincoln, NE 68510
	contracts@telcor.com

If to Licensee:	Kern County Hospital Authority
	Attn:
	1700 Mount Vernon Avenue
	Bakersfield, CA 93306
	Email:

22. **Entire Agreement.** This Agreement, including the GTCs and Attachments, constitutes the entire agreement between the Parties relating to the subject matter herein and supersedes any and all other documents, agreements, correspondence or oral statements. This Agreement may only be modified by the mutual written agreement of the Parties. Any additional, different or conflicting terms appearing on any of Licensee's and/or Facility's purchase orders or payment agreement and/or on a purchase order or



MASTER AGREEMENT

payment agreement on behalf of Licensee or any other document shall be set aside and given no effect, and shall not become part of this Agreement.

23. **Waiver.** A failure or delay on the part of TELCOR or Licensee in exercising its rights hereunder shall not operate as a waiver of such rights, nor shall a single or partial exercise preclude any further exercise of any right, power or privilege by either Party.
24. **Survival.** The following sections shall survive termination of this agreement for any reason: 1, 2, 6, 7, 9 a, iii.-vi., 10, 11, 15, 16, 17, 18, 20, 23, 24, 29. Unless specified otherwise, section numbers include all subparts of that section.
25. **Third-Party Beneficiaries.** Nothing in this Agreement is intended to nor shall it confer any rights on any other persons except the Parties herein and their respective successors and assigns.
26. **Government Customers.** The Software is provided to the federal government and its agencies with RESTRICTED RIGHTS. THE USE, DUPLICATION, OR DISCLOSURE BY THE GOVERNMENT IS SUBJECT TO THE RESTRICTIONS SET FORTH IN SUBPARAGRAPH (c)(1)(ii) OF THE RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE CLAUSE AT DFAAS252.227-7013 OR SUBPARAGRAPHS (c)(1) or (2) OF THE **COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS AT 48 CFR 52.227-19 AS APPLICABLE.**
27. **Compliance with Laws.** The parties shall remain in compliance with all applicable federal laws, and those applicable state and local laws and regulations.
28. **Marks.** All trademarks, service marks, trade names, trade dress, product names and logos appearing in this Agreement are the property of their respective owners.
29. **Relationship of the Parties.** Nothing herein shall create a relationship in agency, partnership or joint venture, and the Parties shall each be independent contractors in the performance of their obligations under this Agreement.
30. **Force Majeure.** Neither Party shall be deemed in default of this Agreement and shall be excused from liability for any failure to perform or delay in performance if said failure or delay is due to causes beyond said Party's reasonable control, including, without limitation, strike, fire, explosion, act of God, riot, war, pandemic, government regulation, major accident, national and/or state emergency, or any other event or circumstances not within the reasonable control of the party affected, whether similar or dissimilar to any of the foregoing. The impacted Party shall promptly notify the other Party that it is prevented from performing its obligations by reason of Force Majeure and shall exercise due diligence to end its inability to perform as promptly as practicable.
31. **Counterparts.** The Parties may execute this Agreement in counterparts, each of which is deemed an original, but all of which together constitute one and the same agreement. The Parties may execute these counterparts and all other supplementary documents physically, by fax or by other electronic signature. A copy of this Agreement bearing an original signature and delivered by physical mail or by electronic mail in PDF format shall be deemed as an original for purposes of evidencing execution of this Agreement.

(signature page to follow)



MASTER AGREEMENT

IN WITNESS WHEREOF, and intending to be legally bound, the duly authorized representatives of the Parties hereto execute this Agreement on the dates indicated:

TELCOR Inc

Kern County Hospital Authority

DocuSigned by:
Jim Terrano
(Signature)

(Signature)

Jim Terrano
(Printed Name)

Russell E. Bigler
(Printed Name)

President & CEO
(Title)

Chairman, Board of Governors
(Title)

3/24/2023
(Date)

(Date)

ATTACHMENTS

- A. [retired]
- B. Quotation
- C. Software Support Agreement

REVIEWED ONLY
NOT APPROVED AS TO FORM

By 
Legal Services Department



www.telcor.com | 7101 A St, Lincoln, NE 68510 | Phone: 402 489-1207 | Fax: 402 489-1313

POC Quotation – Attachment B

Quotation # P22-10174-D7W2, Rev: 1

To: George Vazquez
Kern Medical Center

Prepared by: Jody Marshall, jody.marshall@telcor.com

Reviewed by: BC/CK

Quotation Date: 1/31/2023

Quotation Expiration: 6/26/2023

Licensee: Kern County Hospital Authority

Licensee Address: 1700 Mount Vernon Ave, Bakersfield, CA 93306

Submit Purchase Order(s) Totaling: **\$75,572**

Regional QML:

Line Item Details – Section Summaries and Legends Below

Section	Item	Device Type	Facility	Comment	List	Qty	Adj	Amount
License	Q213.2SP: QML Test System, Sybase (Medium)		Kern Medical Center		\$9,894	1.00	(\$3,958)	\$5,936
License	Q611.2SP: QML Base, Sybase (Medium)		Kern Medical Center		\$9,894	1.00	(\$3,958)	\$5,936
License	Q238.2SP: Interface, Result HL7, Unsolicited		Kern Medical Center	Cerner	\$9,330	1.00	(\$3,732)	\$5,598
License	Q202.2SP: Interface, ADT HL7		Kern Medical Center	Cerner	\$9,330	1.00	(\$3,732)	\$5,598
License	Q602.2L: Limited Use/Quantity Device Type (Medium)	CLINITEK Connect	Kern Medical Center		\$13,359	1.00	(\$5,344)	\$8,015
License	Q802.0: Device Type/Product (Ambulatory/LTAC/LTC)	CLINITEK Connect	Kern Ambulatory	**	\$3,673	1.00	(\$3,673)	\$0
License	Q602.2SP: Device Type/Product (Medium)	NovaNet StatStrip Glucose	Kern Medical Center		\$13,359	1.00	(\$5,344)	\$8,015
License	Q802.0: Device Type/Product (Ambulatory/LTAC/LTC)	NovaNet StatStrip Glucose	Kern Ambulatory	**	\$3,673	1.00	(\$3,673)	\$0
License	Q602.2SP: Device Type/Product (Medium)	RAPIDPoint	Kern Medical Center	adjustment represents 1 production device and 1 backup	\$13,359	1.00	(\$8,416)	\$4,943
License	Q602.2L: Limited Use/Quantity Device Type (Medium)	Sig Elite	Kern Medical Center		\$13,359	1.00	(\$5,344)	\$8,015
Support	QS213.2: QML Test System, Sybase (Medium)		Kern Medical Center		\$1,780	1.00	(0)	\$1,780
Support	QS611.2: QML Base, Sybase (Medium)		Kern Medical Center		\$1,780	1.00	(0)	\$1,780
Support	QS238.2: Interface, Result HL7, Unsolicited		Kern Medical Center		\$1,679	1.00	(0)	\$1,679
Support	QS202.2: Interface, ADT HL7		Kern Medical Center		\$1,679	1.00	(0)	\$1,679
Support	QS602.2: Device Type/Product (Medium)	CLINITEK Connect	Kern Medical Center		\$2,404	1.00	(0)	\$2,404
Support	QS802.0: Subscription Device Type/Prod. (Ambulatory)	CLINITEK Connect	Kern Ambulatory		\$471	2.00	(0)	\$942
Support	QS602.2: Device Type/Product (Medium)	NovaNet StatStrip Glucose	Kern Medical Center		\$2,404	1.00	(0)	\$2,404
Support	QS802.0: Subscription Device Type/Prod. (Ambulatory)	NovaNet StatStrip Glucose	Kern Ambulatory		\$471	2.00	(0)	\$942
Support	QS602.2: Device Type/Product (Medium)	RAPIDPoint	Kern Medical Center		\$2,404	1.00	(0)	\$2,404
Support	QS602.2: Device Type/Product (Medium)	Sig Elite	Kern Medical Center		\$2,404	1.00	(0)	\$2,404
ThirdM	Q341.1: Sybase SQL Anywhere License per CPU - Test		Kern Medical Center		\$1,200	1.00	(0)	\$1,200
ThirdM	Q358.1: Sybase SQL Anywhere FIPS Encryption License - Test		Kern Medical Center		\$1,000	1.00	(0)	\$1,000

This quotation is strictly confidential. Neither its terms nor process shall be shared with any individual or entity not employed by Licensee. TELCOR is aware that Licensee 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.



POC Quotation – Attachment B

www.telcor.com | 7101 A St, Lincoln, NE 68510 | Phone: 402 489-1207 | Fax: 402 489-1313

Quotation # P22-10174-D7W2, Rev: 1

Line Item Details – Section Summaries and Legends Below

Section	Item	Device Type	Facility	Comment	List	Qty	Adj	Amount
ThirdM	Q341.2: Sybase SQL Anywhere License per CPU - Prod		Kern Medical Center		\$1,200	1.00	()	\$1,200
ThirdM	Q358.2: Sybase SQL Anywhere FIPS Encryption License - Prod		Kern Medical Center		\$1,000	1.00	()	\$1,000
ThirdM	Q340: Lantronix UDS2100 & null modem cable	RAPIDPoint	Kern Medical Center		\$349	2.00	()	\$698

License Section Summary – TELCOR Software Products & Services (Remote Implementation)

License Adjustment: **(\$47,174)**

License Subtotal: \$52,056

Adjustments represent Nova agreement pricing

** Adjustment represents device type previously licensed at an inpatient or ambulatory location

Customer is responsible for acquiring the NovaNet device manager directly from Nova Biomedical to connect the Nova devices.

Misc Section Summary – Miscellaneous Customer-Requested TELCOR Professional Services

Misc Subtotal: \$0

Support Section Summary – TELCOR Software Support & Subscriptions, recurring annually unless otherwise noted

Support Subtotal: \$18,418

ThirdA Section Summary – Third-Party Annual Sublicense, Maintenance & Support, recurring annually

ThirdA Subtotal: \$0

ThirdM Section Summary – Third-Party Miscellaneous Software, Equipment & Accessories

ThirdM Subtotal: \$5,098

Quotation Total

Total All Sections: \$75,572

Submit Purchase Order(s) Totaling: **\$75,572**Invoicing Milestones – TELCOR will generate an invoice for each defined Milestone, unless otherwise negotiated in the Terms & Conditions. All invoices are **due as stated** in the Terms & Conditions.Please notify TELCOR Accounting (accounting2@telcor.com) if your organization is unable to process invoices based on these milestones.

SECTION	MILESTONE	DESCRIPTION
License	Placement of Order ("Order")	50% of the License Subtotal reflected in the License Section Summary is invoiced at Order.
	First Productive Use ("FPU")	The remaining 50% of <u>each</u> License section item is invoiced as <u>each</u> item reaches FPU, the timing of which may vary. If FPU is <u>not</u> reached within twelve (12) months of Order, the balance may be invoiced. If any item on this Quotation fails to achieve FPU within twenty-four (24) months of Order, TELCOR will consider that item abandoned and will consequently cancel that portion of the Order. In the event of such cancellation by TELCOR, all fees already paid by Licensee for that item will be non-refundable. To move forward, the item must be repurchased at the then-current price.
Misc	Completion	Fees for each Misc section item are invoiced as the services are completed, unless otherwise indicated in the Item description.
Support	FPU	Fees for each Support section item are invoiced as the <u>first</u> of <u>each</u> line item reaches FPU. Fees may be prorated to maintain a single annual term. Notwithstanding anything to the contrary herein, or in the Agreements, the Software included in this proposal is being provided for Licensee's use for so long as the payments remain current. Nonpayment of the fees will result in revocation of use.
ThirdA	Shipment	Fees for ThirdA section maintenance items are invoiced at shipment, then annually thereafter. Fees may be prorated to maintain a single annual term.
	FPU	Fees for ThirdA section software items are invoiced at FPU, then annually thereafter. Fees may be prorated to maintain a single annual term.
ThirdM	Shipment	Fees for ThirdM section connectivity equipment and accessories are invoiced at shipment.

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POC Quotation – Attachment B

www.telcor.com | 7101 A St, Lincoln, NE 68510 | Phone: 402 489-1207 | Fax: 402 489-1313

Quotation # P22-10174-D7W2, Rev: 1

Invoicing Milestones – TELCOR will generate an invoice for each defined Milestone, unless otherwise negotiated in the Terms & Conditions. All invoices are due as stated in the Terms & Conditions.

Remote Installation Fees for specific ThirdM section software (i.e., Sybase, Terminal Emulation and Terminal Services Client Access Licenses) are invoiced at remote installation.

Order Processing

TELCOR will contact you within two (2) weeks from receipt of the completed Order to begin working with you to coordinate your specific prerequisites. We will assign an implementation project analyst for your project once all of the prerequisites are complete.

Terms & Conditions

1. All quoted prices and payments are required to be in US Dollars. Licensee is responsible for any sales and/or use tax, interest and penalties.
2. **ALL AMOUNTS PAID TO TELCOR ARE NON-REFUNDABLE AND NON-TRANSFERABLE.**
3. Licensee is responsible for providing hardware and resources that meet the published Configuration Requirements.
4. "Placement of Order" shall mean TELCOR's receipt of the following:
 - a. PO or payment agreement for the items listed in this Quotation.
 - b. Fully executed agreements covering the licensing and provision of support for the TELCOR Software, if such agreements are not already on file.
 - c. Sales tax exemption certificate or other evidence certifying sales tax-exempt status, where applicable.
5. "First Productive Use" shall mean the date on which Licensee's live data is first processed through the Software. Prior to FPU, Licensee is responsible for validation of Software in their environment according to their policies and procedures. In the event Licensee achieves FPU without first having validated the Software, the Software will be deemed accepted.
6. Subscriptions may be purchased for the usage period stated and will be prorated for the portion of applicable underlying current term associated with the Software Support Agreement. Further, Subscriptions will automatically renew for a usage period of one (1) year thereafter, or as otherwise mutually agreed to by the parties, unless canceled.
7. Unless otherwise agreed in the agreement(s) between TELCOR and Licensee, invoices are due within thirty (30) days of receipt. Invoices unpaid for greater than thirty (30) days, except those which are reasonably contested, will be charged eighteen percent (18%) per annum, not to exceed the highest rate allowed by law. Licensee shall be responsible for all cost of collection of unpaid invoices, including TELCOR's attorneys' fees.
8. Terms appearing on any of Licensee's purchase orders, or any other document, that are found to be additional, different, or conflicting with the terms of the license and support agreements executed by the parties hereto or this Quotation (collectively, the "Agreements") shall be set aside and given no effect, and shall not become part of the Agreement. Issuance of any purchase order, payment or acceptance pursuant to this Quotation shall constitute Licensee's agreement to all terms contained within the Agreements.

All trademarks, service marks, trade names, trade dress, product names and logos appearing in this document are the property of their respective owners.

TELCOR Inc retains all right, title, interest, ownership, and intellectual property rights in all Line Items listed herein, unless otherwise owned by a Third-Party for which TELCOR has provided such Line Items to Licensee strictly for Licensee's use in conjunction with TELCOR products.

This quotation is strictly confidential. Neither its terms nor process shall be shared with any individual or entity not employed by Licensee. TELCOR is aware that Licensee 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.



TELCOR Inc Software Support Agreement
Master Agreement: Attachment C

This Software Support Agreement ("Support Agreement"), Attachment C to the Master Agreement ("Master"), sets forth the provisions by which TELCOR will provide maintenance and Support Services to Licensee and authorized Facility(ies).

1. **Definitions.** Capitalized terms not otherwise defined in this Support Agreement shall have the same meanings given to such terms in the Master.
2. **Generally.** TELCOR will use commercially reasonable efforts to provide the Support Services (listed below), contingent upon Licensee, (i) remaining current on all Fees as set forth on the applicable Quotation or invoice for a subsequent term of the Support Agreement, and (ii) granting TELCOR reliable, active, and ongoing remote access to Licensee's Hardware. All Support Services described herein shall be provided remotely by TELCOR, subject to Licensee's reasonable requirements, as mutually agreed upon by the Parties, for access to Licensee's Hardware. The Parties agree that Licensee will reimburse TELCOR for any expenses incurred by TELCOR in order to comply with such requirements for access to Licensee's Hardware that fall outside of TELCOR's standard processes, as determined solely by TELCOR.
3. **Support Services.**
 - a. New version releases, maintenance, documentation and installation (collectively, "Updates")
 - b. First-level support of third-party components, Abbott DE and Sybase/SAP
 - c. 4-hour response time
 - d. Except as otherwise specified, unlimited, 24x7 access to customer support for Software questions and issues
4. **Non-Warranty Support Services.** All non-warranty support services will be provided at TELCOR's then-current rate, which will require a purchase order or written payment agreement for the Fees under which the work will be performed. Non-warranty support services include but are not limited to:
 - a. Interface changes required by Licensee or interfaced vendor product(s) regardless of the cause
 - b. Hardware malfunctions and upgrades not caused by TELCOR
 - c. Custom programming changes
 - d. Post-implementation re-training classes
 - e. Any services requested by Licensee and/or Facility to be performed outside of TELCOR's normal business hours (7:00 a.m. to 7:00 p.m. (CST)) are subject to a one-time charge at TELCOR's then-current rate
 - f. Any actions taken by TELCOR to remedy Licensee's failure to perform its responsibilities as set forth herein
5. **Licensee Responsibilities.** The following terms and conditions shall be in addition to those contained within the Master:
 - a. Perform preliminary diagnosis to troubleshoot and resolve problems caused by the operating system, network, hardware failures, user error or any third-party software and/or Hardware not provided by TELCOR.
 - b. Maintain the Hardware housing the Software according to the manufacturer's specifications.
 - c. Operate the Software on Hardware equivalent to the Configuration Requirements provided by TELCOR.
 - d. Apply all necessary Microsoft® patches in a timely manner. Should such patches adversely affect the Software, TELCOR will work with Licensee to respond to and resolve the situation.
 - e. Implement and maintain the backup solution as outlined in the Configuration Requirements provided by TELCOR.
 - f. TELCOR reserves the right to charge a reasonable re-start fee if Licensee has materially delayed the implementation process described in the Implementation Task Plan.
 - g. Once installed by TELCOR on Licensee's Hardware for the test instance of the Software, accept new releases of the Software to a live environment within one hundred eighty (180) days from completion of such installation.



