



## **AGENDA**

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

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

Regular Meeting  
Wednesday, July 17, 2024

11:30 A.M.

#### **BOARD TO RECONVENE**

Board Members: Berjis, Martinez, McLaughlin, Merz, Neal, Pelz, Pollard  
Roll Call:

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

**STAFF RECOMMENDATION SHOWN IN CAPS**

#### 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!**

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 special meeting on June 26, 2024 –  
APPROVE

CA

- 4) Proposed appointment of Thiagarajan Nandhagopal, M.D., as Chief, Division of Pediatrics, effective July 17, 2024 –  
MAKE APPOINTMENT

CA

- 5) Proposed rescission of Amendment No. 2 (Agreement 097-2024) to Agreement 554-2021 with the County of Kern, as represented by the Administrative Office and Kern County Sheriff's Office, and retroactive approval of Amendment No. 2 to Agreement 554-2021 with the County of Kern, as represented by the Administrative Office and Kern County Sheriff's Office, for the provision of health care services to in-custody adult inmates at Kern Justice Facility, extending the term for two years from July 1, 2024 through June 30, 2026, and amending the subordination provision –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 6) Proposed Amendment No. 2 to Personal/Professional Services Agreement 137-2022 with Mesa Energy Systems, Inc., doing business as Emcor Services Hillcrest, an independent contractor, for HVAC maintenance and repair services for the period December 2, 2022 through December 1, 2025, increasing the maximum payable by \$250,000, from \$1,500,000 to \$1,750,000, to cover the term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Proposed Change Order No. 2 to Agreement 076-2023 with James E. Thompson, Inc., doing business as JTS Construction, an independent contractor, for installation of additional devices for the temporary nurse call system in the Emergency Department, increasing the maximum by \$5,384, from \$148,470 to \$153,854, to cover project costs –  
MAKE FINDING THAT THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE;  
AUTHORIZE CHAIRMAN TO SIGN

CA

- 8) Proposed Agreement with Mission Linen Supply, an independent contractor, for linen supply services from August 1, 2024 through July 31, 2027, in an amount not to exceed \$3,672,480 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed First Amendment to Lease Agreement 2016-013 with the County of Kern for lease of a portion of the Multi-Use Warehouse at the Mount Vernon Complex, for a rental credit in the amount of \$6,678 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Amendment No. 2 to Personal/Professional Services Agreement 55521 with Skarphol/Frank Associates, doing business as Skarphol Associates, an independent contractor, for architectural and engineering services for major maintenance and capital projects, for the period November 19, 2021 through November 18, 2024, extending the term for three years from November 19, 2024 through November 18, 2027 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed Amendment No. 4 to Personal/Professional Services Agreement 21218 with Thyssenkrupp Elevator Corporation, an independent contractor, for elevator repair services for the period August 3, 2018 through June 30 2024, extending the term for four months from July 1, 2024 through October 30, 2024, and increasing the maximum payable by \$49,178, from \$730,000 to \$779,178, to cover the term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed Personal/Professional Services Agreement with Patton Sheet Metal Works, Inc., doing business as Patton Air Conditioning, an independent contractor, for installation of steam lines, effective July 17, 2024, in an amount not to exceed \$263,202 –  
MAKE FINDING THAT THE PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301, 15302 AND 15061(B)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF THE TOTAL CONTRACT PRICE

CA

- 13) Proposed Ordering Document CPQ-3488140 with Oracle America, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of equipment, software, and maintenance for management of vital signs devices, effective July 17, 2024, in an amount not to exceed \$3,948, plus taxes and fees –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 14) Proposed Ordering Document CPQ-3488331 with Oracle America, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of equipment, software, and maintenance for management of vital signs devices, effective July 17, 2024, in an amount not to exceed \$3,948, plus taxes and fees –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 15) Proposed Ordering Document CPQ-3488385 with Oracle America, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of equipment, software, and maintenance for management of vital signs devices, effective July 17, 2024, in an amount not to exceed \$3,948, plus taxes and fees –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 16) Proposed Ordering Document CPQ-3488412 with Oracle America, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of equipment, software, and maintenance for management of vital signs devices, effective July 17, 2024, in an amount not to exceed \$3,948, plus taxes and fees –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 17) Proposed Ordering Document CPQ-3488445 with Oracle America, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of equipment, software, and maintenance for management of vital signs devices, effective July 17, 2024, in an amount not to exceed \$3,948, plus taxes and fees –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 18) Proposed Sales Terms with Utah Medical Products, an independent contractor, containing nonstandard terms and conditions, for purchase of umbilical catheters, in an amount not to exceed \$7,500 –  
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN FUTURE SALES ORDERS

CA

- 19) Proposed Quote Q-00316807 with Philips Healthcare, a division of Philips North America LLC, an independent contractor, containing nonstandard terms and conditions, for telemetry software upgrades and additional telemetry monitors in the Diagnostic Treatment Center, in an amount not to exceed \$12,022 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 20) Proposed IBE SMA Standard Software Maintenance Agreement with Philips Healthcare, a division of Philips North America LLC, an independent contractor, containing nonstandard terms and conditions, for telemetry software upgrades and maintenance, from August 1, 2024 through July 31, 2028, in an amount not to exceed \$30,120 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 21) Proposed Quote 2301406246 with Philips Healthcare, a division of Philips North America LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of telemetry equipment for 2 Center, in an amount not to exceed \$13,934 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 22) Proposed Quote Q-00326625 with Philips Healthcare, a division of Philips North America LLC, an independent contractor, containing nonstandard terms and conditions, for purchase of telemetry equipment for the Operating Room, in an amount not to exceed \$100 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 23) Proposed Schedule A-9 to Agreement 039-2021 with Healthcare Performance Group, Inc., an independent contractor, for electronic health record consulting services, from August 5, 2024 through September 6, 2024, increasing the maximum payable by \$22,400, from \$315,360 to \$337,760, plus expenses –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 24) Proposed Memorandum of Understanding with Committee of Interns and Residents/Service Employees International Union, Local 1957, from July 17, 2024 through June 30, 2027, in an amount not to exceed \$4,429,196 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE HUMAN RESOURCES STAFF TO IMPLEMENT CHANGES

CA

- 25) Proposed Side Letter of Agreement to Memorandum of Understanding 089-2022 with Service Employees International Union, Local 521, amending Article VI, Section 6, adding premium pay for registered nurses who are assigned the role of high-risk delivery nurse, effective July 17, 2024  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN TO SIGN SUBJECT TO APPROVAL AS TO FORM BY COUNSEL; AUTHORIZE HUMAN RESOURCES STAFF TO IMPLEMENT CHANGES

CA

- 26) Proposed Master Service Agreement with PatientNow, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of electronic medical record software from August 1, 2024 through July 31, 2025, in an amount not to exceed \$4,656 plus taxes and fees –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 27) Proposed acceptance of donation of travel and related expenses from Decision Resource, Inc., doing business as Clarivate, for two Kern Medical Center employees to attend the 2024 Member Retreat, "Resilience: Navigating from Recovery to High-Functioning Innovation," from August 14-15, 2024, in Austin, Texas –  
APPROVE; ADOPT RESOLUTION

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

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

CA

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

CA

- 31) Claims and Lawsuits Filed as of June 30, 2024 –  
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

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

- 33) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION  
(Government Code Section 54956.9(e)(3)) Number of cases: Three (3) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection –
- 34) Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, AUGUST 21, 2024 AT 11:30 A.M.