TELCOR Inc Software Support Agreement
Master Agreement: Attachment C

- i. In the event that Licensee fails to install such new releases to the live environment for the Software within the timeframe set forth above, TELCOR reserves the right to charge a fee to re-install the Software on Licensee's Hardware housing the test instance.
 - ii. Upon such re-installation, TELCOR will install the most recent version of the Software and will not install outdated versions of the Software.
 - iii. Once the updated Software has been re-installed on Licensee's Hardware for the test instance, the timeframe of one hundred eighty (180) days will begin again.
 - h. Accept and validate all version releases in a timely manner or as recommended by TELCOR.
 - i. Licensee must be on a version less than three (3) years old.
 - ii. TELCOR is under no obligation to fix any Software defects that have been remedied in a released version not installed by Licensee within the periods specified herein.
 - i. Provide remote access to TELCOR pursuant to the Configuration Requirements.
- 6. **Term and Termination.** The term of this Support Agreement is twelve (12) months beginning at FPU or ninety (90) days after Software Load, whichever is sooner. The term will automatically renew for additional one (1) year periods unless canceled by either Party in writing at least sixty (60) days prior to the end of the then-current term.
- 7. **Cancellation of Specific Software/Support Services.** Cancellation of one (1) or more item(s) of Software and/or Support Services shall be effective upon notice to TELCOR by Licensee.
- 8. **Fees.** The following terms shall be in addition to those contained within the Master:
 - a. Licensee shall pay the Fees set forth on the applicable Quotation or invoice.
 - b. All Fees will be annualized for the subsequent year of the Support Agreement.
 - c. Once per year TELCOR may increase the Fees by no more than the published Consumer Price Index for All Urban Consumers (CPI-U).
 - d. Support Services provided to Licensee when not under an active, fully paid Support Agreement shall be on a time-and-materials basis at TELCOR's then current rates, provided that Licensee and/or Facility supplies TELCOR with an open purchase order or written payment agreement for such Fees.
- 9. **Inactive Support Agreement.** Updates for the Software are only provided pursuant to an active, fully paid Support Agreement. A Licensee without an active, fully paid Support Agreement who requests Support Services, will pay any past-due amounts and may also be required to pay a re-implementation fee prior to TELCOR providing any Support Services. Notwithstanding the foregoing, TELCOR is under no obligation to provide Support Services for Software that has not been under an active, fully paid Support Agreement for the prior two (2) years.
- 10. **DISCLAIMER OF WARRANTY. EXCEPT AS SPECIFICALLY PROVIDED ELSEWHERE HEREIN OR THE MASTER, TELCOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MAINTENANCE AND/OR SUPPORT SERVICES.**

(signature page to follow)



TELCOR Inc Software Support Agreement
Master Agreement: Attachment C

IN WITNESS WHEREOF, and intending to be legally bound, the duly authorized representatives of the Parties hereto execute this Support Agreement on the dates indicated:

TELCOR Inc

Kern County Hospital Authority

DocuSigned by:

Jim Terrano

(Signature)

(Signature)

Jim Terrano

(Printed Name)

Russell E . Bigler

(Printed Name)

President & CEO

(Title)

Chairman, Board of Governors

(Title)

3/24/2023

(Date)

(Date)

REVIEWED ONLY
NOT APPROVED AS TO FORM

By

[Signature]
Legal Services Department

Certificate Of Completion

Envelope Id: C0CFEE27CB474F24A0E73749C3147348

Status: Completed

Subject: Complete with DocuSign: Kern Medical Contract Package 23 0324.pdf, Kern Medical BAA 23 0324.pdf

Source Envelope:

Document Pages: 19

Signatures: 3

Envelope Originator:

Certificate Pages: 4

Initials: 0

Dani Taylor

AutoNav: Enabled

7101 A Street

EnvelopeId Stamping: Enabled

Lincoln, NE 68510

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

dani.taylor@telcor.com

IP Address: 76.79.4.194

Record Tracking

Status: Original

Holder: Dani Taylor

Location: DocuSign

3/24/2023 7:14:47 AM

dani.taylor@telcor.com

Signer Events**Signature****Timestamp**

Jim Terrano

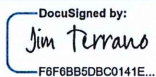
jim.terrano@telcor.com

CEO*

TELCOR Inc

Security Level: Email, Account Authentication
(None)

DocuSigned by:



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Viewed: 3/24/2023 9:09:55 AM

Signed: 3/24/2023 9:10:26 AM

Electronic Record and Signature Disclosure:

Accepted: 10/25/2019 12:15:54 PM

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Envelope Sent

Hashed/Encrypted

3/24/2023 7:26:22 AM

Certified Delivered

Security Checked

3/24/2023 9:09:55 AM

Signing Complete

Security Checked

3/24/2023 9:10:26 AM

Completed

Security Checked

3/24/2023 9:10:26 AM

Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**



BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made effective as of _____ ("Effective Date"), between Kern County Hospital Author ("Covered Entity") and TELCOR Inc ("Business Associate"). Covered Entity and Business Associate shall be collectively referred to herein as the "Parties".

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Security and Privacy Rule; and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement; and

WHEREAS, the Parties are subject to the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (HITECH Act) and regulations promulgated thereunder, and such laws and regulations as may be amended from time to time (collectively, "HIPAA Rules"); and

WHEREAS, the Parties wish to comply in all respects with the requirements of the HIPAA Rules;

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information ("PHI"), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
2. Protected Health Information and Unsecured Protected Health Information as used in this Agreement shall only include that which is provided to Business Associate by Covered Entity to perform the services set forth in the underlying agreement(s) or as Required By Law
3. **Obligations and Activities of Business Associate**
 - a. Business Associate agrees to not Use or Disclose PHI other than as permitted or required by this Agreement or as otherwise Required By Law.
 - b. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR 164 with respect to electronic PHI, to prevent Use or Disclosure of PHI other than as provided for by the Agreement.
 - c. Business Associate agrees that to the extent it is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
 - d. Business Associate agrees to Use, Disclose, and request only the Minimum Necessary PHI to accomplish the intended purpose of such Use, Disclosure, or request.
 - e. 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 Agreement.



BUSINESS ASSOCIATE AGREEMENT

- f. Business Associate agrees to report to Covered Entity any Use or Disclosure of the PHI not provided for by this Agreement of which it becomes aware including Breaches of Unsecured PHI as required by 45 CFR 164.410, and any Security Incident affecting Covered Entity's PHI of which it becomes aware. Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are trivial in nature, such as pings and port scans, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such unsuccessful Security Incidents is required.
 - g. Business Associate agrees that in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same or similar restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
 - h. Business Associate agrees to maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528. Business Associate shall notify the Covered Entity immediately of any request for an accounting of Disclosures directly from an Individual and provide Covered Entity the information necessary to respond to such request.
 - i. Business Associate agrees to make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.
 - j. Business Associate agrees, if applicable, to make available PHI in a Designated Record Set to the Covered Entity within ten (10) days of request via electronic media as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524. If a request for access that the business Associate receives comes directly from the Individual, Business Associate shall notify Covered Entity of the request and provide Covered Entity with the information necessary to respond to such request.
 - k. Business Associate agrees, if applicable, to make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Covered Entity within ten (10) days of the request pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526. Business Associate agrees to forward any Individual's request for amendment to Covered Entity immediately upon receipt of the request.
 - l. Business Associate acknowledges that it must comply with specific sections of the Privacy and Security rules, including the implementation of administrative safeguards, physical safeguards, technical safeguards, organizational requirements and policies and procedures and documentation requirements.
- 4. Obligations of Covered Entity**
- a. Covered Entity shall 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.
 - b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to Use or Disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.



BUSINESS ASSOCIATE AGREEMENT

- c. Covered Entity shall 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.

5. Permitted Uses and Disclosures by Business Associate

- a. Except as otherwise limited in this Agreement, Business Associate may Use or Disclose PHI only as necessary to perform the services set forth in the underlying agreement(s) or as Required By Law. Business Associate may not Use or Disclose PHI in a manner that would violate Subpart E of 45 CFR 164 if done by Covered Entity.

6. Specific Use and Disclosure Provisions

- a. Except as otherwise limited in this Agreement, Business Associate may Use or Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, as Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and Used or further Disclosed only as Required By Law or for the purpose for which it was disclosed, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- b. Business Associate may Use PHI to report violations of law to appropriate Federal and State authorities, consistent with 164.502(j)(1).

7. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of the Effective Date, and shall terminate upon the sooner of termination of the underlying agreement(s), or on the date Covered Entity terminates for cause as set forth in subsection (b) of this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the underlying agreements if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 2. Immediately terminate this Agreement and the underlying agreements if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - 3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- c. Effect of Termination.
 - 1. Except as provided in paragraph (2) of this Section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - 2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions



BUSINESS ASSOCIATE AGREEMENT

that make return or destruction infeasible. Upon determination that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and 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.

8. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule, Security Rule, or HITECH Act means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Parties to comply with the requirements of the HIPAA Rules and any other applicable law.
- c. Survival. The respective rights and obligations of Business Associate under Section 7(c) shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit compliance with the HIPAA Rules.
- e. Third Party Beneficiaries. Nothing in this Agreement is intended to nor shall it confer any rights on any other persons except Covered Entity and Business Associate and their respective successors and assigns.
- f. Notices. Any notices required or permitted to be given hereunder shall be given in writing: (i) by personal delivery; (ii) by United States first class registered or certified mail, postage prepaid, return receipt requested; or (iii) by bonded courier or by a nationally recognized overnight delivery service, in each case, addressed to:

If to Business Associate: TELCOR Inc
7101 A Street
Lincoln, NE 68510
Attn: Compliance Officer
Email: contracts@telcor.com

If to Covered Entity: Kern County Hospital Author
1700 Mount Vernon Avenue
Bakersfield, CA 93306
Attn: Privacy
Email: contracts@kernmedical.com

Or to such other addresses as the Parties may request in writing by notice given pursuant to this Section. Emails with Delivery Receipt requested shall also satisfy these Notice requirements. Notices shall be deemed received on the earliest of personal delivery; electronic confirmation of delivery if by email; 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.



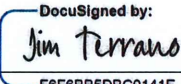
BUSINESS ASSOCIATE AGREEMENT

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

Business Associate: TELCOR Inc

Covered Entity:

Kern County Hospital Authority

By: 
F6F6BB5DBC0141E...

By: _____

Printed Name: Jim Terrano

Printed Name: Russell E. Bigler

Title: President & CEO

Title: Chief Executive Officer

Date: 3/24/2023

Date: _____

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By: 
Legal Services Department

Certificate Of Completion

Envelope Id: C0CFEE27CB474F24A0E73749C3147348

Status: Completed

Subject: Complete with DocuSign: Kern Medical Contract Package 23 0324.pdf, Kern Medical BAA 23 0324.pdf

Source Envelope:

Document Pages: 19

Signatures: 3

Envelope Originator:

Certificate Pages: 4

Initials: 0

Dani Taylor

AutoNav: Enabled

7101 A Street

Envelope Stamping: Enabled

Lincoln, NE 68510

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

dani.taylor@telcor.com

IP Address: 76.79.4.194

Record Tracking

Status: Original

Holder: Dani Taylor

Location: DocuSign

3/24/2023 7:14:47 AM

dani.taylor@telcor.com

Signer Events

Jim Terrano

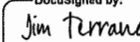
jim.terrano@telcor.com

CEO

TELCOR Inc

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

DocuSigned by:



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Signature Adoption: Pre-selected Style

Using IP Address: 98.191.108.2

Timestamp

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Viewed: 3/24/2023 9:09:55 AM

Signed: 3/24/2023 9:10:26 AM

Electronic Record and Signature Disclosure:

Accepted: 10/25/2019 12:15:54 PM

ID: 742d0611-40b5-4c8a-9620-29c07c134d98

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

Hashed/Encrypted

3/24/2023 7:26:22 AM

Certified Delivered

Security Checked

3/24/2023 9:09:55 AM

Signing Complete

Security Checked

3/24/2023 9:10:26 AM

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Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**



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

April 19, 2023

Subject: Proposed Amendment No. 4 to Master Service Agreement #30718 with JDM Solutions Inc.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

The proposed Amendment No. 4 for continued professional services with JDM Solutions Inc. is required to meet Kern Medical's big data strategy of utilizing an electronic data warehouse to house all of Kern Medical's legacy and core system data into a centralized location to improve historical data access and the integration of core system data. The end result is to provide data marts for end user self-reporting data analytic tools to be used by Kern Medical leaders.

The proposed Amendment provides for continued staffing of consultants who can:

- (1) Manage and maintain the Data Intelligence program that provides leveraging data analytics support and tools which feed a variety of essential 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, a real time data tool; and
- (4) Provide data tools for process improvement through data quality

Previous Agreements	Purpose of Amendment	Variance
Original Agreement, November 21, 2018	MSA with JDM Solutions Inc. to provide consultants to develop the Data Intelligence program at Kern Medical	\$249,500
Amendment No. 1, July 17, 2019	Amendment to provide continued staffing of consultants	\$1,289,600
Amendment No. 2, May 19, 2021	Amendment 2 provided continued staffing of consultants	\$1,361,200
Amendment No. 3, March 15, 2023	Amendment 3 provided continued staffing of consultants	\$334,880
Proposed Amendment No. 4 May 1, 2023	Amendment 4 provides maintain and support the Kern Medical electronic data warehouse.	\$358,200

Therefore, it is recommended that your Board approve the proposed Amendment No. 4 to the Master Service Agreement with JDM Solutions, Inc. for the period May 1, 2023 through April 30, 2024, increasing the maximum payable by \$358,200 from \$3,235,180 to \$3,593,380 for the professional fees and travel expenses, and authorize the Chairman to sign.

**AMENDMENT NO. 4 TO
MASTER SERVICE AGREEMENT**

This Amendment No. 4 to the Master Service Agreement is made and entered into this 19th day of April 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 entered into a Master Services Agreement for professional services dated August 16, 2018 (30718), Amendment No. 1 dated July 17, 2019 (044-2019), Amendment No. 2 dated May 19, 2021 (026-2021) and Amendment No. 3 dated March 15, 2023 (028-2023) for the period stated on the statement of work; and
- b) Client requires application analyst resources to assist with the expertise and gaps in resources as such services are unavailable from Client's resources; and
- c) Provider represents its expertise in providing application analyst resources as outlined in Exhibit B-4; and
- d) The parties agree to amend certain terms and condition of the agreement as hereinafter set forth to provide for the additional services; and
- e) The Agreement is amended effective May 1, 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 A-4 – Provider Rate schedule, effective May 1, 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 B-4 – Work Order, effective May 1, 2023

Exhibit C - Insurance

Exhibit D – Business Associate Agreement”

2. Except as otherwise defined herein, all capitalized terms used in this Amendment No. 4 have the meaning set forth in the Agreement.
3. This Amendment No. 4 shall be governed by and construed in accordance with the laws of the state of California.
4. This Amendment No. 4 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 19th day of April 2023, by:

Kern County Hospital Authority

Printed Name: RUSSELL BIGLER

Title: Chairman, Board of Governors

Jaishree Mclane
JDM Solutions, Inc.

Printed Name: JAISHREE MCLANE

Title: President

APPROVED AS TO CONTENT:
Kern Medical Center

Printed Name: Reynaldo Lopez
Title: Chief Information Officer

APPROVED AS TO FORM:
Legal Services Department

[Signature]
Hospital Counsel
Kern County Hospital Authority

EXHIBIT A-4

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.	Hours/Yr.	FTE
	Data Governance data integrity	20	1040	0.5
	Data Architect	10	520	0.25
	Data and reporting analyst	30	1560	1
	Data self-service reporting & Dashboards developer	40	2080	0.75
	TOTAL	100	5200	2.5
	Fixed Price/yr.		\$343,200.00	
	Travel Expense		15,000.00	
	Total price of contract (1 yrs.)		\$358,200.00	

EXHIBIT B-4

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 #:202102KERN

WORK ORDER SUBMISSION DATE: March 31st, 2023

WORK ORDER EXPECTED START DATE: May 1st, 2023

PLACE OF PERFORMANCE: ONSITE & REMOTE

OBJECTIVE:

- **Summary**
Complete Phase V of the EDW Build
 - Enterprise data stewardship
 - Enterprise dashboards
 - Functional area datasets/universes in EDW
 - Enterprise data catalog
 - Use Master data management
 - Use EDW for OSHPD/HEDIS support
 - Ensure that EDW can be used to pull all are EMR data as needed**(Legacy and Current)**
 - Reduce use of HealtheIntentEDW, Support and move the analytics to Kern EDW.
- **Data infrastructure**
 - Monitor and Maintain data process
 - Add data infrastructure to support self service reporting. To eliminate
 - Bring new sources data into kern-EDW
 - Kern Health system
 - Establish data exchange
 - Improve claim payments
 - Health Net enrollment
 - Incentive programs
 - Omni
 - Establish data exchange
 - Tonic

- Improve data for QIP submission for better reimbursement
 - Cerner Clinical Events/DTA's
 - Process improvement
 - Infection prevention
- Establish Universe for self-service reporting portal
 - Cocci research
 - Process Improvement
 - EMR data needs by HIM
 - Labs/Pathology
 - Pharmacy
 - Infection prevention
 - Nursing support
- Establish phase 4 EDW program
- **Data Governance**
 - Develop data governance processes
 - Maintain low duplication of data
 - Patient, Provider, Employee
 - Correct data for regulatory submission
 - QIP/NHSN/etc.
 - Provide data correction for improvement in data and get better reimbursements
- **Data analytics & self-service reporting**
 - Provide a mechanism to update report value that are currently hard coded reporting which make reports obsolete after a one use
 - Ability to collection data into EDW through mobile device eliminating duplication of data entry
 - Develop Tableau dashboards for each functional area to reduce the need for report requests
 - Support Population health team for data accuracy and measure needs

SCOPE SERVICES:

Outline of the Phases: The details that will be included in each phase

Phase 1 2019 - 2020	Future State Planning	Phase 2 2021	Phase 3 2022	Phase 4 2023-25
Focus Sustain Data Analytics capabilities through fully-enabled Analytics Center of Excellence to progress toward enterprise use of advanced analytics				
Objectives <ul style="list-style-type: none">➤ Reduce the need for new software solutions➤ Overall, have a better long term data solution at a lower cost an➤ Maintain EDW without having additional costs from Cerner➤ Self Service Analytics➤ Develop Self Service reporting and reduce dependency on CCL for reporting and data analytics➤ Kern build measures internally instead depending on Cerner's schedule		Outcomes/Deliverables <ul style="list-style-type: none">➤ Maintain and expand on the following:<ul style="list-style-type: none">➤ Evidence based care data models➤ Statistical and predictive analytic models➤ Enterprise data stewardship➤ Enterprise dashboards➤ Functional area datasets/universes in EDW➤ Enterprise data catalog➤ Use Master data management➤ JIRA Operational reporting➤ Interoperability support➤ Use EDW for OSHPD/HEDIS support➤ HealthIntent, HealthCare, & HealthRegistries Support		

RESOURCES available :

Service	Service Description
Appropriate staff will be brought in as needed to support the objectives. Following resources will be available as needed.	
Data Analytic Resources	<ul style="list-style-type: none">• Samvel Zakaryan• Franco Rodriguez
Data Governance regulatory	<ul style="list-style-type: none">• Jan Acker
Technical Resources	<ul style="list-style-type: none">• Francis Mayo• Samvel Zakaryan• Rachel Chen• Anjali Mamam



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

April 19, 2023

Subject: Proposed recommendation to Kern County Board of Supervisors to appoint Cynthia D. Pollard, a qualified candidate, to the Kern County Hospital Authority Board of Governors to fill the community at large member vacancy created by the resignation of Jacqui Kitchen, term to expire June 30, 2024

Recommended Action: Make Recommendation; Refer to Kern County Board of Supervisors to Make Appointment

Summary:

Kern Medical has received one application from a qualified candidate to fill the community at large member vacancy on your Board created by the resignation of Jacqui Kitchen, effective December 31, 2022. The qualified candidate is:

Cynthia D. Pollard (Cindy) – Ms. Pollard is a resident of Bakersfield. She has extensive community involvement and has been employed with Aera Energy since December 2014. She is a graduate of the University of La Verne and University of Southern California, and holds a Master's degree in Public Administration and Bachelor's degree in English. According to her application, she meets the following specific qualifications to serve on the Board of Governors: 1) Knowledge of human resources in large organizations, and 2) an understanding of budgeting process, revenue cycle, financial reports and basic accounting principles, and 3) experience in advocating for safety net populations including, but not limited to, the pursuit of public funding for the delivery of healthcare services. Her resume and application are attached and she has cleared the required background check.

The hospital authority Bylaws for Governance provides that your Board may make a recommendation to the Board of Supervisors from the pool of qualified candidates to fill the vacancy.

Therefore, it is recommended that your Board recommend that Ms. Pollard be appointed to fill the vacancy, and refer the recommendation to the Kern County Board of Supervisors to make the appointment.



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

April 19, 2023

Subject: Kern County Hospital Authority Chief Financial Officer report – February 2023

Recommended Action: Receive and File

Summary:

Kern Medical Operations:

Kern Medical key performance indicators:

- Operating gain of \$273,283 for February is \$202,096 more than the February budget of \$71,187 and \$49,125 more than the \$224,158 average over the last three months
- EBIDA of \$2,030,109 for February is \$992,502 more than the February budget of \$1,039,608 and \$685,175 more than the \$1,344,934 average over the last three months
- Average Daily Census of 153 for February is 1 more than the February budget of 152 and 14 less than the 167 average over the last three months
- Admissions of 705 for February are 243 less than the February budget of 948 and 87 less than the 792 average over the last three months
- Total Surgeries of 437 for February are 11 less than the February budget of 448 and 18 less than the 455 average over the last three months
- Clinic Visits of 16,624 for February are 2,324 more than the February budget of 14,300 and 1,441 more than the 15,183 average over the last three months. The total includes 48 COVID-19 vaccination visits

The following items have budget variances for the month of February 2023:

Patient Revenue:

Kern Medical operated at 9% under budget for gross patient revenue for the month due to less than average patient billing for the month. In addition, February is a short month and the monthly budget allocation was based on a regular 30-day or 31-day month. On a year-to-date basis there is a small unfavorable budget variance of 3%.

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 AB_915 Outpatient Supplemental Funding Program. Kern Medical will recognize 100% of total projected revenue for the Medi-Cal waiver programs including the Global Payment Program (GPP), CalAIM, the Enhanced Payment Program (EPP), and the Quality Incentive Program (QIP).

Other Operating Revenue:

Other operating revenue has a favorable budget variance for February due to the receipt of more than the average monthly dollar amount of medical postgraduate education funds. On a year-to-date basis, revenue for items such as medical education funding, grants, and Proposition 56 are received 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. Kern Medical plans to continue its need for registry services as appropriate to staff for patient needs.

Medical Fees:

Medical fees are over budget for the month and on a year-to-date basis because of an increase in coverage for trauma 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 to qualify patients for Medi-Cal coverage. However, 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 under budget for the month due to a change in the treatment of accounting for leases. GASB 87 was implemented in 2022 and requires leases to be set up as assets at fair market value and amortized over time. Corresponding right-of-use liabilities are also set up for leases with applicable interest expense accrued. A year-to-date true-up entry was posted in February to account for GASB 87. The net effect of the implementation of GASB 87 is minimal. The decrease in lease expense under the other expenses section of the income statement is offset by increases in amortization expense and in interest expense. On a year-to-date basis, the unfavorable budget variance is primarily because of clinic lease expense, higher than average costs for repairs and maintenance, and for utilities.

Interest Expense:

Interest expense is over budget for the month because of the implementation GASB 87. Please see the other expenses section of this memo for an explanation of how leases are accounted for under GASB 87 and how it may affect interest expense. On a year-to-date basis, in addition to GASB 87 interest expense is over budget due to higher than anticipated certificate of participation (COP) bond interest.

Depreciation and Amortization Expense:

Depreciation and amortization expenses are over budget for the month and on a year-to-date basis because of the implementation of GASB 87. Please see the other expenses section of this memo for an explanation of how leases are accounted for under GASB 87 and how it may affect amortization expense.

Balance Sheet: Long-Term Liabilities

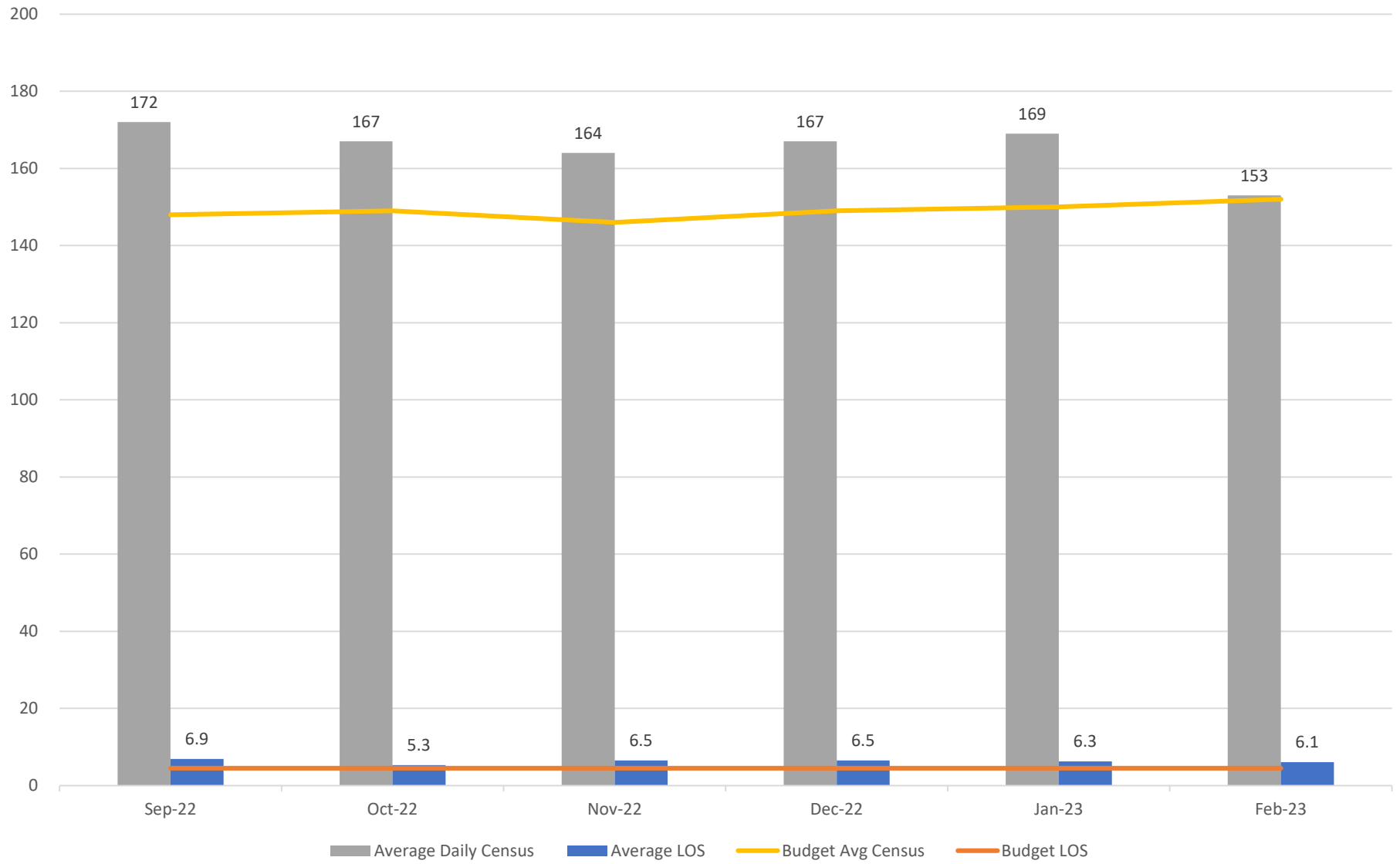
Kern Medical's FY 2022 financial audit was completed in February 2023 and the FY 2022 reporting period was closed. The resulting adjustments for long-term liabilities made after fiscal year-ended June 30, 2022 are now reflected in the monthly balance sheet reporting for FY 2023. Among the entries is a \$96.9 million favorable accounting adjustment for the unfunded pension obligation. The adjustment is supported by the year-end actuarial report received from KCERA that was based on market conditions at the time the report was compiled. This adjustment also has a favorable effect on retained earnings and the total fund balance. This accounting adjustment does not alter financial profitability or cash position.

In addition to the favorable change for the unfunded pension liability, other-long term liabilities reported for February 2023 total \$130,099,694, up from the prior year amount of \$64,286,919. The unfavorable change is due in large part to a \$49.1 million unfavorable increase in deferred inflows from the pension. This adjustment for deferred inflows is also supported by the KCERA actuarial report previously referenced. In addition, a separate actuarial report from Segal supports a \$5.6 million unfavorable adjustment for the other post-employment benefits (OPEB) liability. A \$5.2 million long-term liability was also added as part of the implementation of the new GASB 87 accounting treatment for leases. Please see the other expenses section of this memo for details about the implementation of GASB 87.