**SUPPORTING DOCUMENTATION FOR AGENDA ITEMS**

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

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

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

CA

31) CLAIMS AND LAWSUITS FILED AS OF JUNE 30, 2024 –  
RECEIVE AND FILE

- A) Claim in the matter of Bonnie Rhea Ferguson
- B) Claim in the matter of Martin Adan Gonzalez
- C) Claim in the matter of Edward Michael Villanueva
- D) Claim in the matter of Cherie Latreks Villanueva
- E) Claim in the matter of Daniel Alexander Bazan
- F) Claim in the matter of Fernando Pacheco Gonzalez
- G) Claim in the matter of Maurice Tyree Johnson
- H) Claim in the matter of Cheryl Ann Nolbert Bonner
- I) Claim in the matter of Gurpal A. Singh



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

July 17, 2024

**Subject:** Proposed appointment of Thiagarajan Nandhagopal, M.D. as Chief, Division of Pediatrics

**Recommended Action:** Make appointment

**Summary:**

The Medical Executive Committee requests your Board appoint Thiagarajan Nandhagopal, M.D., as Chief, Division of Pediatrics. Dr. Nandhagopal is a board-certified pediatrician who has been employed by Kern Medical since July 6, 2022. If approved, Dr. Nandhagopal will replace Dr. Sam Aiylam who recently resigned as Chief to move to part-time status. The pediatric service is a division of the Department of Family Medicine.

Article X, Section 10.8, of the Medical Staff Bylaws sets forth the qualifications of a division chief and the selection process to appoint such person to the position. In accordance with the Bylaws, your Board appoints each division chief after recommendation by the department chair through the Chief Executive Officer and Medical Executive Committee.

Dr. Nandhagopal meets the qualifications as outlined in the Bylaws in his training and experience and has demonstrated current ability in the clinical area of pediatrics. He has no conflict of interest prohibited by the Kern Medical and carries the recommendation by the Chair, Department of Family Medicine, the Chief Executive Officer and the Medical Executive Committee.

Dr. Nandhagopal has agreed to serve as division chief until such time as he is removed from office, resigns, or loses medical staff membership or clinical privileges in the department.

Therefore, it is recommended that your Board appoint Thiagarajan Nandhagopal, M.D. as Chief, Division of Pediatrics, effective July 17, 2024.



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

July 17, 2024

**SUBJECT:** Proposed rescission of Amendment No. 2 (Agreement 097-2024) to Agreement 554-2021 with the County of Kern, as represented by the Administrative Office and Kern County Sheriff's Office, and retroactive approval of Amendment No. 2 to Agreement 554-2021 with the County of Kern for health care services at Kern Justice Facility

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

**Summary:**

On June 26, 2024, your Board approved Amendment No. 2 (Agreement 097-2024) to Agreement 554-2021 with the County of Kern for health care services at Kern Justice Facility. As this Agreement requires the consent of the California Department of Corrections and Rehabilitation (CDCR), Kern Medical and the County of Kern have worked to finalized language. After the amendment was approved in the June Board of Governors meeting, the CDCR required additional changes to the subordination language. As a result, Kern Medical is requesting that your Board rescind Amendment No. 2 approved at the June 26, 2024 meeting and approve the revised Amendment No. 2 to Agreement 554-2021 with the County of Kern, as represented by the Administrative Office and Kern County Sheriff's Office, for the provision of health care services to adult inmates detained in the Kern Justice Facility, effective July 1, 2024.

Kern Medical provides health care services on behalf of the Kern County Sheriff's Department, to meet the County's obligation to provide health care services under Titles 15 and 24 of the California Code of Regulations to in-custody adult inmates housed in the Kern Justice Facility. The County reimburses the Authority for such services based on a mutually agreed upon annual budget.

The Agreement and any amendments require the consent of the CDCR due to the Facility Sublease between the CDCR and the County and the County's certificate of the Tax Certification referenced therein. In order to allow for additional time in the coming years, the Amendment extends the term of the Agreement for a period of two years from July 1, 2024 through June 30, 2026, unless the Board of Supervisors selects a replacement provider during that time frame. This will allow sufficient time to obtain approval of future amendments prior to the termination date of the Agreement. As required by the CDCR, the subordination provision of the Agreement has been amended.

Therefore, it is recommended that your Board rescind Amendment No. 2 (Agreement 097-2024) to Agreement 554-2021 and retroactively approve Amendment No. 2 to Agreement 554-2021 for the provision of health care services to in-custody adult inmates at Kern Justice Facility, extending the term for two years from July 1, 2024 through June 30, 2026, amending the subordination provision, and authorize the Chairman to sign.

**AMENDMENT NO. 2  
TO  
KERN COUNTY JUSTICE FACILITY MEDICAL SERVICES AGREEMENT  
(County of Kern – Kern County Hospital Authority)**

This Amendment No. 2 to the Kern County Justice Facility Medical Services Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, between Kern County Hospital Authority (“Authority”), a local unit of government, which owns and operates Kern Medical Center (“KMC”), and County of Kern, a political subdivision of the state of California (“County”), on behalf of County Administrative Office (“CAO”) and Kern County Sheriff’s Office (“Sheriff”).

**RECITALS**

(a) County and Authority have heretofore entered into the Kern County Justice Facility Medical Services Agreement (Kern County Agt. #554-2021, dated September 14, 2021) and Amendment No. 1 (Kern County Agt. #599-2022, dated October 25, 2022) (“Agreement”), for the period July 1, 2021 through June 30, 2024, whereby Authority through KMC provides health care services to in-custody adult inmates housed in the Kern County Justice Facility (“Facility”); and

(b) The Agreement relates solely to services provided by KMC to in-custody adult inmates housed in Facility; and

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

(d) The Agreement is amended effective July 1, 2024;

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

1. Section 1, Term of Agreement and Records at Termination of Agreement, paragraph 1.1 shall be deleted in its entirety and replaced with the following:

“1.1 Term of Agreement. This Agreement will be effective as of July 1, 2021, and remain in effect through June 30, 2026, unless the Kern County Board of Supervisors has selected a replacement provider of healthcare services to adult inmates under the responsibility of Sheriff.”