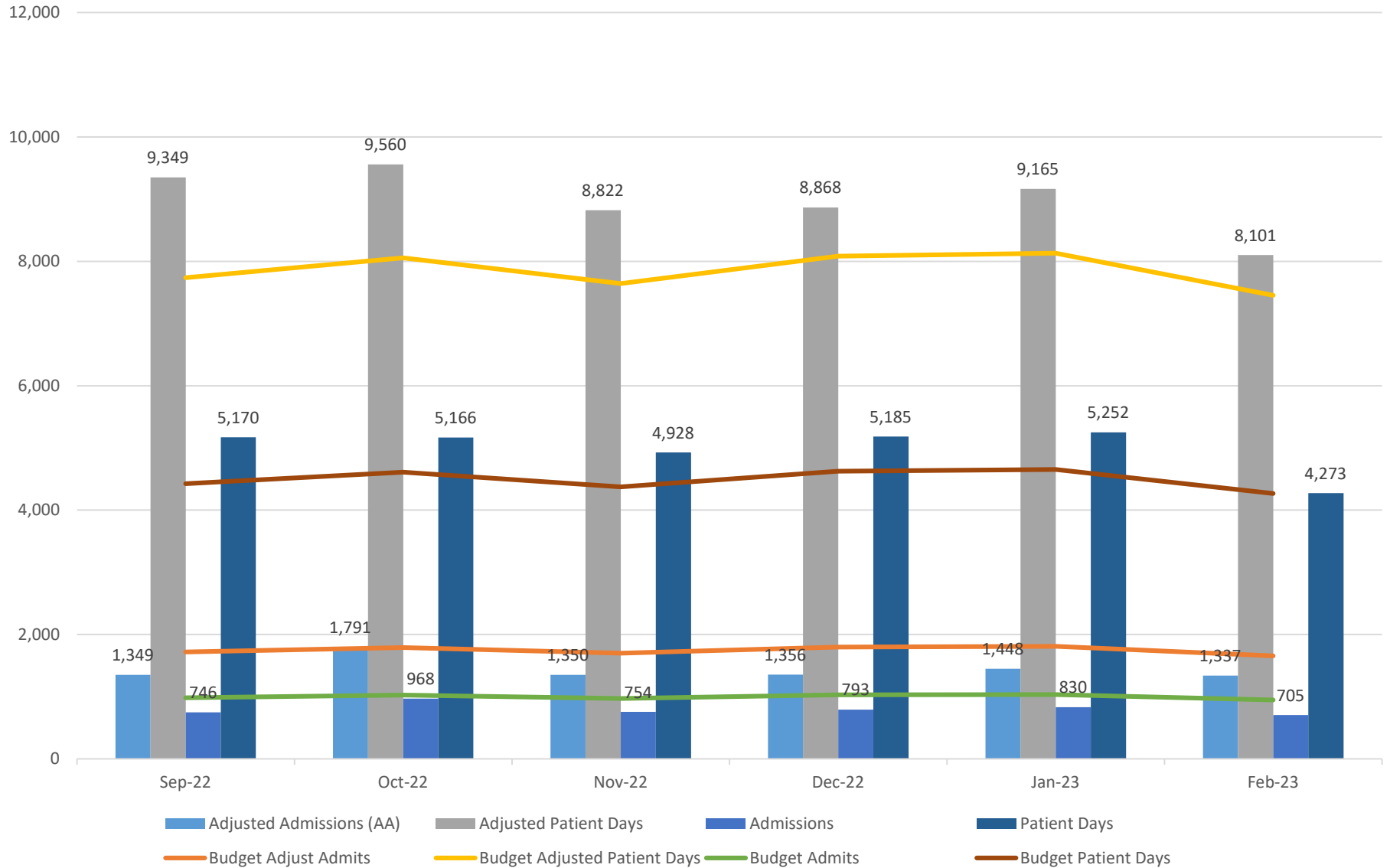


**BOARD OF GOVERNORS' REPORT
KERN MEDICAL – FEBRUARY 2023**

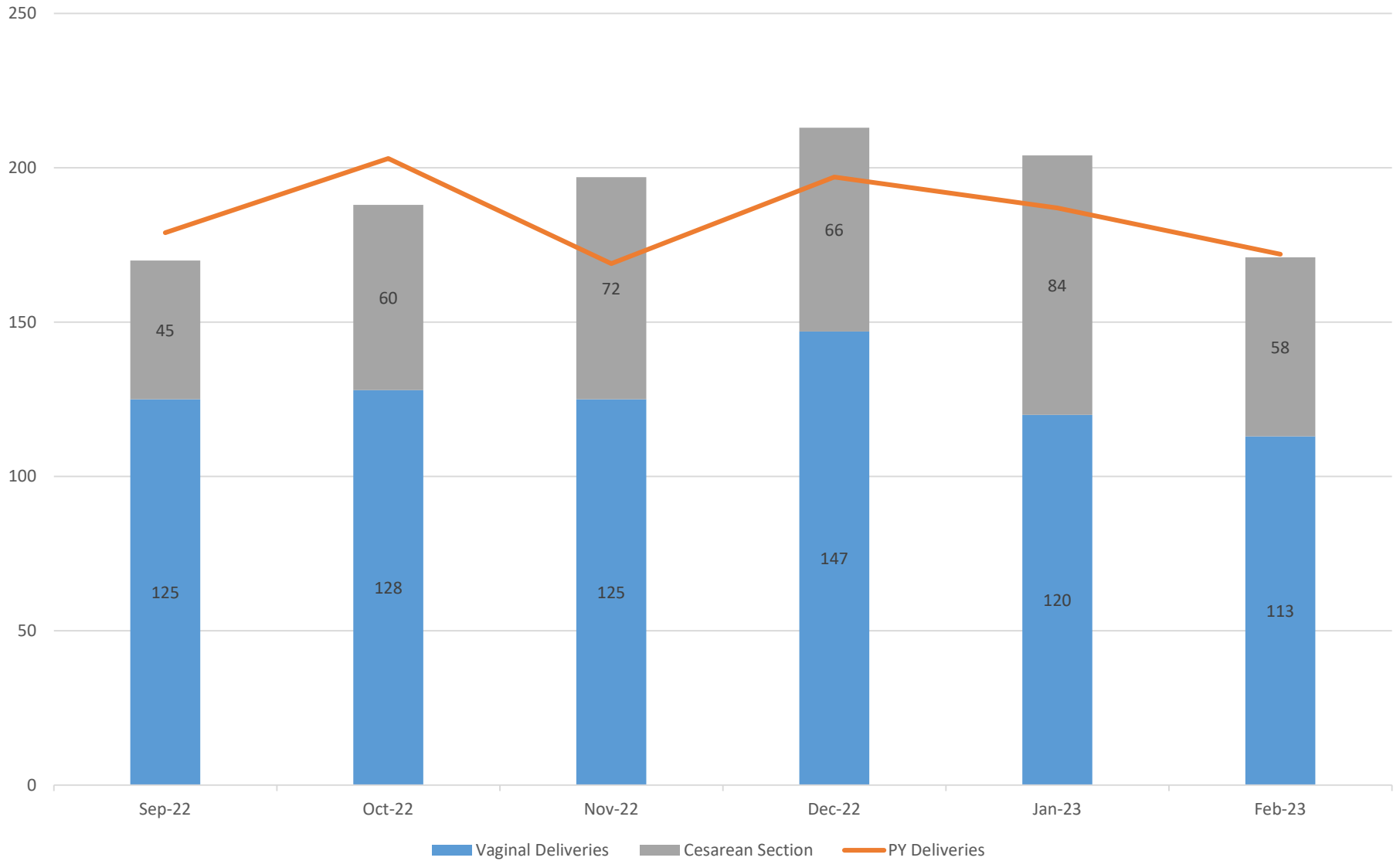
Census & ALOS



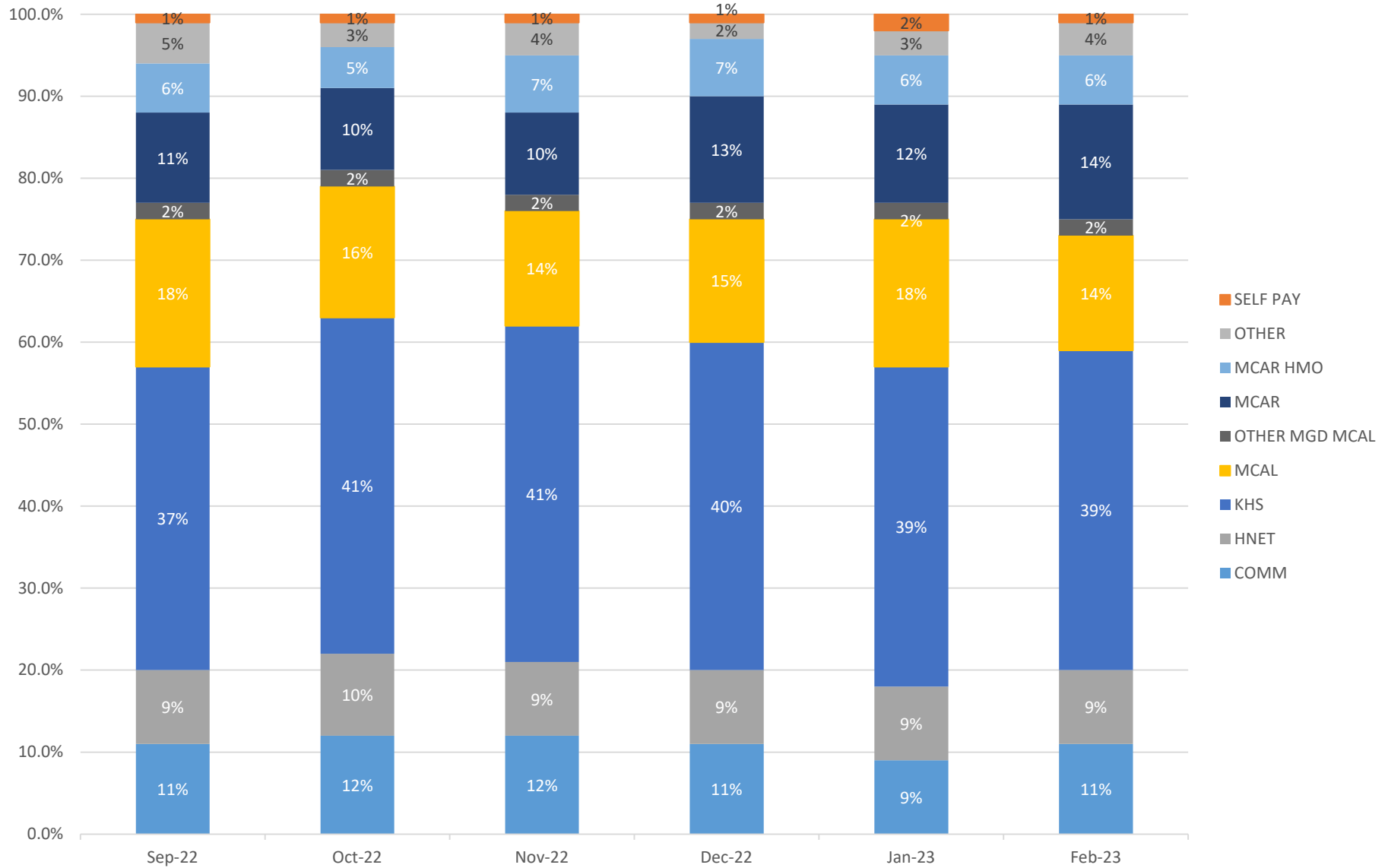
Hospital Volumes



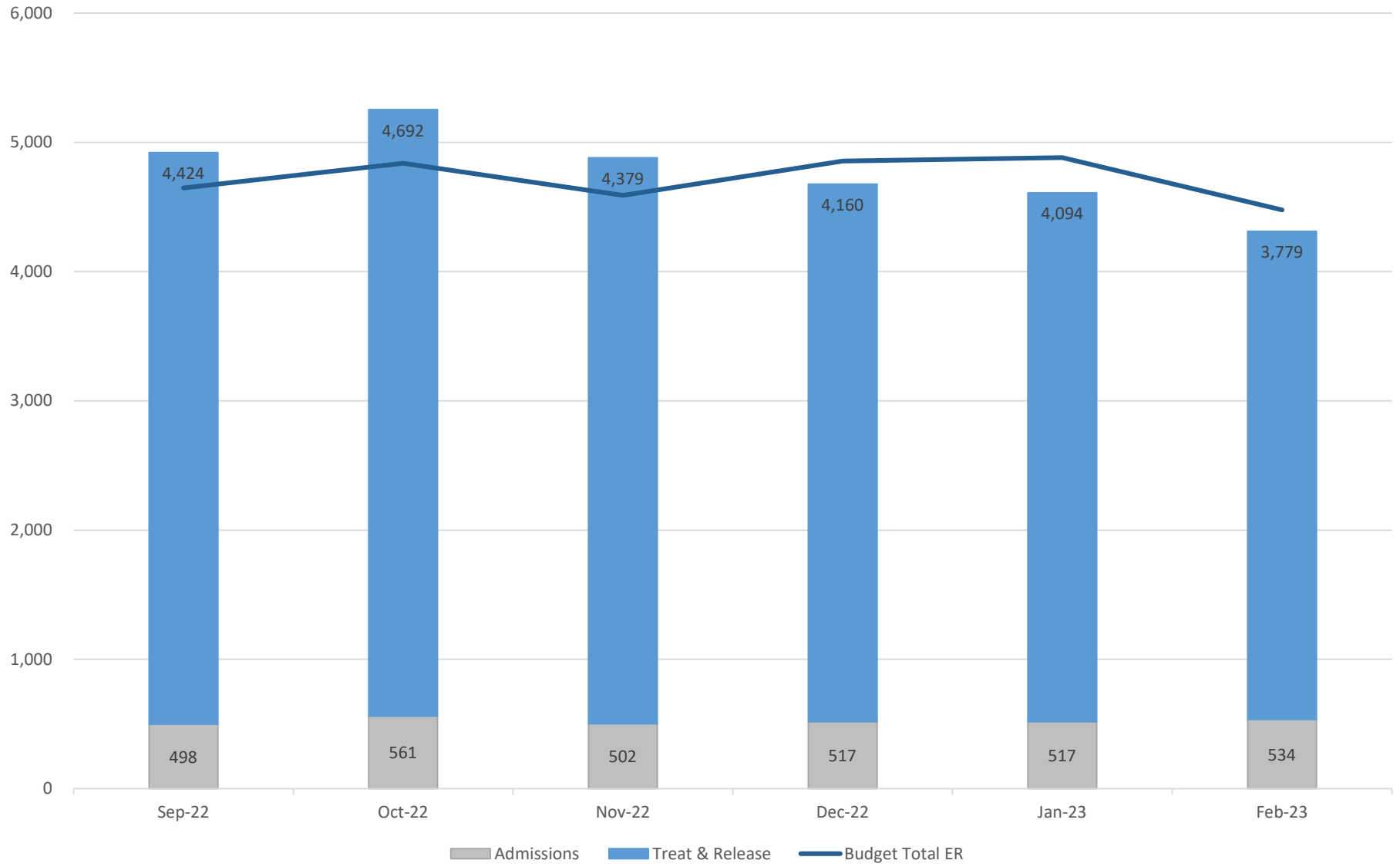
Deliveries



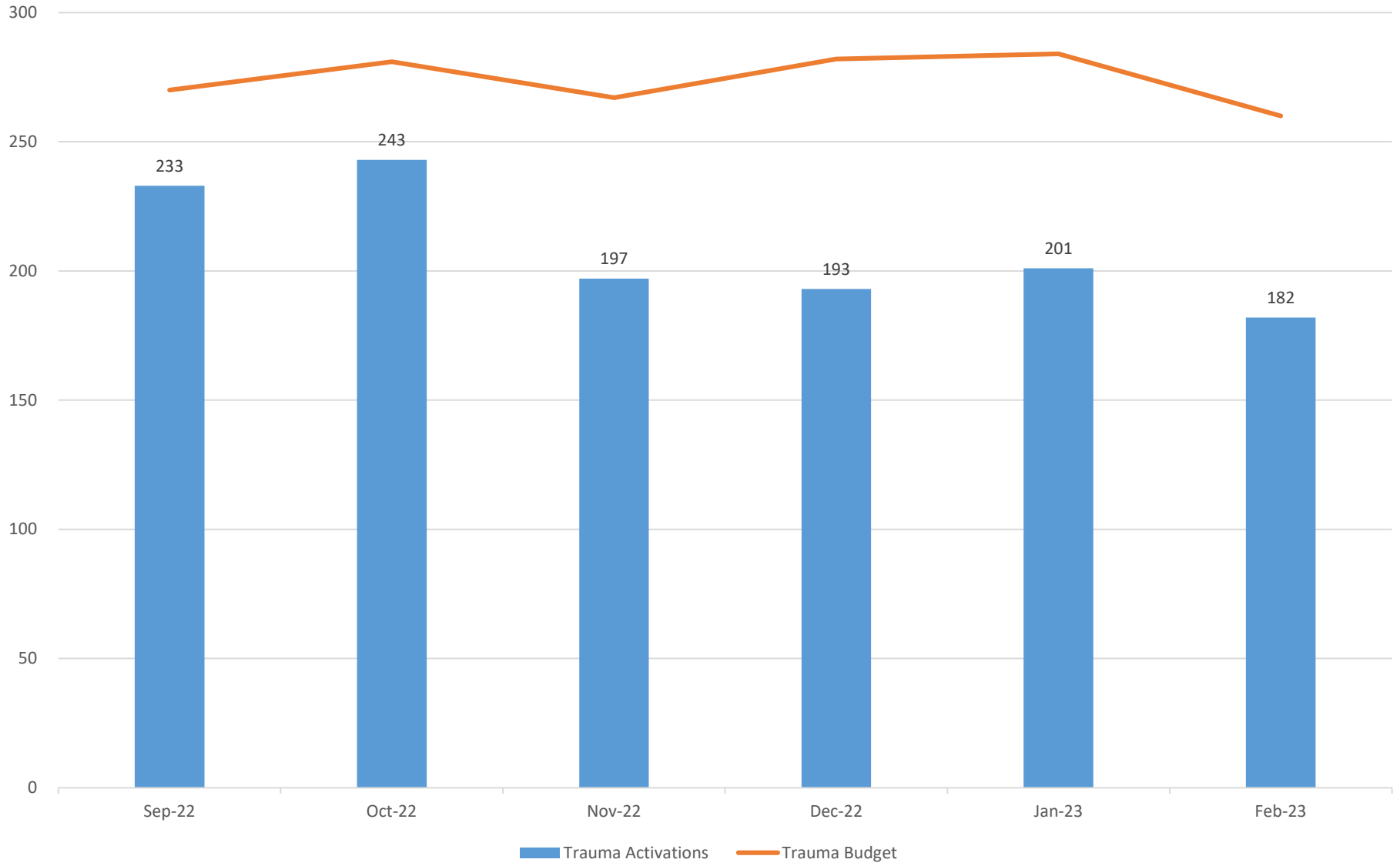
PAYER MIX



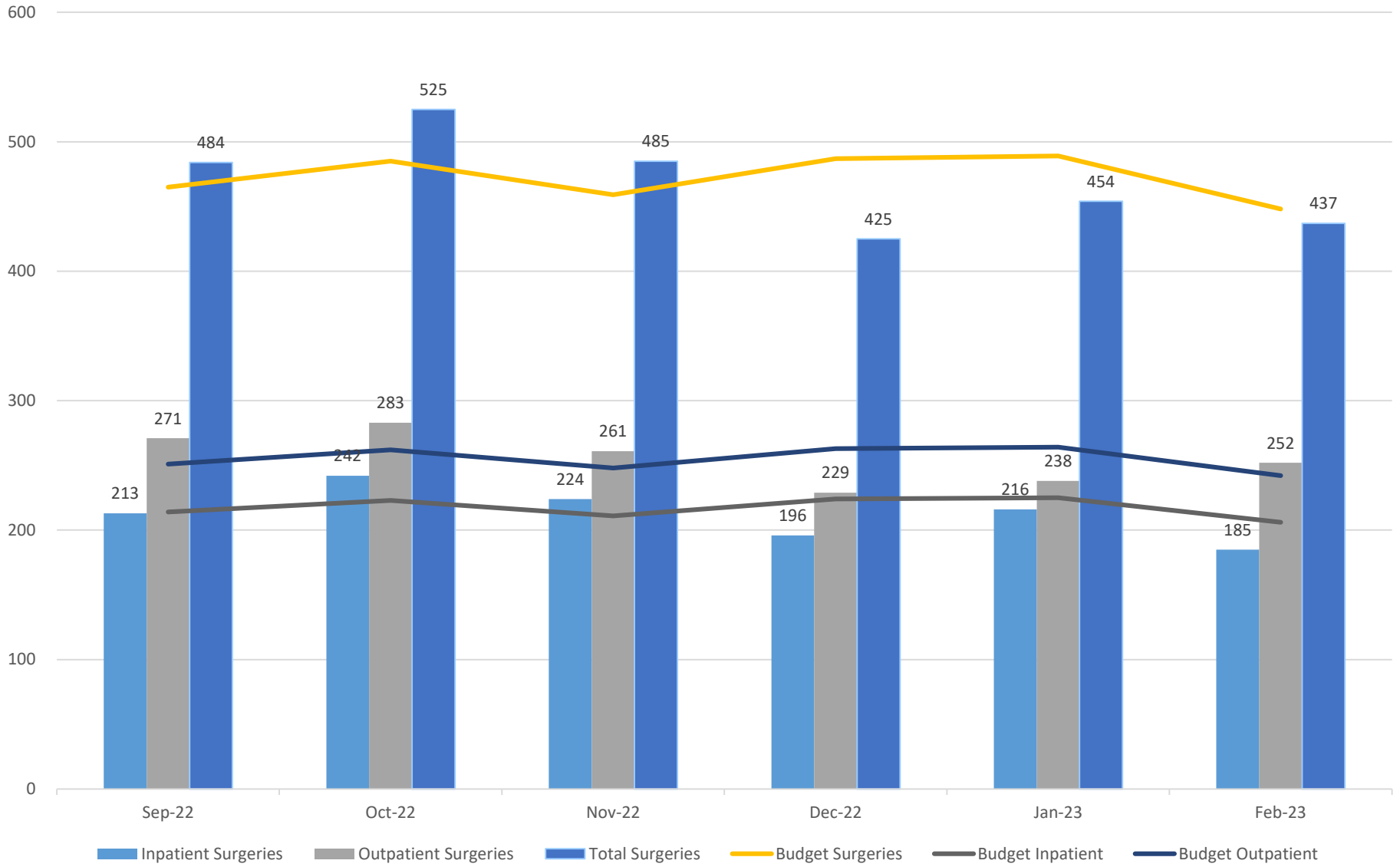
Emergency Room Volume



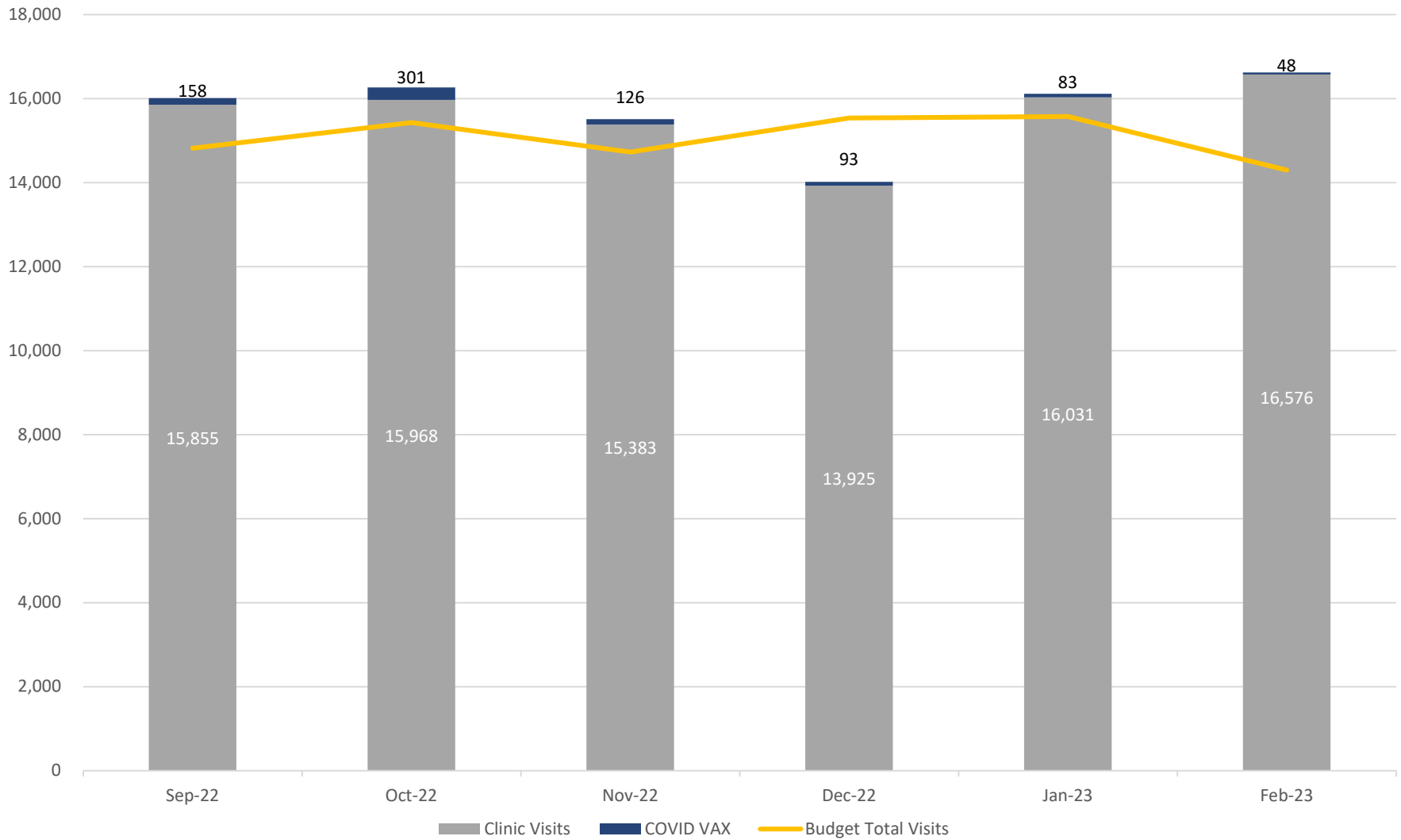
Trauma Activations



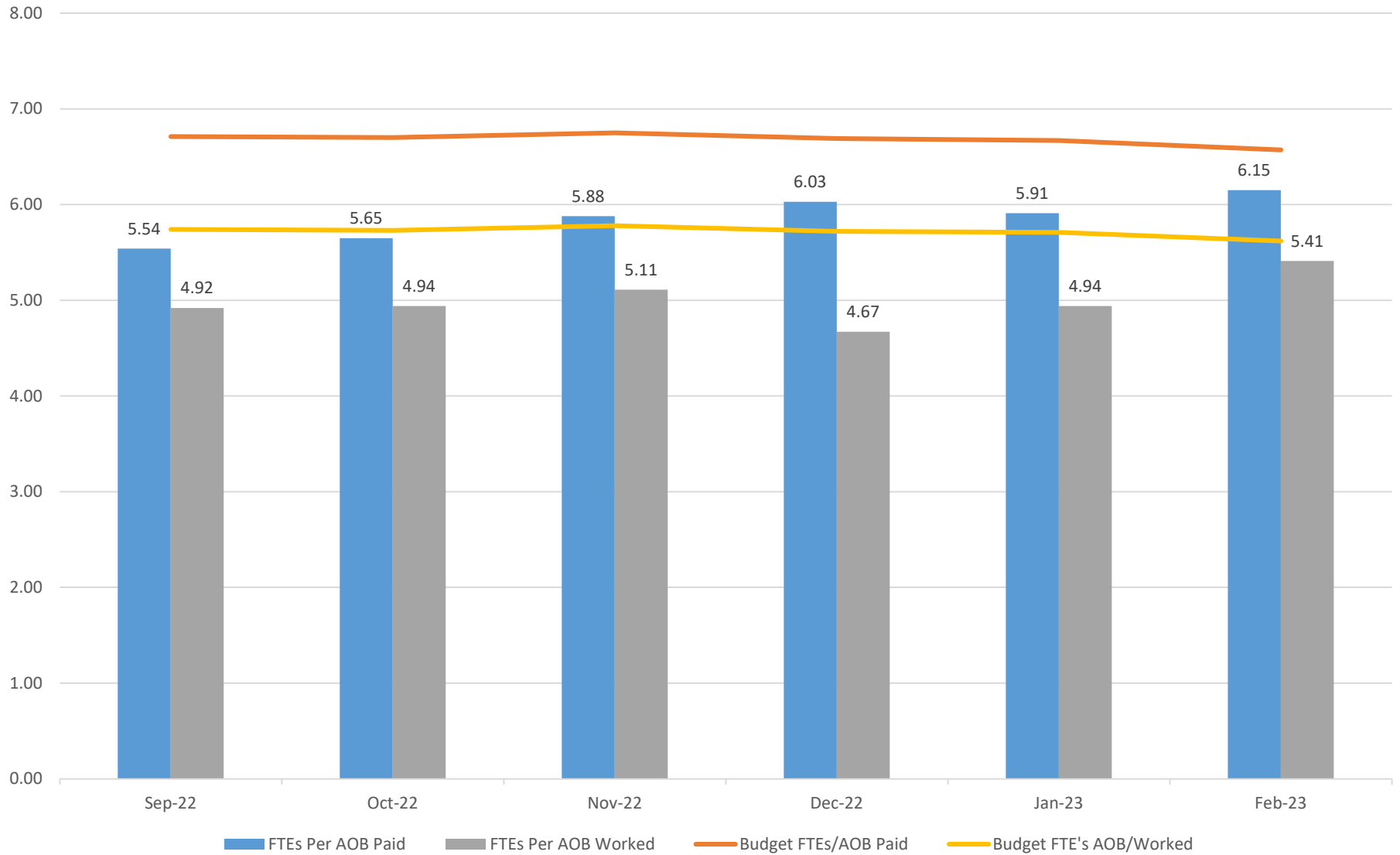
Surgical Volume



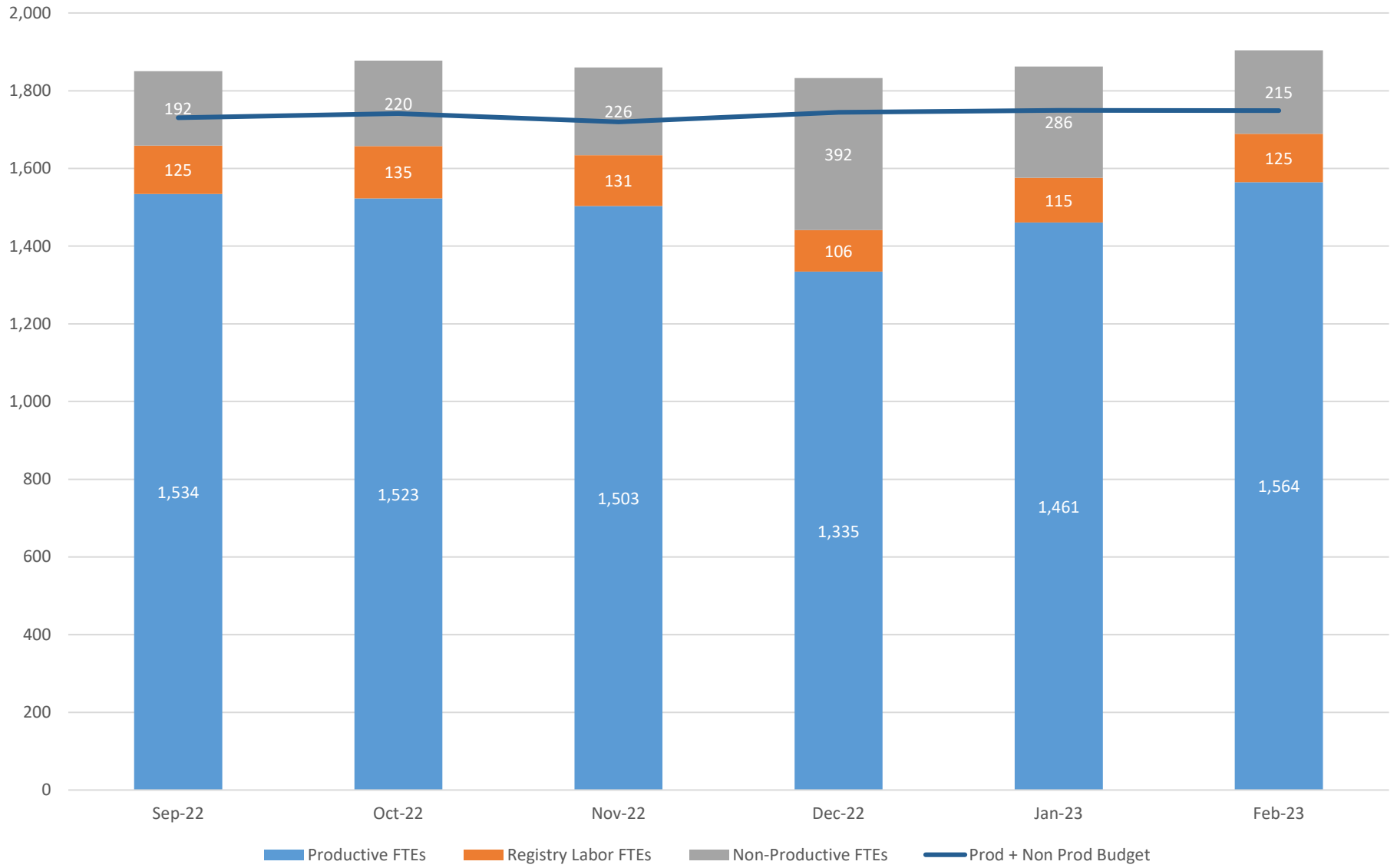
Clinic Visits



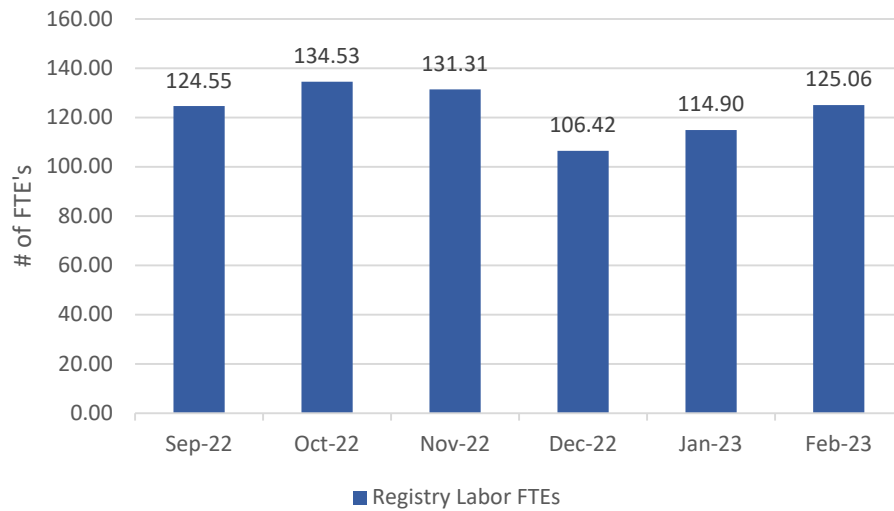
Labor Metrics



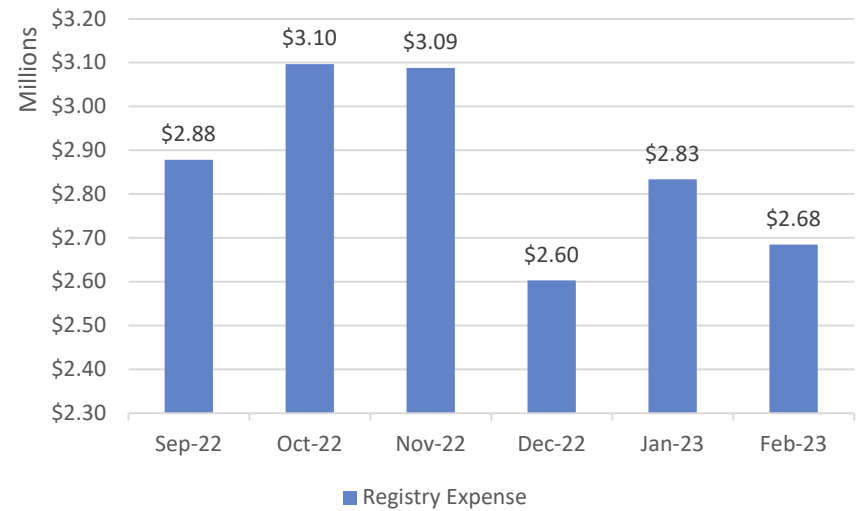
Productivity



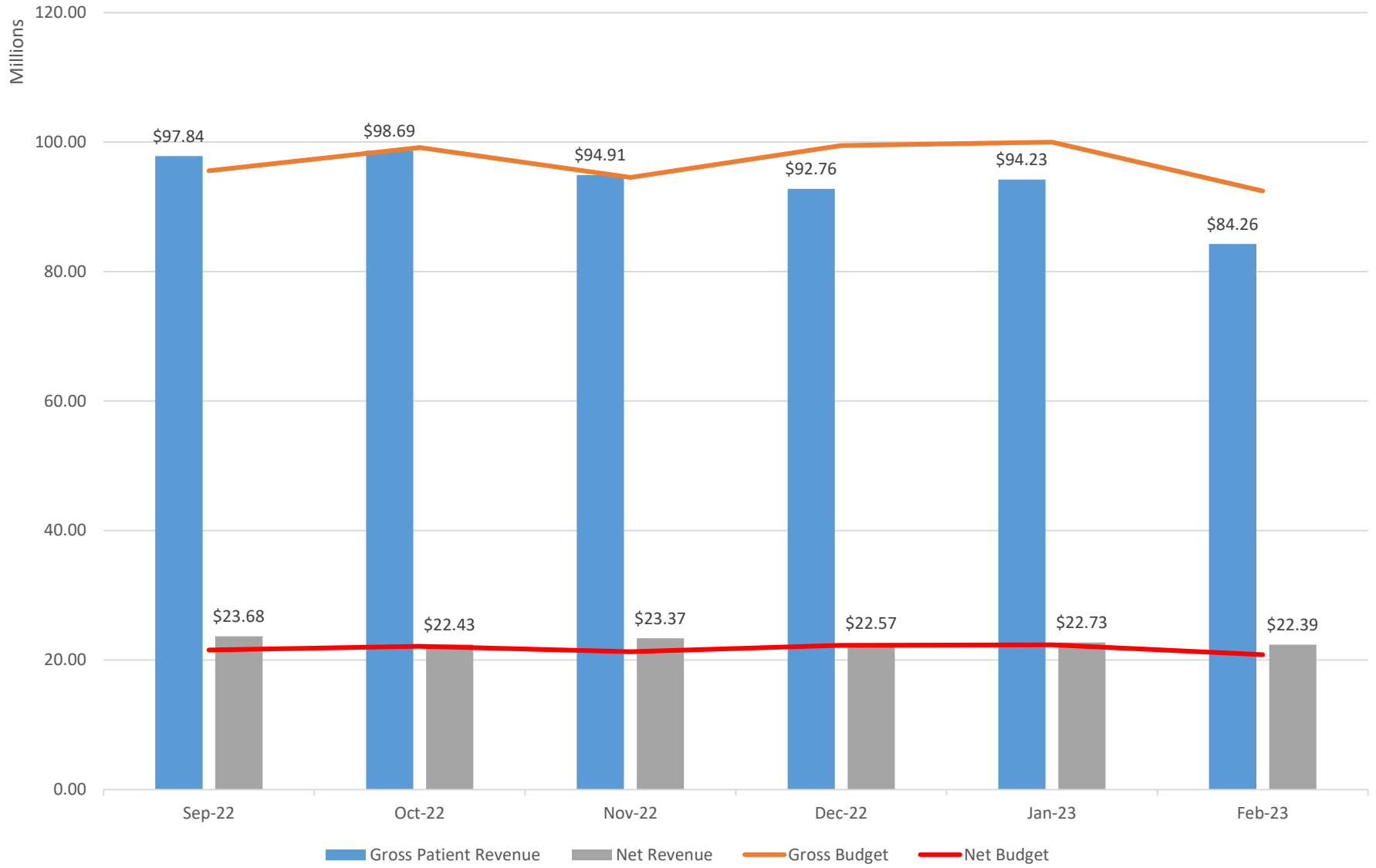
Registry FTE's



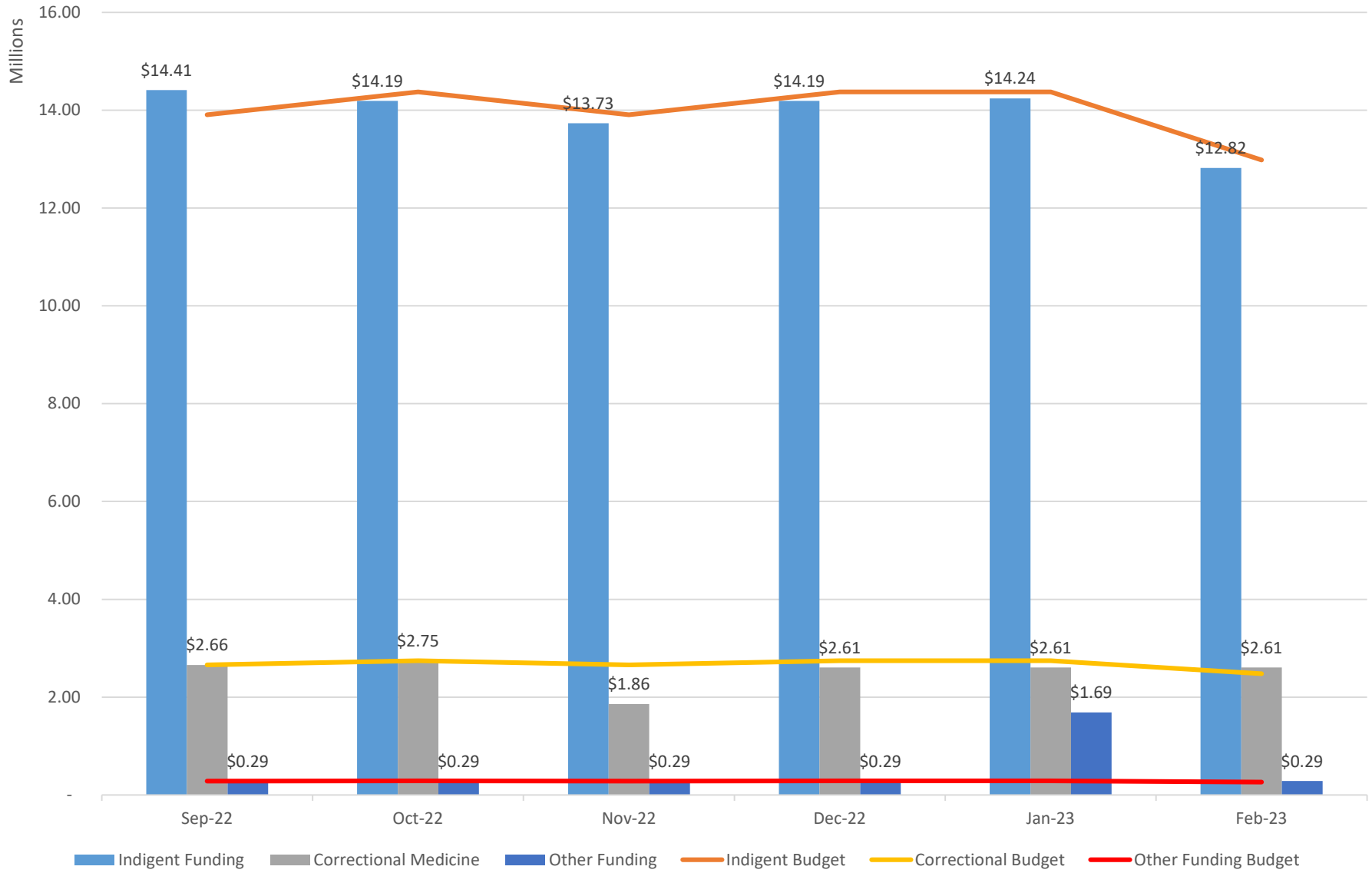
Registry Expense



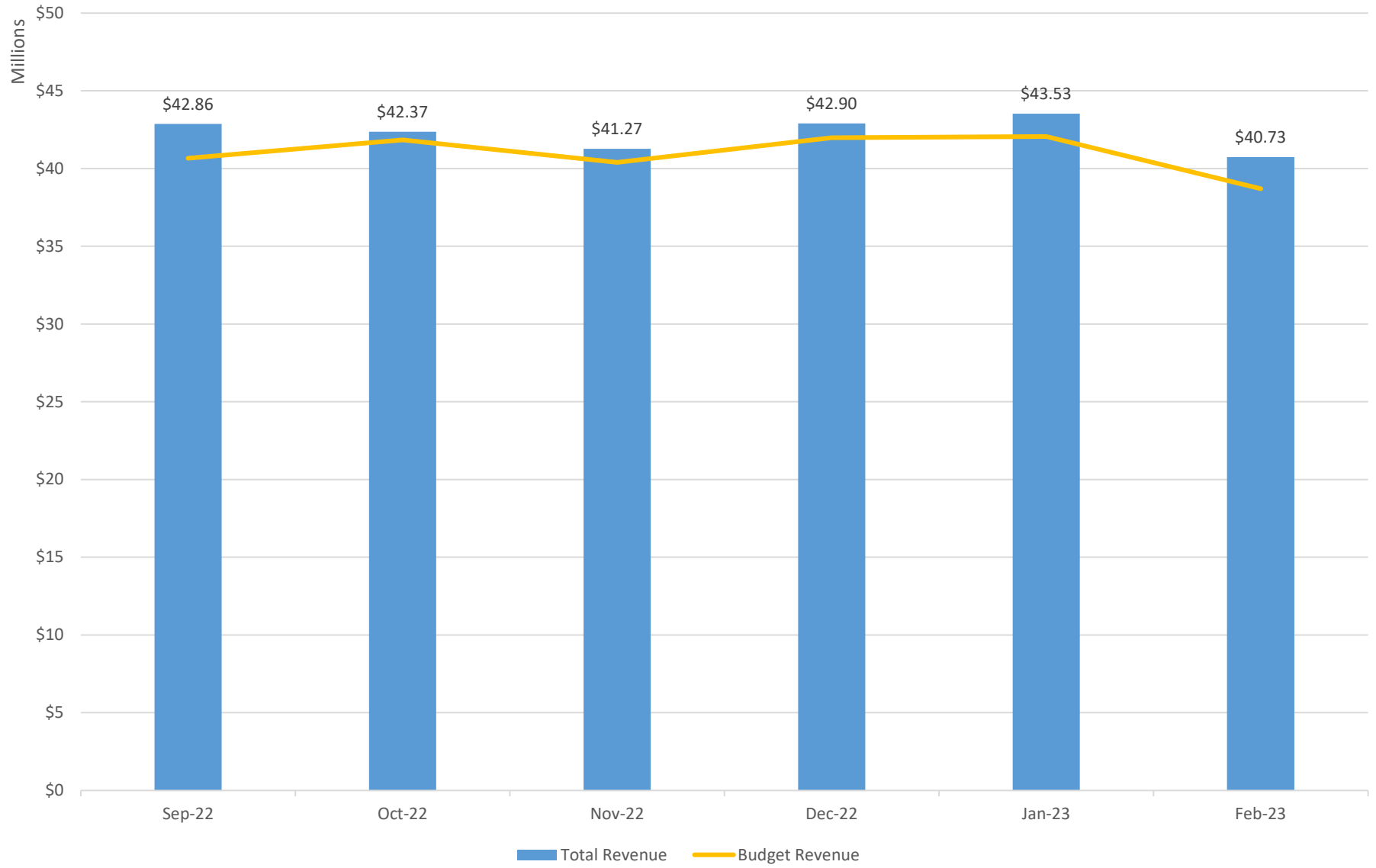
Patient Revenue



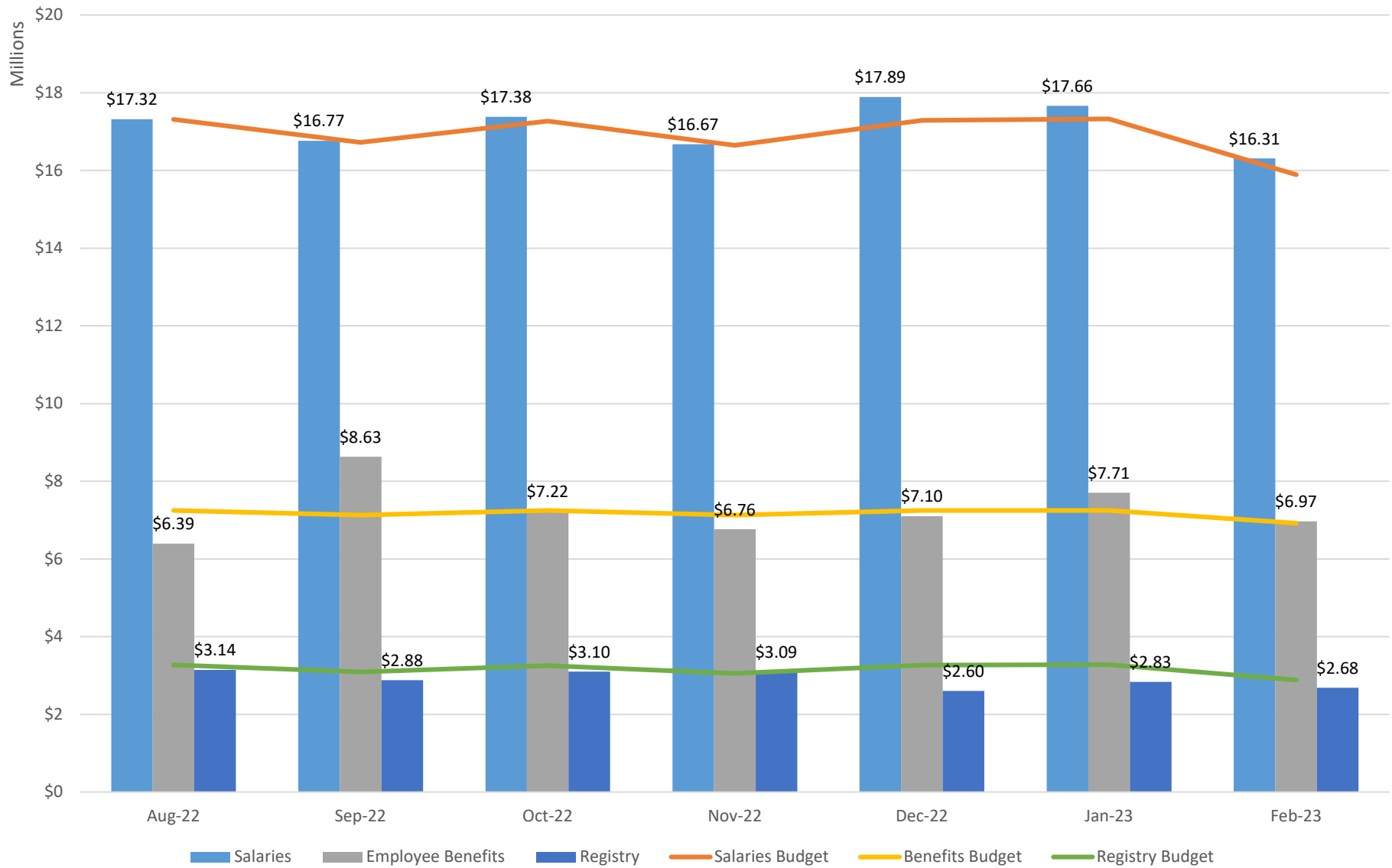
Indigent & Correctional Revenue



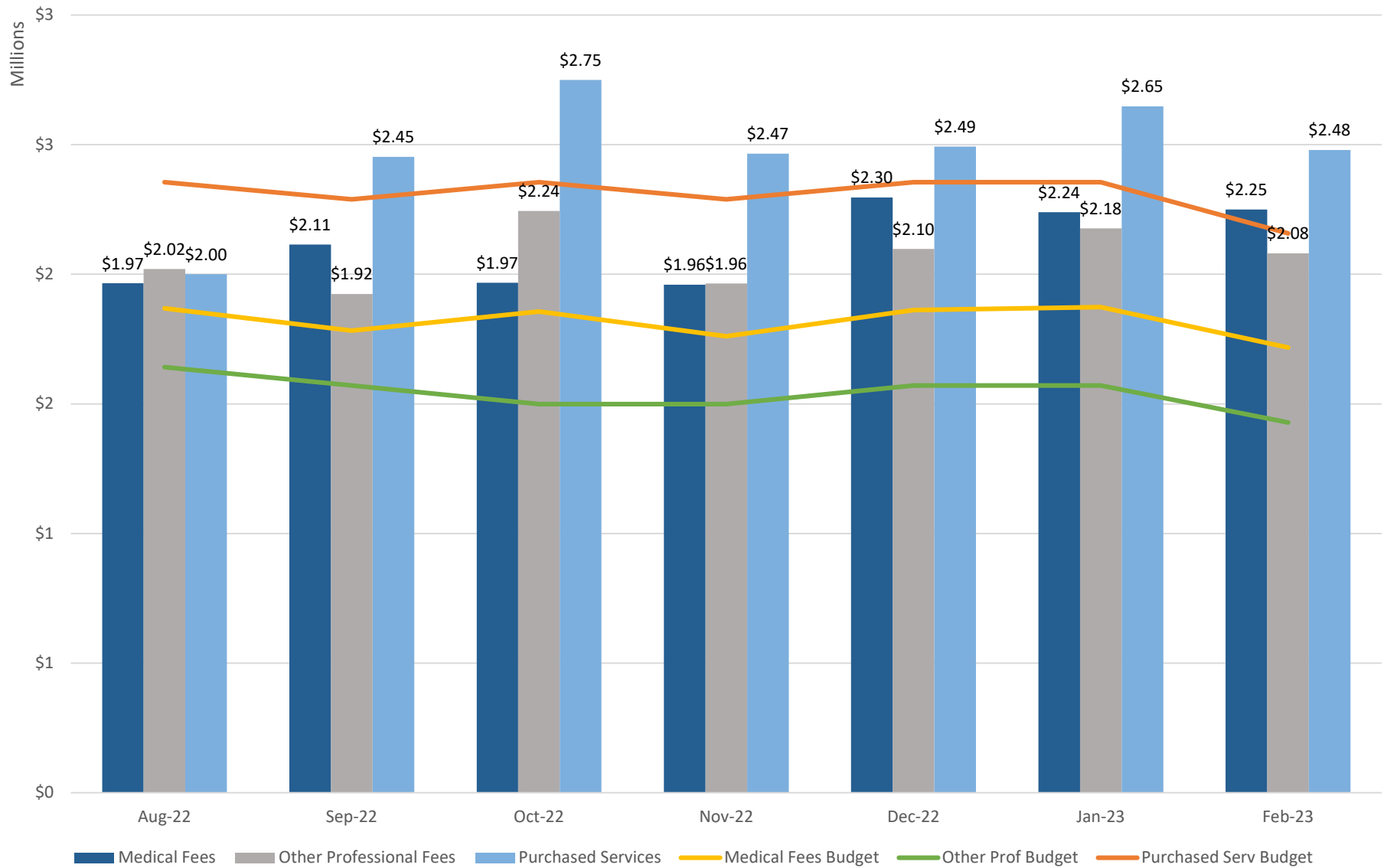
Total Revenue



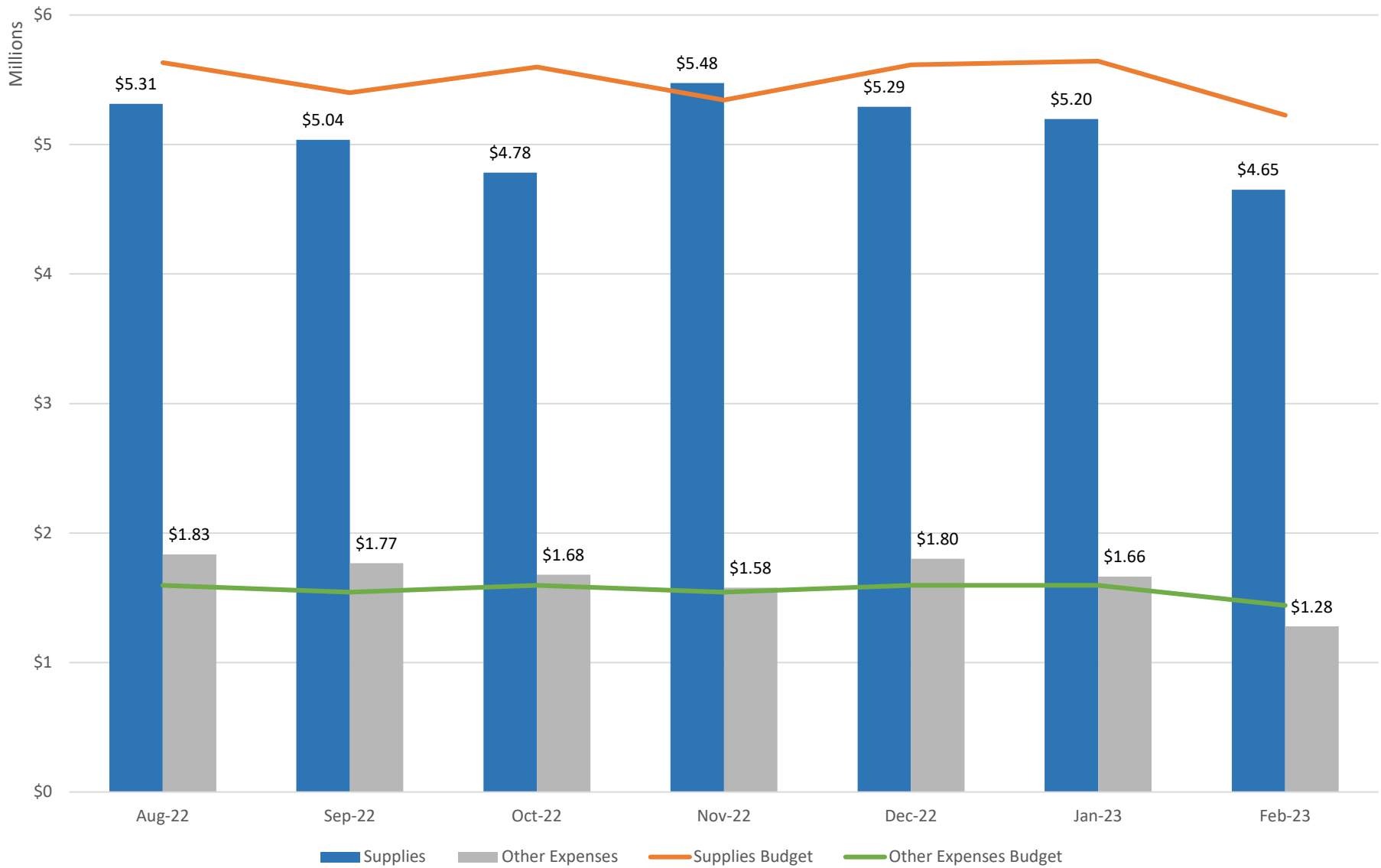
Expenses



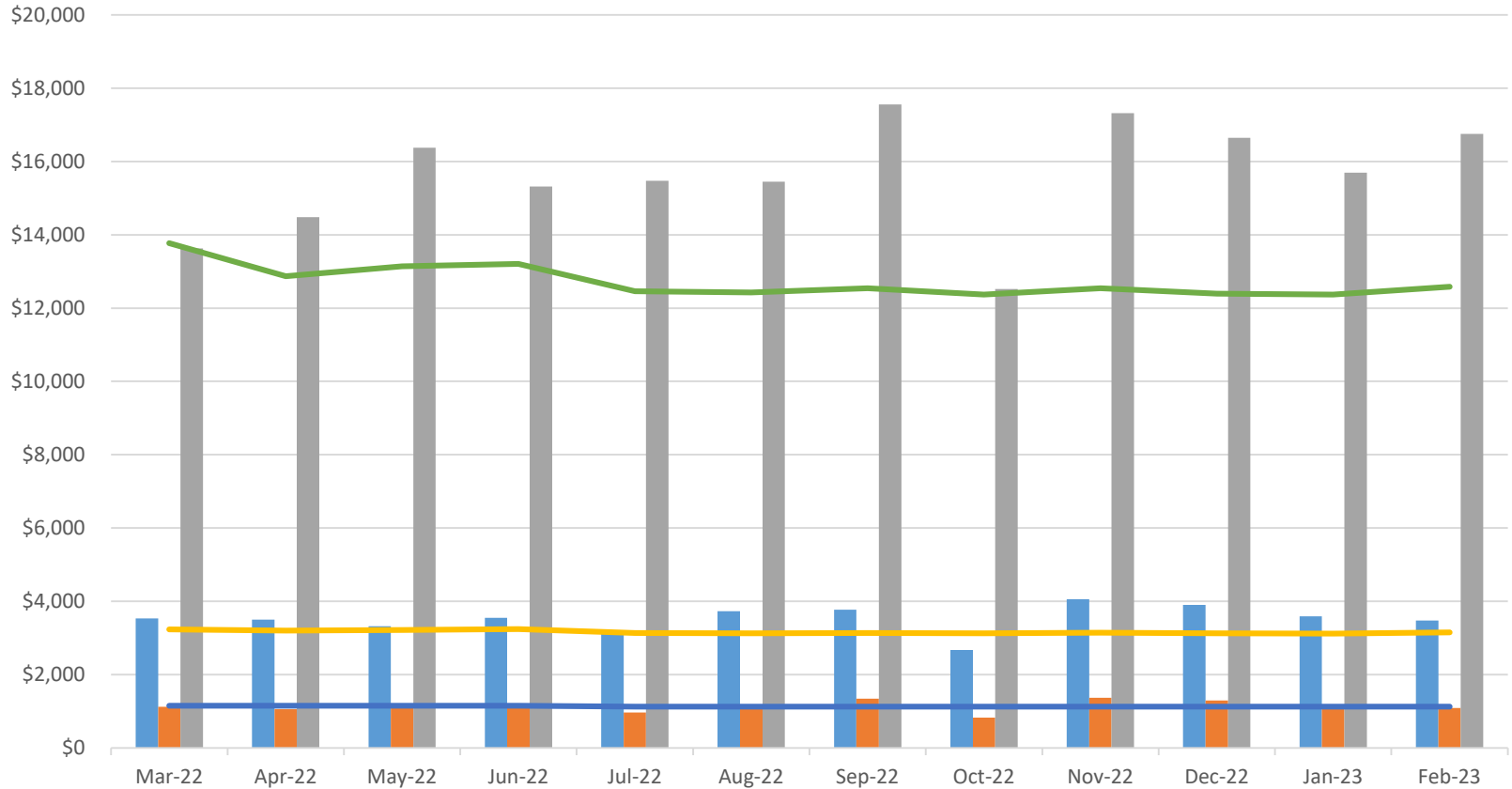
Expenses



Expenses

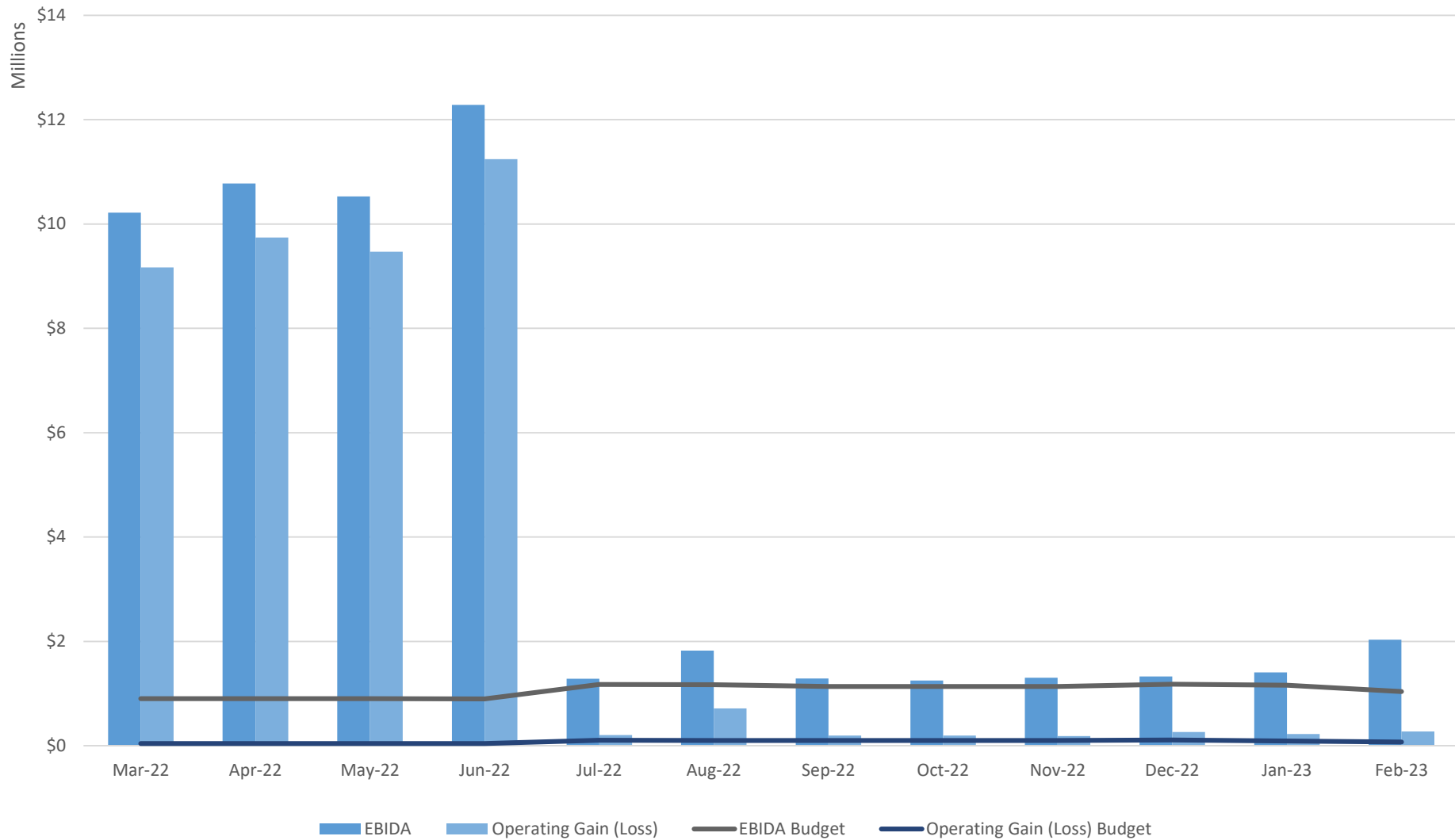


Operating Metrics

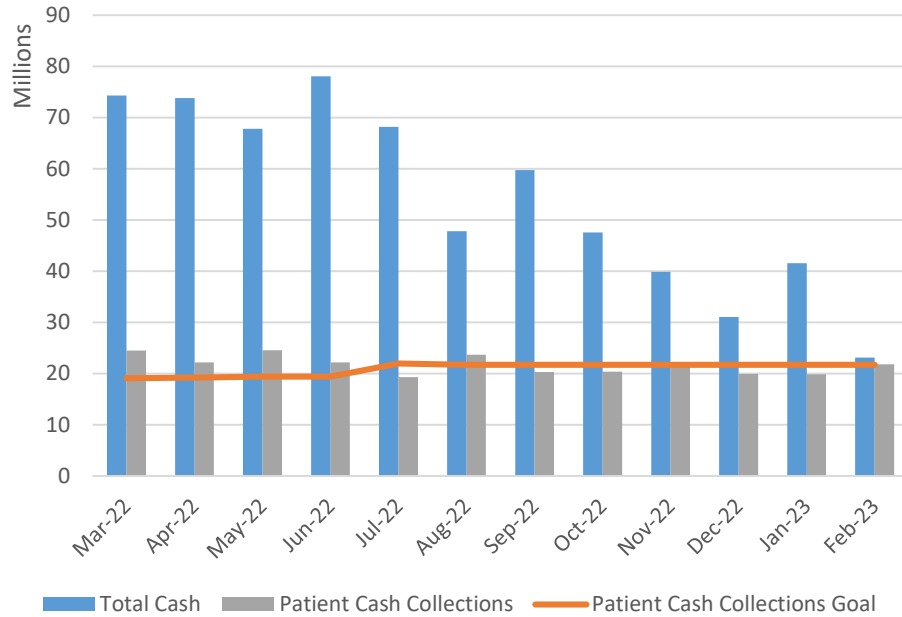


	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23
Supply Expense per AA	\$3,538	\$3,501	\$3,323	\$3,555	\$3,195	\$3,728	\$3,773	\$2,670	\$4,056	\$3,902	\$3,588	\$3,480
Pharm Cost per AA	\$1,120	\$1,062	\$1,097	\$1,218	\$966	\$1,101	\$1,349	\$826	\$1,368	\$1,293	\$1,153	\$1,094
Net Revenue Per AA	\$13,629	\$14,480	\$16,374	\$15,318	\$15,476	\$15,451	\$17,552	\$12,523	\$17,317	\$16,642	\$15,694	\$16,749
Budget Supp/AA	\$3,236	\$3,202	\$3,220	\$3,242	\$3,136	\$3,125	\$3,140	\$3,127	\$3,145	\$3,124	\$3,122	\$3,156
Budget Pharm/AA	\$1,156	\$1,154	\$1,156	\$1,156	\$1,126	\$1,126	\$1,126	\$1,126	\$1,126	\$1,126	\$1,126	\$1,127
Budget Net Rev/AA	\$13,771	\$12,868	\$13,141	\$13,206	\$12,461	\$12,428	\$12,543	\$12,368	\$12,545	\$12,398	\$12,368	\$12,579

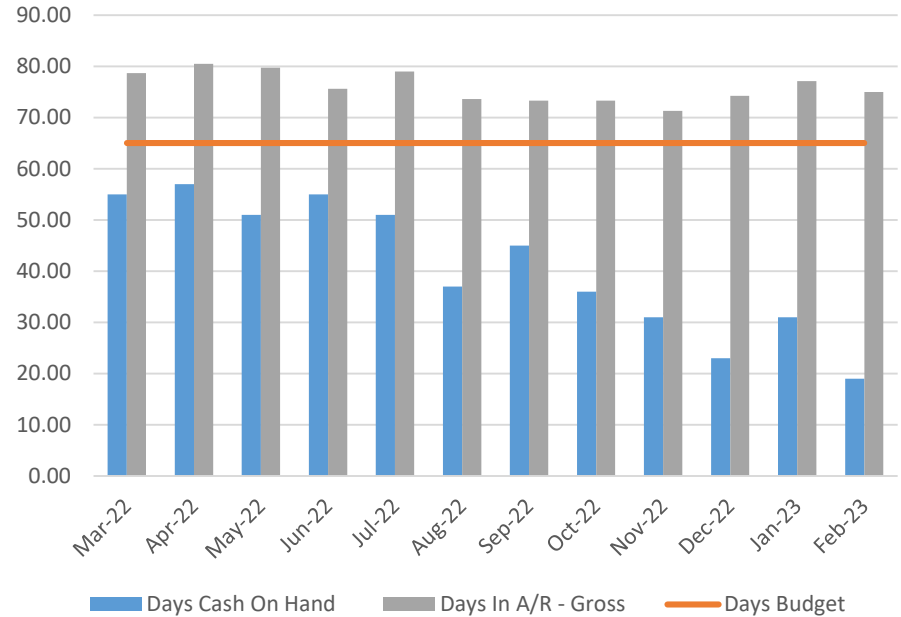
EBIDA Rolling Year



Cash Rolling Year



AR Days Rolling Year



3-Month Trend Analysis: Revenue & Expense

February 28, 2023

				BUDGET	VARIANCE	PY
	DECEMBER	JANUARY	FEBRUARY	FEBRUARY	POS (NEG)	FEBRUARY
Gross Patient Revenue	\$ 92,763,154	\$ 94,229,366	\$ 84,259,605	\$ 92,435,800	(9%)	\$ 87,636,700
Contractual Deductions	(70,191,960)	(71,498,539)	(61,872,968)	(71,597,745)	(14%)	(64,516,510)
Net Revenue	22,571,194	22,730,827	22,386,637	20,838,055	7%	23,120,190
Indigent Funding	14,191,888	14,241,868	12,818,480	12,979,917	(1%)	86,421,950
Correctional Medicine	2,608,400	2,608,481	2,608,481	2,481,030	5%	2,583,481
County Contribution	285,211	285,211	285,211	262,947	8%	285,211
Incentive Funding	0	1,404,200	0	0	0%	0
Net Patient Revenue	39,656,693	41,270,587	38,098,808	36,561,949	4%	112,410,830
Other Operating Revenue	3,231,026	2,242,396	2,620,823	2,094,162	25%	2,788,999
Other Non-Operating Revenue	11,635	18,353	13,485	44,666	(70%)	2,302,336
Total Revenue	42,899,354	43,531,336	40,733,116	38,700,777	5%	117,502,166