2. Section 31, Subordination, shall be deleted in its entirety and replaced with the following:

“31. **Subordination.**

31.1 Notwithstanding anything in this Agreement the parties agree:

(i) This Agreement in all respects is subordinate and subject to the terms of the Indenture for the State Public Works Board of the State of California Lease Revenue Bonds (Department of Corrections and Rehabilitation) 2018 Series A (Kern Jail Complex) (the "Bonds"), and the Site Lease, the Facility Lease, and the Facility Sublease (including but not limited to, reletting rights) related to the Bonds that involve, or are executed by, the County of Kern and any subsequent indenture or amended or restated site lease, facility lease, and facility sublease entered into to facilitate a refunding of the Bonds; (ii) to the extent the Bonds are refunded, the foregoing subordination shall be self-executing and effective automatically without the requirement that any further agreement or confirmation be executed or delivered by County; provided, however, that upon written request from the State Public Works Board in connection with any State Public Works Board Financing, County shall execute such further writings as may be reasonably required to separately document any such subordination; and

31.2 This Agreement is subject to review and written consent of the State Public Works Board and Department of Corrections and Rehabilitation prior to execution, as is any amendment or modification thereto; and

31.3 This Agreement shall be terminable by the parties or at the direction of the State Public Works Board upon fifty (50) days' written notice, without penalty or cause."

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 taken together shall constitute one and the same instrument.

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

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS TO THE FOREGOING, the parties have executed this Amendment No. 2 as of the day and year first written above.

COUNTY OF KERN

By \_\_\_\_\_  
Chairman  
Board of Supervisors

APPROVED AS TO CONTENT:  
ADMINISTRATIVE OFFICE

By \_\_\_\_\_  
Elsa Martinez  
Interim Chief Administrative Officer

SHERIFF'S OFFICE

By \_\_\_\_\_  
Donny Youngblood  
Sheriff

APPROVED AS TO FORM:  
OFFICE OF COUNTY COUNSEL

By \_\_\_\_\_  
Assistant County Counsel

CONSENTED TO (Pursuant to a Facility  
Sublease Dated April 1, 2018, between the  
Department of Corrections and Rehabilitation of  
the state of California and the County of Kern and  
the County certificate to the Tax Certification  
referenced therein)

STATE PUBLIC WORKS BOARD OF THE  
STATE OF CALIFORNIA

By \_\_\_\_\_  
Koreen H. van Ravenhorst  
Deputy Director

DEPARTMENT OF CORRECTIONS AND  
REHABILITATION OF THE STATE OF  
CALIFORNIA

By \_\_\_\_\_  
Michelle Weaver  
Deputy Director

KERN COUNTY HOSPITAL AUTHORITY

By \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO CONTENT:  
KERN MEDICAL CENTER

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

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By \_\_\_\_\_  
Vice President & General Counsel  
Kern County Hospital Authority



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

July 17, 2024

**Subject:** Proposed Amendment No. 2 to Professional Services Agreement with Mesa Energy Systems, Inc. dba Emcor Services Hillcrest, for HVAC maintenance and repairs at KCHA facilities

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

**Summary:**

Kern Medical requests your Board approve proposed Amendment No. 2 to the Professional Services Agreement with Mesa energy Systems, Inc. dba Emcor Services Hillcrest for HVAC system repairs and maintenance at KCHA facilities. On December 2, 2022 your Board entered into a three (3) year agreement in the amount of \$1,000,000. On January 17, 2024, your Board increased the not to exceed amount to \$1,500,00. This Amendment No. 2 will increase the not to exceed amount by an additional \$250,000, for a total of \$1,750,000, through the remainder of the contract term.

Budgeted Maintenance/Repairs for this Agreement include, but are not limited to:

Chiller #1 Rebuild

Chilled Water and Heating Pumps

Actuator Replacement

Payment for Services	Previous Year Agreement	Proposed Agreement	Variance
Original Agreement	\$1,000,000		
Amendment No. 1	\$1,500,000		\$500,000
Amendment No. 2		\$1,750,000	\$250,000

Therefore, it is recommended that your Board approve proposed Amendment No. 2 to the Professional Services Agreement with Mesa Energy Systems, Inc. dba Emcor Services Hillcrest, to increase the not to exceed amount from \$1,500,000 to \$1,750,000, and increase of \$250,000, for HVAC system maintenance and repairs at Kern Medical facilities and authorize the chairman to sign.

**AMENDMENT NO. 2  
TO  
PERSONAL/PROFESSIONAL SERVICES AGREEMENT  
(Kern County Hospital Authority-Emcor Services)**

THIS AMENDMENT TO AGREEMENT, effective May 15, 2024, is between the Kern County Hospital Authority, a local unit of government ("KCHA"), which owns and operates Kern Medical Center ("KMC"), and Mesa Energy Systems, Inc. dba Emcor Services Hillcrest ("Consultant") with its principal place of business located at 2 Cromwell, Irvine, California 92618.

**WITNESSETH:**

WHEREAS, KCHA and Consultant entered into a Personal/Professional Services Agreement dated December 2, 2022 (KCHA Agt. #137-2022) and Amendment No. 1 dated January 17, 2024 (KCHA Agt. #010-2024) ("Agreement"), for the period December 2, 2022 through December 1, 2025; and

WHEREAS, the parties to the Agreement desire to amend the Agreement as specified herein below;  
NOW, THEREFORE, KCHA and Consultant do mutually agree as follows (check those applicable):

_____	<b>Term.</b> The Agreement shall be extended from XXX to XXX, unless sooner terminated as provided for in the Agreement.
<u>  X  </u>	<b>Fees</b> payable by KCHA under the Agreement shall increase by <u>\$250,000</u> , from <u>\$1,500,000</u> to <u>\$1,750,000</u> .
_____	<b>Travel Expenses</b> payable by KCHA under the Agreement shall increase from by \$, from \$ to \$.
_____	<b>Services.</b> See Exhibits A-1 and B-1, attached hereto and incorporated herein by this reference, for revised Services.
_____	<b><u>Other</u></b>

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

IN WITNESS WHEREOF, this Amendment No. 2 to the Agreement has been executed as of the date indicated above.

**KERN COUNTY HOSPITAL AUTHORITY**

**APPROVED AS TO CONTENT:**  
Responsible KCHA Department

By \_\_\_\_\_  
Chairman, Board of Governors  
"KCHA"


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

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

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

**MESA ENERGY SYSTEMS, INC.  
DBA EMCOR SERVICES HILLCREST**

**APPROVED AS TO FORM:**  
Legal Services Department

By   
Name: Sal Delgado  
Title: Branch Manager  
"Consultant"

By   
Hospital Counsel  
Kern County Hospital Authority

Date: 5/3/2024

Date: 5/3/2024



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

July 17, 2024

**Subject:** Proposed Change Order No. 2 to Agreement 076-2023 with James E. Thompson, Inc., dba JTS Construction

**Recommended Action:** Make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; Approve; Authorize Chairman to sign;

**Summary:**

Kern Medical requests your Board approve the proposed Change Order No. 2 to the Agreement with James E Thompson, Inc., dba JTS Construction in the amount of \$5,384, to provide additional nurse call devices in the Emergency Department.

On May 21, 2023, your Board approved an agreement with JTS Construction in the amount of \$98,450 with authorization for the Chief Executive Officer to execute future change orders in an amount not to exceed 10% the total contract price, to provide temporary nurse call systems in the Emergency Department.

On October 18, 2023, your Board approved Change Order No. 1 in the amount of \$50,000 to provide additional devices as required by the Department of Health Care Access and Information (HCAI).

This proposed Change Order No. 2, in the amount of \$5,384 compensates the contractor for additional devices at the Nurse Station to enhance the notification sound levels as required by HCAI.

Therefore, it is recommended that your Board make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of State CEQA Guidelines; approve the Change Order with James E. Thompson, Inc., dba JTS Construction in the amount of \$5,384 for a new total of \$153,854 and authorize Chairman to sign.

## **CHANGE ORDER**

**PROJECT:**

Temporary Nurse Call at Emergency Department  
1700 Mt. Vernon Avenue  
Bakersfield, CA 93306

PROJECT NO.: 10127  
CONTRACT NO.: 076-2023

**CONTRACTOR:**

JTS Construction  
P.O. Box 41766  
Bakersfield, CA 93384

CHANGE ORDER NO.: Two

DATE: 7/17/2024

DESCRIPTION OF CHANGE	ADD	DEDUCT
1. Provide a credit for programming.		(\$10,552.38)
2. Provide all labor, material and equipment to install additional devices as required by HCAI.	\$15,936.14	
CHANGE ORDER NO. 2 TOTAL (ADD)	\$5,383.76	
CHANGE ORDER NO. 1 TOTAL (ADD)	\$50,020.00	
ORIGINAL CONTRACT PRICE	\$98,450.00	
NEW CONTRACT AMOUNT	\$153,853.76	

**REASON FOR CHANGE**

1. Contractor was not able to complete the system programming.
2. HCAI reqired additional devices during the plan review phase.

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

**CONFORMANCE WITH SPECIFICATIONS:**

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

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

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**SUBMITTED BY:**

JTS Construction

BY: \_\_\_\_\_

Troy Brookins

**APPROVED AS TO FORM:**

Legal Services Department

BY: \_\_\_\_\_

Phillip Jenkins  
Hospital Counsel

**APPROVED AS TO CONTENT**

BY: \_\_\_\_\_

Scott Thygerson, CEO

BY: \_\_\_\_\_

Tyler Whitezell, COO

**KERN COUNTY HOSPITAL AUTHORITY**

BY: \_\_\_\_\_

Chairman, Board of Governors

"AUTHORITY"



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

July 17, 2024

**Subject:** Proposed Agreement for Professional Services with Mission Linen Supply to provide linens to main campus facility and clinics.

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

**Summary:**

Kern Medical requests your Board approve an Agreement for the proposed Rental Agreement with Mission Linen Supply, for the provision of various linens such as gowns, washcloths, bath towel, sheets, blankets and etc. at the main campus and clinic facilities. Mission Linen Supply continues to be a preferred vendor as it has accommodated Kern Medical's increased service requests while reducing pricing. The Agreement is for a term of thirty-six (36) months, from August 1, 2024 through July 31, 2027, with a maximum payable of \$3,672,480, as outlined below.

Payment for Services	Previous Agreements	Proposed Agreement	Variance
Year 1		\$1,200,000	
Year 2 – 2% Increase		\$1,224,000	
Year 3 – 2% Increase		\$1,248,480	
Grant Total:		\$3,672,480	

Therefore, it is recommended that your Board approve the proposed Rental Agreement with Mission Linen Supply to provide linen services to KCHA facilities from August 1, 2024 through July 31, 2027, in an amount not to exceed \$3,672,480 and authorize the Chairman to sign.



## RENTAL AGREEMENT

This AGREEMENT is made this July 17, 2024 by and between MISSION LINEN SUPPLY ("Supplier") and KERN COUNTY HOSPITAL AUTHORITY, a local unit of government, which owns and operates KERN MEDICAL CENTER ("Customer").

The parties agree as follows:

### SCOPE OF SERVICES

1. SUPPLIER agrees to furnish and CUSTOMER agrees to rent and use the linen supply items listed herein, in accordance with the conditions and terms set forth below (See Attachment "A"). Initial linens provided by SUPPLIER shall be new or like new condition.
2. Except as may be provided herein, all linen items and garments supplied shall remain the property of, and be processed exclusively by, SUPPLIER. Alterations to rental items by CUSTOMER are not allowed. (1) Supplier will implement a defined lost linen maintenance program in conjunction with department heads of CUSTOMER.
3. Additional services may be provided under this Agreement upon mutual agreement between SUPPLIER and CUSTOMER, and shall then be expressed and identified by a written Addendum. Upon signed acceptance by both SUPPLIER and CUSTOMER, this Addendum shall become a part of this Agreement.
4. At time of delivery an invoice will be given, or sent electronically, reflecting the individual item counts. If there is a discrepancy in the count, it will be brought to the attention of SUPPLIER'S service department promptly and will be addressed immediately. All clean linens will be billed by invoice at the contracted price per item. (See attachment "A"). A monthly report will break out the calibrated weight of items provided.

### AGREEMENT TERM

5. This AGREEMENT is effective is effective on August 1, 2024, and shall remain in effect until July 31, 2027. This agreement may be renewed by written agreement between the parties not less than thirty (30) days in advance of the expiration date of the then current term. This agreement shall not be binding upon SUPPLIER until it has been accepted by its District Manager or General Manager.

## SERVICE DELIVERY PERFORMANCE

6. Deliveries and pick-ups will be made by SUPPLIER on a regular scheduled basis at a time mutually agreed upon by both parties. At no additional cost to CUSTOMER, an answering service will be provided 24 hours a day.
  - a. During normal business hours (8:00 am to 5:00 pm, M-F), there are office staff available to take all calls. All calls are given to the respective manager for response.
  - b. All other hours are handled by our answering service. They have mobile numbers for all management. Response would be within 1 hour.
  - c. Additionally, Mission shall provide a phone directory listing for all management personnel and service personnel, which includes their mobile access numbers.
7. As often as necessary, with a minimum 24 hour notice, it is agreed that SUPPLIER shall have access to CUSTOMER'S place of business during normal business hours to check or inventory any or all of the linen items furnished by SUPPLIER.
8. CUSTOMER shall provide an area which SUPPLIER can deliver clean product to at CUSTOMER'S facility/facilities as agreed to by all parties. All clean linen products shall be delivered by SUPPLIER in covered containers with manifest specifying the content of each cart. In addition, CUSTOMER shall also provide a secured area in which soiled linen carts shall be stored for pick-up by SUPPLIER.
9. CUSTOMER shall agree to make sure that all soiled textile products which may be wet, are sealed and secured within plastic bags that prevent leakage which could result in contamination of the environment, during collection, transportation and storage prior to processing. CUSTOMER also agrees that selected bags must not tear when filled to capacity and are capable of being securely closed to prevent textiles from falling out.
10. CUSTOMER agrees to utilize red bags to contain soiled textiles known to be contaminated. Red bags will be identified with bio-hazard symbol and shall not be put in with regular soiled linen. All other soiled textiles shall be put in standardized dark blue or black containment bags.
11. SUPPLIER shall provide all transport carts required for service to CUSTOMER'S facility locations.
12. SUPPLIER shall maintain and clean all carts that have been used to transport soiled linen in accordance with all requirements as stated in our Policies and Procedures documents. In addition, SUPPLIER shall insure the separation of clean and soiled linen in transport from CUSTOMER facilities to SUPPLIER service facilities.