Expenses						
Salaries	17,889,327	17,661,435	16,309,458	15,889,219	3%	14,865,291
Employee Benefits	7,101,819	7,707,456	6,967,974	6,922,523	1%	(14,279,376)
Registry	2,602,860	2,833,340	2,684,308	2,879,748	(7%)	5,415,401
Medical Fees	2,296,002	2,239,065	2,250,226	1,717,676	31%	1,773,518
Other Professional Fees	2,097,587	2,177,254	2,080,624	1,427,987	46%	1,627,625
Supplies	5,292,544	5,196,818	4,651,711	5,227,295	(11%)	3,849,371
Purchased Services	2,492,913	2,648,107	2,479,872	2,157,871	15%	2,091,765
Other Expenses	1,800,266	1,663,634	1,278,834	1,440,852	(11%)	(928,309)
Operating Expenses	41,573,318	42,127,109	38,703,006	37,663,169	3%	14,415,286
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 1,326,036	\$ 1,404,227	\$ 2,030,109	\$ 1,037,608	96%	\$ 103,086,880
EBIDA Margin	3%	3%	5%	3%	86%	88%
Interest	112,380	157,018	244,463	77,858	214%	345,733
Depreciation	666,461	737,458	697,339	616,792	13%	661,829
Amortization	285,372	283,345	815,025	271,771	200%	2,728,165
Total Expenses	42,637,531	43,304,929	40,459,833	38,629,590	5%	18,151,013
Operating Gain (Loss)	\$ 261,822	\$ 226,406	\$ 273,283	\$ 71,187	284%	\$ 99,351,153
Operating Margin	0.6%	0.5%	0.7%	0.2%	264.7%	84.6%

KERN MEDICAL
Year to Date: Revenue & Expense
February 28, 2023

	ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
	FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
Gross Patient Revenue	\$ 755,795,101	\$ 777,614,271	(3%)	\$ 786,339,672	(4%)
Contractual Deductions	(574,047,920)	(603,016,060)	(5%)	(599,196,702)	(4%)