### PRODUCT PERFORMANCE

13. Except as may be provided herein, all linen items and garments supplied shall remain the property of, and be processed exclusively by, SUPPLIER. All linen items shall be standardized in accordance to SUPPLIERS specifications and product line. All products will be folded as per standard SUPPLIER specifications. Custom folding or bundling requested by CUSTOMER may require additional cost at SUPPLIERS discretion. Any specialty items requested by CUSTOMER, must be approved by both parties, and may result in pricing adjustments. Alterations to rental items by CUSTOMER are not allowed. SUPPLIER will implement a defined lost linen maintenance program in conjunction with department heads of CUSTOMER (See Exhibit "A"). On no less than a quarterly basis, a physical inventory of the below listed medical items will be taken in concert with SUPPLIER and CUSTOMER. In the event of loss, damage, misuse or abuse to such items, normal wear and tear excluded, CUSTOMER shall pay to SUPPLIER the then current replacement rate. This replacement rate may vary depending upon the material goods market.
14. All weighing of clean linens will be conducted at the SUPPLIER'S plant. At time of delivery an invoice will be given or sent electronically. If there is a discrepancy in the delivery item amounts, it will be brought to the attention of SUPPLIER'S service department promptly and will be addressed immediately. All clean linens will be billed by invoice at the contracted unit price. (See Exhibit "A").
15. SUPPLIER will establish an on site quality control program to ensure that linen meets CUSTOMER standards of quality. Quality issues will be reviewed on a quarterly basis or at the request of CUSTOMER. CUSTOMER may reject any linen that they feel does not meet their quality standards. All rejected items must be kept separately and returned to SUPPLIER for credit.

### TERMINATION

16. In the event of cancellation of this Agreement for any reason, CUSTOMER agrees to:
  - (a) Purchase the entire inventory of any and all Non-Standard items in service or otherwise held for CUSTOMER'S use at the then current replacement cost.
  - (b) Pay all outstanding amounts owed to SUPPLIER.
17. Should CUSTOMER believe that SUPPLIER has failed to provide service in accordance with the standard and quality comparable to that of other commercial laundries rendering like service in the same area, it shall notify SUPPLIER in writing by certified mail, setting forth the specific nature of the complaint. Should SUPPLIER in its discretion find such complaint to be valid but then fail to remedy the complaint within (30) days, CUSTOMER may terminate this Agreement by giving (60) days' written notice to SUPPLIER and by purchasing all special items in issue and/or in inventory at the then current replacement value.

18. Non-appropriation. Customer as a government entity, reserves the right to terminate this Agreement in the event insufficient funds are appropriated for this Agreement in any fiscal year under the provisions of California Constitution Article 16 section 18a. Customer's fiscal year is July 1 to June 30 of each calendar year. Upon such termination, Customer will be released from any further financial obligation to SUPPLIER, 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. SUPPLIER will be given 30 days prior to the date of termination or any liability due to any default existing at the time this clause is exercised. SUPPLIER will be given 30 days' prior written notice in the event that CUSTOMER requires such action.

Termination without Cause. Customer shall have the right to terminate this Agreement without cause upon sixty (60) days notice.

### PRICING

19. SUPPLIER shall provide the services and products as established and agreed upon as per the pricing listed in Exhibit "A".
20. SUPPLIER shall have the right to, and be entitled to a price increase on each anniversary date of this Agreement. The amount of this increase shall be in accordance with the percentage increase of the Consumer Price Index (CPI), for the Kern County, California area for the prior 12-month period. The amount of increase will be 2% for the 2<sup>nd</sup> year and 2% for the 3<sup>rd</sup> year. Also, Supplier will not give a price increase during year of renewal (i.e 2024)
21. This Agreement and its pricing is based on the quality and quantity mix of all products being requested by CUSTOMER and provided by SUPPLIER at the time of this Agreement. Should CUSTOMER substantially change product selection or delete product provision from the program, SUPPLIER may need to adjust pricing for services. Both CUSTOMER and SUPPLIER must mutually agree to the changes, and a signed Addendum by both parties shall become part of this Agreement.
22. SUPPLIER will guarantee this contract price for twelve (12) months from date of installation. In the event of unexpected market conditions which significantly change and increase cost of services to CUSTOMER, SUPPLIER can impose additional charges above the annual increase stated in paragraph twenty (20) of this agreement. SUPPLIER shall send written notice and meet with CUSTOMER no less than thirty (30) days before the implementation of any such increase. SUPPLIER shall discuss with CUSTOMER the conditions which necessitate such action with the intent of reaching mutual agreement. If after both parties have met and discussed any rate or charge increases, and an agreement has not been reached which results in an impasse, SUPPLIER may cancel this agreement by giving CUSTOMER one hundred twenty (120) days written notice and fulfilling all requirements of paragraph nineteen (19) of this agreement. SUPPLIER shall not include any "energy charge", "environmental charge", "service charge", or any other ancillary charge as described in paragraph twenty-three (23) without the mutual agreement of CUSTOMER.

### PAYMENT

23. All invoices of SUPPLIER shall be deemed to be true and correct, and unless an objection to an invoice is made by the CUSTOMER in writing on or before the due date, or unless the account is C.O.D. etc., all charges are due and payable by the 10<sup>th</sup> of the month following service. In the event CUSTOMER charges are not paid in a timely manner, SUPPLIER has the option to place CUSTOMER on a C.O.D. basis, plus a percentage of any past due bills. SUPPLIER shall apply any payment received toward the current bills first and any balance against past due bills until CUSTOMER is again current.
24. This statement describes the billing policies and practices of Mission Linen Supply regarding charges that will appear on your invoice. Please read it carefully. Like many companies, SUPPLIER'S price for the goods it rents and the services it provides is made up of several components. The goods and services are referred to on the CUSTOMER invoice by descriptive words such as "bar towel" or "shop towel." The basic price charged is determined by multiplying the number of goods rented or the quantity of services provided by a price per item of such goods or services called the "unit price." The unit price will be the amount determined by the agreement with Mission. The result will be the basic price and will be entered as a dollar amount on one line of the CUSTOMER invoice. Mission reserves the right to charge amounts in addition to the basic unit prices based on its costs and market conditions. Such additional charges will be described on the CUSTOMER invoice variously as "environmental charge," "ancillary charge," "fuel charge," "energy charge," "service charge," or "additional charge." Some CUSTOMER invoices will have charges added and others will not. Charges may be temporary and will be collected for less than the full term of the agreement. Others may be permanent and will be collected over the entire term of the agreement. The method of calculation will vary but usually will be either a flat charge or a percentage of the total invoice amount. In unusual situations the charge may be based on circumstances unique to a particular CUSTOMER. Generally, there will be no exact correlation between the charge assessed and any specific cost or expense incurred by Mission. Instead, the charges are intended to recover Mission's costs associated with energy, gasoline, environmental compliance, wastewater and related expenses on a company wide basis but the amount charged to a particular CUSTOMER will not bear an exact relationship to actual costs incurred on behalf of that CUSTOMER. Other charges shown on a CUSTOMER invoice may be related to actual CUSTOMER experience. Those charges will be described variously as an "abuse charge," "loss charge," "loss and abuse charge," "inventory maintenance charge," "replacement charge," or "linen maintenance charge." Typically they will be assessed on a percent of invoice basis but may be based on another method. These charges may be collected in addition to or in lieu of other charges. The addition or omission of such charges, the amount and method of calculation, and the determination of whether charges are temporary or permanent, are all matters within the discretion of SUPPLIER and may not be applied in the same way for all CUSTOMERS or in all locations because of variations in costs, the needs of different CUSTOMERS and the effects of competition in different markets. Unit prices and additional charges may vary according to locale. If charges are added the amount charged and the method of calculation will be separately reflected on the CUSTOMER invoice in addition to the unit price.
25. The projected payment under this agreement will be \$1,200,000 each year based on current usage by Kern Medical Center or \$3,600,000 for the duration of the agreement for linen services. If the needs and or usage increase beyond this projection, customer will be notified.

#### **FOURCE MAJEURE**

26. In the event of strikes, lockouts, riots, fire, war, government acts, acts of God, and other conditions beyond the control of SUPPLIER or CUSTOMER, either party may be excused to the extent that such things as mentioned prevent the performance of services described within this Agreement.

SUPPLIER has a contingency plan on file to service CUSTOMER without interruption. This plan provides for management intervention and involvement to insure the delivery of goods. Please see Exhibit "D" for further clarification as to this contingency plan.

#### SHARPS/MEDICAL WASTE

27. CUSTOMER agrees and acknowledges that "sharps" or contaminated Red Bio-Bag medical waste must not be mixed with soiled linens. Should sharps be found in soiled linen returned from the hospital to the laundry, each item shall be documented and notice made to the CUSTOMER'S Infectious Control Nurse (ICN). After the third such occurrence, SUPPLIER will assess a handling fee of \$250 for each subsequent incident. SUPPLIER will request a written plan that demonstrates the measures CUSTOMER is taking to ensure that potentially dangerous instruments do not become mixed with soiled linens. Additionally, CUSTOMER will be responsible for the disposal costs of medical waste received at the laundry mixed with soiled linens.

#### MISCELLANEOUS

28. In the event of sale, disposal, or closing of any or all CUSTOMER'S business or locations, CUSTOMER shall immediately notify SUPPLIER in writing and shall be liable to SUPPLIER for all linen items and garment furnished, until such notice is given.
29. CUSTOMER warrants that the execution of this agreement will not constitute a breach or violation of any existing contract to which CUSTOMER is a party.
30. CUSTOMER acknowledges that the items furnished under this agreement are for general purposes, and are not designated or recommended for use in areas of flammability risk or where contact with hazardous materials or ignition sources is possible.
31. CUSTOMER covenants that it is in compliance with the U.S. Department of Labor, Occupational Safety and Health Administration's standards covering exposure to blood-borne pathogens as published in the Federal Registrar on December 6, 1991, and will consistently maintain compliance with that standard.
32. SUPPLIER shall comply with local, state, federal laws and regulations and the Joint Commission Accreditation of Health Care Organizations which apply to occupational exposure to blood or other potentially infectious materials and performing their duties and obligations hereunder. Additionally, SUPPLIER shall comply with all requirements of California Code of Regulations, Title 22, §70825 and §70827. Notwithstanding the content of §11.1(a), failure to comply with the foregoing shall be grounds for the immediate termination of this Agreement.
33. Equal Opportunity Employer—it is the policy of SUPPLIER to provide equal employment opportunity to all of its applicants and employees. SUPPLIER does not unlawfully discriminate on the basis of race, color, religion, sex, national origin, ancestry, age, medical condition, handicap, veteran's status, marital status, or sexual orientation. SUPPLIER also makes reasonable accommodations for handicapped and disabled employees. This policy applies to all areas of

employment including recruitment, hiring, training, promotion, compensation, benefits, transfer and social and recreational programs.

34. The CUSTOMER shall assume the liability for and shall indemnify, defend and hold harmless SUPPLIER and its officers, agents and employees, and each of the foregoing, with respect to any and all liability, losses, claims, suits, damages, taxes, charges and demand of any kind and nature whatsoever by any party which any of them may incur or suffer as a result of any negligent act or omission by CUSTOMER.
35. The SUPPLIER shall indemnify, defend and hold harmless the CUSTOMER and its officers, agents and employees, and each of the foregoing with respect to any and all liability, losses, claims, suits, proceedings, damages, taxes, charges and demands of any kind and nature whatsoever by any party which any of them may incur or suffer as a result of any action relating to or arising out of any negligent act or omission of SUPPLIER, its agents, or its employees.
36. Federal Eligibility. Supplier represents and warrants to Hospital that during the term of this Agreement, that Seller and all of its owners, officers, directors and managing employees shall not have been (a) suspended or excluded from participation in any federal or state health care program (including, without limitation, Medicare, Medi-Cal, or CHAMPUS/Tricare), or (b) convicted of any criminal offense related to the delivery of any good or service paid for by a federal or state health care program or to the neglect or abuse of patients, or (c) suspended, excluded or sanctioned under any other federal program, including the Department of Defense, the Department of Veterans Affairs. Seller shall notify Hospital immediately if any event occurs which would make the foregoing representation untrue. Breach of this provision shall be grounds for immediate termination of this Agreement.
37. Compliance with Medicare Books and Records Access Law: Until the expiration of four (4) years after the furnishing of the services provided under this contract, Seller shall cooperate fully with Hospital by maintaining and making available all necessary records, or by executing any agreements, in order to assure that Hospital will be able to meet all requirements for participation and payment associated with public or private third party payment programs including, but not limited to, the Federal Medicare program. Consistent with the foregoing, Seller agrees to comply with § 1861(v)(1)(I) of the Social Security Act, as amended, and any regulations promulgated pursuant thereto, under which Seller agrees to maintain its books, documents and records that are necessary to certify the nature and extent of such services and payments under this Agreement and to furnish such books, documents and records, upon written request to the Secretary of Health and Human Services or to the Comptroller General, or any of their duly authorized representatives. If Seller is requested to disclose books, documents or records pursuant to this Section for purpose of an audit, Seller shall notify Hospital of the nature and scope of such request and Seller shall make available, upon written request of Hospital, all such books, documents or records, during regular business hours of Seller.

If Supplier carries out the duties of the contract through a subcontract worth \$10,000.00 or more over a twelve (12) month period with a related organization, the subcontract will also contain an access clause to permit access by the Secretary of Health and Human Services or to the Comptroller General, or any of their duly authorized representatives to the related organization's books and records.