Net Revenue	181,747,181	174,598,211	4%	187,142,969	
Indigent Funding	111,971,697	112,647,135	(0.6%)	180,978,020	(38%)
Correctional Medicine	20,582,172	21,531,800	(4%)	20,525,655	0%
County Contribution	2,281,687	2,282,002	(0%)	2,282,002	(0%)
Incentive Funding	1,404,200	0	0%	0	0%
Net Patient Revenue	317,986,936	311,059,148	2%	390,928,647	(19%)
Other Operating Revenue	18,694,738	17,701,232	6%	17,926,793	4%
Other Non-Operating Revenue	105,799	387,637	(73%)	4,382,144	(98%)
Total Revenue	336,787,474	329,148,016	2%	413,237,583	(19%)
Expenses					
Salaries	137,064,233	135,558,427	1.1%	130,247,926	5%
Employee Benefits	57,169,660	57,403,152	(0%)	34,586,137	65%
Registry	23,919,092	25,279,755	(5%)	35,919,346	(33%)
Medical Fees	16,677,152	14,525,705	15%	14,006,445	19%
Other Professional Fees	16,490,391	12,280,684	34%	12,365,305	33%
Supplies	40,403,820	43,920,868	(8%)	47,169,095	(14%)
Purchased Services	19,870,806	18,513,953	7%	15,956,673	25%
Other Expenses	13,478,088	12,504,536	8%	10,303,310	31%
Operating Expenses	325,073,242	319,987,080	2%	300,554,237	8%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 11,714,232	\$ 9,160,936	28%	\$ 112,683,346	(90%)
EBIDA Margin	3%	3%	25%	27%	(87%)
Interest	1,074,467	675,692	59%	937,374	15%
Depreciation	5,640,815	5,352,875	5%	5,363,651	5%
Amortization	2,840,707	2,358,586	20%	4,513,433	(37%)
Total Expenses	334,629,230	328,374,234	2%	311,368,696	7%
Operating Gain (Loss)	\$ 2,158,244	\$ 773,782	179%	\$ 101,868,887	(98%)
Operating Margin	0.6%	0.2%	172.6%	24.7%	(97%)