38. Insurance. Supplier shall maintain adequate general public liability, property damage and workers compensation insurance against any claim or claims which might or could arise as a result of this Agreement. Upon execution of the Agreement and when requested by Hospital, an insurance certificate indicating the foregoing coverage, issued by an insurance company licensed to do business in the relevant state or states and signed by an authorized agent, shall be furnished.

39. **Governing Law; Venue.** The parties agree that this Agreement shall be deemed as having been executed in the offices of Hospital. This Agreement will be governed by and construed in accordance with the laws of the State of California. The venue for any litigation arising out of this Agreement shall be a state or federal court of competent jurisdiction in Kern County, California.
40. This agreement contains entire agreement between the parties and any terms or conditions not set forth herein are null and void. If any term or provision of this agreement or the application thereof to any person or circumstance is held to be void or unenforceable to any extent, then the remaining provisions of this agreement shall continue in full force and effect
41. 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.
42. Non-collusion Covenant. Supplier represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with Customer. Vendor has received no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the date and year first above written.

**Mission Linen Supply**

Roman Vasquez  
Authorized Representative: Roman

Roman Vasquez  
Signature

General Manager  
Title

6/12/2024  
Date

**Kern County Hospital Authority**

1700 Mt. Vernon Bakersfield, CA 93306

\_\_\_\_\_  
Authorized Representative:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Chairman, Board of Governors

\_\_\_\_\_  
Date

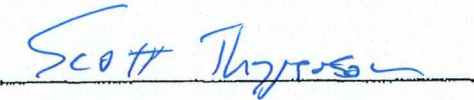
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APPROVE AS TO CONTENT

*Kern Medical Center*



Signature

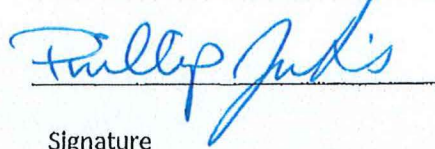


Please Print: Scott Thygeson  
Chief Executive Officer

\_\_\_\_\_  
Date

APPROVE AS TO FORM

*Kern County Hospital Authority, Legal Services Department*



Signature



Please Print Phillip Jenkins, Esq.

\_\_\_\_\_  
Date



**ATTACHMENT "A"**  
**SCHEDULE OF CHARGES**  
**RENTAL LINEN PROCESSING**

**PRICING/ FEE SCHEDULE**

**PATIENT & NON-SPECIALTY ITEMS**

Mission Linen Supply will place into service, pick-up soiled, process, and deliver all linen requirements for Kern Medical. The items quoted here are agreed upon standard items or items that have been reviewed, approved and may be special for Kern Medical. Any items required outside this agreement will be priced according to mutual agreement between the two parties.

**Poundage Pricing**

Finished goods will be bundled and stacked in clean delivery carts only. They will then be weighed as "Clean dry weight" by scale, and not by product count and pre-calibrated weight.

The weight of the cart is subtracted from the gross weight, and the net weight is then billed per this schedule. Quarterly calibration and certification of our scale will be done to ensure accuracy. All clean transportation carts will be of uniform size, and reflect their actual empty net weight on the side.

**Standard Patient Linen**

The following list of items will be charged at a price of \$.52 per clean delivered pound.

Sheet, hospital Std	Blanket, baby rec	Gown, patient blue
Sheet, OR	Blanket, thermal	Cape, mammography
Sheet, birthing	Towel, bath	Gown, pedi
Sheet, contour fitted	Towel, blue	T-shirt, baby
Pillow slip	Washcloth	
Blanket, spread	Pad, bed under quilted	
Blanket, bath	Gown, patient (IV)	

A five percent (5%) Linen Maintenance will be applied to all invoices to help defray the cost of linen Replacement for the items listed above.

**Staff Apparel, Specialty Items, & Floor Care**

The following list of items will be charged at the unit prices reflected here.

Tablecloths \$17.88  
 Scrub Tops \$0.66  
 Scrub Bottoms \$0.66  
 Lab Coats \$.47  
 Microfiber Towels \$0.17  
 Microfiber Flat Mops \$0.36

All garment charges are based on a predetermined percentage rate amount based on the stated weekly inventory requirements. All replacements on uniforms and scrubs are charged at Current replacement value (CRV).

#### Outlying Clinics and other Non-Specified Business Units

The following list of items will be charged at the unit prices reflected here:

Fitted Sheets \$.83  
 Pillow Slip \$0.28  
 Single Sheet \$0.51  
 Bath Towels \$0.34  
 Wash Cloths \$.18  
 Bath Blankets \$0.83  
 Patient Gowns \$.80

#### REPLACEMENT PROGRAM

The following replacement program is designed to provide for mutual involvement in the maintenance and Continuation of a quality linen supply program. Normal replacement of standard patient linen is a continuous process. A large part of this replacement is generated by premature retirement of product through abuse or loss. In order to facilitate a genuine partnership in this program, Mission Linen Supply will apply a five (5) percent linen maintenance charge on all standard patient linen. This is calculated on the amount of the poundage invoice total.

The following items represent the amount by which actual replacements exceed standard replacement by pieces used and are factored by the following rates.

Item:	Maintenance Charge:	Replacement Charge:
Sheet, fitted	2.50%	\$16.64
Pillowslip	2.50%	\$2.49
Sheet, hospital Std	2.50%	\$8.93
Blanket, Baby	2.77%	\$3.47
Gown, IV	1.21%	\$8.76
Gown, patient blue	1.21%	\$8.76
Blanket, flannel	2.50%	\$17.85
Gown, ped	2.62%	\$6.65
Pad, Bed under-quilt	2.46%	\$9.51
Towel, bath	2.50%	\$3.93
Washcloth	7.00%	\$5.51
Towel, blue	3.00%	\$2.74
T-shirt, baby	1.90%	\$2.47

Scrub Top	0%	CRV
Scrub Bottom	0%	CRV

Both SUPPLIER and CUSTOMER realize that linen loss and abuse is a major contributor to cost. SUPPLIER has provided a cost program to address and account for the common conditions of loss And early mortality of the textile products provided for and supplied to CUSTOMER. An area of Loss not accounted for within this program is the loss of linen which is allowed to go out of the Hospital via transfer patients to other facilities (i.e. Skilled Nursing, Long Term Care, Rehabilitation, Other hospitals...) and linen taken by Emergency Response Units through the ER.

SUPPLIER shall incorporate a program of tracking and monitoring of a soil to clean variance. This Program will track the amount of soil linen returned to the amount of clean linen delivered. The base Line for soil to clean shall be ten percent (10%) per month. Amounts less than this can indicate a Significant amount of linen may be leaving CUSTOMER's facility.

CUSTOMER agrees that should the variance drop below a nine percent (9%) threshold of soil to clean variance, it will immediately enact procedures to resolve. SUPPLIER and CUSTOMER shall work together to correct and eliminate the loss conditions through the development of a written action plan.