**KERN MEDICAL
BALANCE SHEET**

	FEBRUARY 2023	FEBRUARY 2022
ASSETS:		
<i>Total Cash</i>	\$ 23,132,348	\$ 30,261,902
Patient Receivables Subtotal	249,168,767	311,759,644
Contractual Subtotal	(191,976,444)	(258,975,620)
<i>Net Patient Receivable</i>	57,192,323	52,784,023
Total Indigent Receivable	285,442,902	176,217,178
Total Other Receivable	7,714,721	7,749,194
Total Prepaid Expenses	7,216,236	5,535,100
Total Inventory	5,154,081	4,139,485
<i>Total Current Assets</i>	385,852,611	276,686,883
Deferred Outflows of Resources	105,241,458	127,290,855
Total Land, Equipment, Buildings and Intangibles	241,329,209	223,151,678
Total Construction in Progress	9,946,439	3,703,830
<i>Total Property, Plant & Equipment</i>	251,275,648	226,855,508
Total Accumulated Depr & Amortization	(149,681,932)	(132,826,957)
<i>Net Property, Plant, and Equipment</i>	101,593,716	94,028,551
<i>Total Long Term Assets</i>	105,241,458	127,290,855
<i>Total Assets</i>	\$ 592,687,785	\$ 498,006,289

**KERN MEDICAL
BALANCE SHEET**

	FEBRUARY 2023	FEBRUARY 2022
LIABILITIES & EQUITY:		
Total Accounts Payable	\$ 23,301,236	\$ 21,249,297
Total Accrued Compensation	25,454,098	31,455,336
Total Due Government Agencies	14,318,339	16,025,989
Total Other Accrued Liabilities	48,059,153	54,013,517
<i>Total Current Liabilities</i>	111,132,826	122,744,139
Unfunded Pension Liability	284,243,193	381,152,811
Other Long-Term Liabilities	130,099,694	64,286,919
<i>Total Long-Term Liabilities</i>	414,342,887	445,439,730
<i>Total Liabilities</i>	525,475,713	568,183,869
Fund Balance	36,714,022	36,714,022
Retained Earnings	30,498,050	(106,891,602)
<i>Total Fund Balance</i>	67,212,071	(70,177,580)
<i>Total Liabilities and Fund Balance</i>	\$ 592,687,785	\$ 498,006,289



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

April 19, 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.

April 19, 2023
Board of Governors
CEO Report

As much as we all wish to move on from the affects of the global COVID-19 pandemic these past three years, many components of our country's society, economy, and services will suffer for some time. These issues affect everyone personally as well as our institutions that are here to serve.

Health care staff across the country has faced intense pressure, which has resulted in 100,000 fewer nurses working today than before COVID. This national nursing shortage is also felt locally and here at Kern Medical. We recognize and acknowledge the sacrifices our staff has made throughout the pandemic and are grateful for their service. You all heroically showed up to work every day.

Because of our vital mission, we must continue on. Our recruitment and retention efforts are focused on supporting our staff as they carry out their commitment as caregivers. No one likes it when, at times, our charge nurses have to care for patients to maintain staffing ratios. We understand and are doing everything possible to remedy the situation.

On the economic front, it is reported by the California Hospital Association that 20 percent of our state's hospitals are at risk of closure and more than 200 of the roughly 400 hospitals in the state are now losing money to care for patients.

Kern Medical has been fortunate in maintaining its positive financial margins, which allow us to carry out our broad mission as a public safety net hospital serving the most vulnerable, operate as our area's teaching hospital, and serve as the only trauma center.

In addition to our efforts focusing on supporting our staff and maintaining our financial stability, we have a significant number of other initiatives that we must continue. Some of these include:

CalAIM: This relatively new supplemental funding program replaces Whole Persons Care. Kern Medical has worked closely with Kern Health Systems in Enhanced Care Management and Community Supports that are components of this program.

2024 Health Plan Transitions: In late 2022, DHCS announced the results of their Statewide selections of the Commercial Health Plans serving Medi-Cal beneficiaries. In Kern County, Anthem Blue Cross replaces Health Net as the commercial option in 2024. Additionally, California's Department of Health Care Services (DHCS) will extend Kaiser a direct contract in Kern County for Medi-Cal. DHCS has acknowledged this transition will result in major shifts in membership. We have already reached out to Anthem Blue Cross regarding preparations for this transition.

Medi-Cal Membership Renewals: During the COVID-19 public health emergency, DHCS froze Medi-Cal redeterminations so Medi-Cal enrollees could continue their health benefits. With the end of the public health emergency, Medi-Cal redeterminations and enrollment will return to pre-pandemic processes. Kern Medical is working closely with Kern Health Systems and other stakeholders to ensure continuity of coverage and medical care.

Joint Commission Accreditation: The Joint Commission is responsible for accrediting most of our nation's hospitals on behalf of the Centers for Medicare and Medicaid Services (CMS). Kern Medical is inside the window for The Joint Commission survey this year. Our staff spends considerable time and effort maintaining continuous accreditation standards. As we have entered our accreditation renewal window, it is an opportunity for us to review and ensure we are prepared for this process.

Culture of Safety: Health care is about taking care of people in their time of need. While the community assumes safety just happens, it takes tremendous efforts and focus. Kern Medical will continuously look for opportunities to ensure the ongoing safety of our patients and staff. One of the benefits of us emerging from the pandemic is our ability to gather again. Our staff can look for upcoming regular safety huddles that will focus on our initiatives to keep our patients and staff safe.

It is an honor to serve in health care. Our staff serves in a noble endeavor caring for all in such an incredible way. Serving in such a vital profession and industry brings immense value to those of us fortunate enough to work and provide care for others. There is deep meaningfulness and significance in serving. Our many thanks and gratitude go out to all our staff, physicians, residents, and all others here at Kern Medical.



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

April 19, 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.



What's Happening?

NEW PEDS UNITS OPEN HOUSE



BOY SCOUTS HONOREES DINNER

- Tung Trang, MD, FACS
- Caleb Billings, RCP, RRT-NPS
- Gil Tabano III, CP, RRT-NPS
- Jeff Jolliff, PharmD, MBA,
BCPS, BCACP, AAHIVP
- George Bratton, RN
- Brock Beeney, RN
- Lizzy Joseph, RN



JOINT PRESS CONFERENCE

With Assembly Member Dr. Jasmeet Bains Recognizing First Responders



PATIENT SAFETY AWARENESS WEEK



KERN MEDICAL IN THE NEWS

TELEMUNDO

Caminata por la fiebre del valle

Posted: Mar 20, 2023 / 04:36 PM PDT
Updated: Mar 20, 2023 / 04:36 PM PDT



LOCAL NEWS

Valley Fever Walk returned Saturday for the first time in 4 years

by: Dalu Okoli
Posted: Mar 18, 2023 / 06:11 PM PDT
Updated: Mar 21, 2023 / 02:27 PM PDT



Valley Fever Walk set to take place after weather delay

by BakersfieldNow Staff | Fri, March 17th 2023, 6:39 AM PDT



VALLEY FEVER AWARENESS WALK

Group Photo: Mayor Karen Goh, Supervisor Jeff Flores, and Assemblymember Vince Fong



MATCH DAY



**Kern
Medical**

Health for Life.

FRIDAY, MARCH 17, 2023

#KernMedicalMatch

Kern Medical is in movie theaters!

Visit any of the following locations between now and
October to see our featured ad during the previews:

Studio Movie Grill
Maya Bakersfield
Valley Plaza





DONATIONS NEEDED!

The Kern Medical Auxiliary is accepting new and gently used newborn-sized baby clothes.

Please bring your donations to Room 1227



2023 EDUCATIONAL VIDEO *competition* WINNER



SHAD REEVES

Security Director

ANTHONY MICHAEL

Facility Manager

REBEKAH MORALES

Safety Officer

STEPHEN GRISSOM

Security Dayshift Lead

DANIEL HURTADO

Security Site Supervisor

THANK YOU TO ALL WHO PARTICIPATED IN PATIENT SAFETY AWARENESS WEEK!

Graduate Medical Education

Weekly Noon Lecture Series

MARCH

- 2 Leadership Development: Exploring Leadership Values, by Glenn Goldis, MD, MMM, CMO, CMIO
- 9 Stroke Workshop by Kiron Thomas MD, Interventional Neurologist
- 14 Opioid Use Disorder: Basics & MOUD by Sarah Gonzalez, MD
- 23 Thoracic Multidisciplinary conference: Pleural Effusion of Uncommon Etiology, Diagnostic Approach and Management Moderated by Augustine Munoz, MD
- 30 EM/IM Joint Conference Moderated by Shikha Mishra, MD & Lev Libet MD

APRIL

- 6 Pain Management: Narcotics by Warren Wisnoff, DO
- 20 4th Leadership Development Series for Chief Residents/Fellows by Russell Judd, Former CEO of Kern Medical
- 27 Financial Wellness by Amin Ramzan, MD

NATIONAL RECOGNITIONS IN MARCH

- Brain Injury Awareness Month
- National Colorectal Cancer Awareness Month
- National Kidney Month
- National Nutrition Month
- Workplace Eye Wellness Month
- Social Work Month
- Healthcare HR Week (March 11-17)
- Patient Safety Awareness Week (March 11-17)
- Health Information Professionals Week (March 18-24)
- Drug and Alcohol Facts Week (March 20-26)
- World Down Syndrome Awareness Day (March 21)
- National Doctors Day (March 30)

NATIONAL RECOGNITIONS IN APRIL

- Alcohol Awareness Month
- STI Awareness Month
- Autism Awareness Month
- Minority Health Month
- National Donate Life Month
- National Occupational Therapy Month
- Oral Cancer Awareness Month
- Youth Sports Safety Month
- Public Health Week (April 3-9)
- Health Information and Privacy Week (April 18-24)
- Pediatric Transplant Week (April 23-29)
- World Immunization Week (April 24-30)
- World Health Day (April 7)
- Prescription Drug Take Back Day (April 22)

DID YOU KNOW?

MARCH IS KIDNEY MONTH



WHAT IS NEPHROLOGY?

Nephrology is a branch of Internal Medicine devoted to the physiology and study, diagnosis, and treatment of kidney disease. The kidneys help to control blood pressure by removing excess water and waste from the body. These organs can cause many issues when they do not function as they should, which is why the Nephrology Division is actively working to prevent kidney problems for optimal kidney health.

CONDITIONS TREATED:

- Chronic Kidney Diseases
- Acute Renal Failure
- Kidney Stones
- Hypertension (High Blood Pressure)
- Urinary Tract Infections
- Fluid and Electrolyte Abnormalities
- Acid-Base Disorders
- Cystic Diseases of the Kidney
- Gout
- Pre and Post Kidney Transplant Management
- Acute and Chronic dialysis care (Home hemodialysis, peritoneal and In-center Hemodialysis)

WHAT IS CHRONIC KIDNEY DISEASE (CKD)?

CKD is a progressive disease that, when caught early, can be managed and treated to inhibit critical damage to the organs.

HOW TO RECOGNIZE CHRONIC KIDNEY DISEASE (CKD):

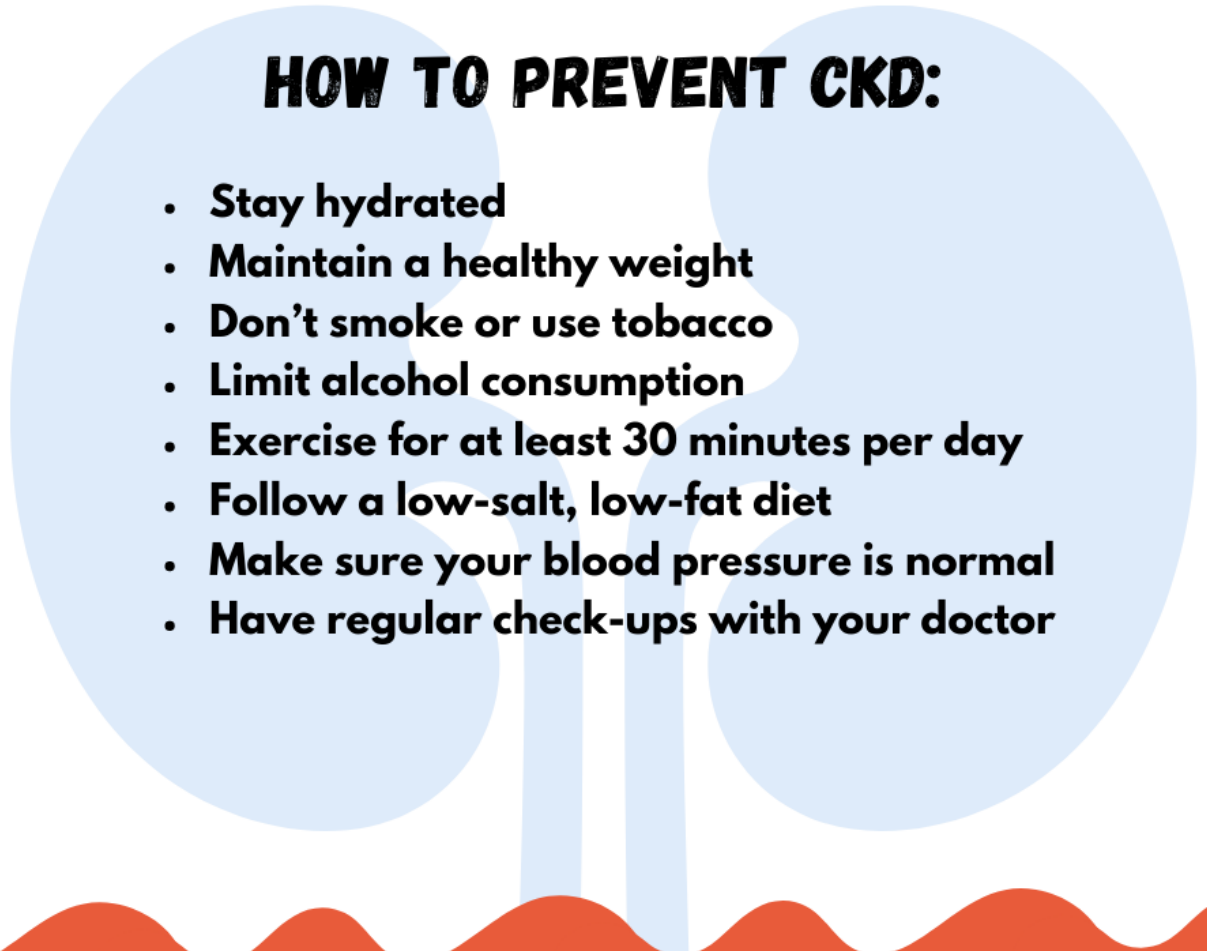

CKD can be difficult to detect. Sometimes, initial kidney failure symptoms simply include fatigue and exhaustion, which often go unnoticed. If this is the only symptom in the beginning, the disease may go undiagnosed until more serious care is required, such as a kidney transplant.



Dr. Eppanapally recommends people with diabetes should see a kidney specialist once a year as a preventative measure.

“If you don’t have diabetes, however, you should still know the signs. For some people, it’s a genetic issue, and the only way to prevent damage is to be aware,” he said.

HOW TO PREVENT CKD:

- **Stay hydrated**
 - **Maintain a healthy weight**
 - **Don’t smoke or use tobacco**
 - **Limit alcohol consumption**
 - **Exercise for at least 30 minutes per day**
 - **Follow a low-salt, low-fat diet**
 - **Make sure your blood pressure is normal**
 - **Have regular check-ups with your doctor**
- 
- 

NEPHROLOGY TEAM



Dr. Sabitha Eppanapally

Medical School:

Board of Intermediate Education – India

Internship:

Osmania Medical College – India

Residency:

St. John's Episcopal Hospital

Fellowship:

Yale University



Johnny Leung, Nurse Practitioner

New Nephrology Physician

Joining Kern Medical August 1



Dr. Kulwant Bath

Medical School:

Vitebsk State Medical University – Belarus

Internship:

Govt. Multi Speciality Hospital – India

Residency:

University of South Alabama University Hospital

Fellowship:

Olive View – UCLA Medical Center

NEPHROLOGY TEAM



Stockdale Services

**9330 Stockdale Hwy, Suite 400
Bakersfield, CA 93311**



Columbus Clinic

**1111 Columbus Street
Bakersfield, CA 93305**

**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 April 19, 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 April 19, 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: United States ex rel.
Collado, Plaintiff v. Bracco, U.S.A., Inc., et al., Defendants, United States District
Court, District of New Jersey, Case No. 2:20-cv-08719-EP-JSA –

**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 April 19, 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-1633-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 April 19, 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 April 19, 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 April 19, 2023, to consider:

 X PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) –

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54957.7

The Board of Governors will hold a closed session on April 19, 2023, to consider:

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

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54957.7

The Board of Governors will hold a closed session on April 19, 2023, to consider:

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