#### COG (Customer Owned Goods) ITEMS

The following Customer Owned Goods shall be laundered at the following unit price.

Cubicle Curtain	\$7.90
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Any new or additional items will be priced according to mutual agreement between the two parties.



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

July 17, 2024

**Subject:** Proposed First Amendment to Lease Agreement 2016-013 with the County of Kern for Lease of a Portion of the Multi-Use Warehouse at the Mount Vernon Complex

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

**Summary:**

On July 1, 2016, your Board approved a Lease Agreement with the County of Kern for the lease of the Coroner and Probation Warehouse located on Mount Vernon and College Avenue. Kern Medical requests your Board approve the proposed First Amendment to Lease Agreement 2016-013, which reflects the correct square footage of the leased premises and provides a rental credit to reconcile overpaid rent. Under this Amendment, the Authority will receive a rental credit of \$6,678 which accounts for a \$742 per month overpayment for nine (9) months from July 1, 2023 through March 31, 2024.

Therefore, it is recommended that your Board approve the First Amendment to the Lease Agreement 2016-013 with the County of Kern for leased premises and address a rent credit in the amount of \$6,678 and authorize the chairman to sign.

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

(County of Kern – Kern County Hospital Authority)

**THIS FIRST AMENDMENT TO AGREEMENT FOR LEASE** (“**First Amendment**”) is made and entered on \_\_\_\_\_, 2024 (“**Execution Date**”) by and between the **COUNTY OF KERN**, a political subdivision of the State of California (“**County**”), and the **KERN COUNTY HOSPITAL AUTHORITY**, a county hospital authority, which owns and operates Kern Medical Center (“**Lessee**”). County and Lessee are referred to individually as a “**Party**” and collectively as the “**Parties.**”

**RECITALS:**

**A.** County owns real property and a warehouse building referred to as the Coroner’s/Probation Warehouse (“**Building**”) located off of Mount Vernon Avenue and College Avenue in Bakersfield, County of Kern, State of California.

**B.** Lessee requires storage space within a portion of the Building to support its operations at Kern Medical Center.

**C.** On June 1, 2016, the Parties entered into an agreement to allow Lessee to use a portion of the Building as storage (“**Agreement**”).

**D.** The Parties desire to amend the Agreement to correct an error in the size of the leased premises and address a rent credit.

**AGREEMENT:**

- 1. Section 1 “Premises”** of the Agreement is deleted and replaced with the following:

For and in consideration of the terms, covenants, and conditions contained in this Agreement, County leases to Lessee, and Lessee leases from County, an approximate 1,222-square foot portion of the Building, which is located off of Mount Vernon Avenue and College Avenue, Bakersfield, County of Kern, state of California, and is depicted on the site plan attached to the Agreement as **Exhibit “A.”**

2. **Section 6.b “Rent – Option Term”** of the Agreement shall be edited to add the following to the end thereof:

b. **Option Term** – Commencing July 1, 2023, the amount of monthly rent for the 3-year option term shall be \$0.63/sf per month (\$770 per month).

3. **Rent Credit:** County shall honor a credit in the amount of \$6,678.00 for Lessee to acknowledge an overpayment of rent based on an error in the size of the Premises covering July 1, 2023 through March 31, 2024 (difference of \$742/month x (9) months = \$6,678).

4. **Ratification of Agreement:** Except as modified by this First Amendment, all terms and conditions of the Agreement shall be in full force and effect. All rights provided to County in this First Amendment are in addition to those provided in the Agreement and those provided by law.

5. **Authority to Execute:** Each of the individuals executing this First Amendment on behalf of Lessee and County represent and warrant that he or she is duly authorized to execute and deliver this First Amendment on behalf of Lessee or County, respectively, and that this First Amendment is binding upon Lessee and County, respectively, in accordance with its terms.

*Remainder of page intentionally left blank.*



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

**COUNTY OF KERN**

By Geoffrey Hill  
Geoffrey Hill,  
Chief General Services Officer  
"County"

**APPROVED AS TO CONTENT:**  
County Administrative Office

By Isaac Preston  
Isaac Preston,  
Senior CAO Officer

**APPROVED AS TO FORM:**  
Office of County Counsel

By Brian Van Wyk  
Brian Van Wyk,  
Deputy County Counsel

**KERN COUNTY HOSPITAL AUTHORITY**

By \_\_\_\_\_  
Chair  
Board of Governors  
"Lessee"

**APPROVED AS TO CONTENT**  
Kern County Hospital Authority

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

**APPROVED AS TO FORM:**  
Office of County Counsel

By Phillip Jenkins  
Phillip Jenkins  
Hospital Counsel

L-11





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

July 17, 2024

**Subject:** Proposed Amendment No. 2 to Professional Services Agreement #55521 with Skarphol/Frank Associates

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

**Summary:**

Kern Medical requests your Boards approval for Amendment No. 2 to Professional Services Agreement with Skarphol/Frank Associates to provide design services for budgeted construction projects at the main campus and clinic space.

On November 19, 2021 your Board approved an Agreement with Skarphol in the amount of \$250,000 for a three (3) year term.

On July 19, 2023, your Board approved Amendment No. 1 to provide for an increase from \$250,000 to \$500,000.

This Amendment No. 2 will extend the term of the Agreement for an additional three (3) years from November 19, 2024 to November 18, 2027.

Budgeted construction projects for this Fiscal Year Include, but are not limited to: New CT Scan

Therefore, it is recommended that your Board approve the Amendment No. 2 to the Professional Services Agreement with Skarphol/Frank Associates to extend the term of the Agreement for three (3) years from November 18, 2024 to November 18, 2027, and authorize the Chairman to sign.

**AMENDMENT NO. 2  
TO  
PERSONAL/PROFESSIONAL SERVICES AGREEMENT  
(Kern County Hospital Authority – Skarphol/Frank Associates)**

THIS AMENDMENT TO AGREEMENT, effective July 17, 2024, is between the Kern County Hospital Authority, a local unit of government ("KCHA"), which owns and operates Kern Medical Center ("KMC"), and Skarphol/Frank Associates ("Consultant") with its principal place of business located at 925 17<sup>th</sup> Street, Bakersfield, California 93301.

WITNESSETH:

WHEREAS, KCHA and Consultant entered into a Personal/Professional Services Agreement dated effective November 19, 2021 (KCHA Agt. #55521), Amendment No. 1 (KCHA Agt. #089-2023) effective July 19, 2023 ("Agreement"), for the period November 19, 2021 through November 18, 2024; and

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

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

  X   **Term.** The Agreement shall be extended from November 19, 2024 to November 18, 2027, unless sooner terminated as provided for in the Agreement.

       **Fees** payable by KCHA under the Agreement shall increase by \$XXX, from \$XXX to \$XXX.

       **Travel Expenses** payable by KCHA under the Agreement shall increase from by \$, from \$ to \$.

       **Services.** See Exhibits        and       , attached hereto and incorporated herein by this reference, for revised Services.

       **Other:**

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


IN WITNESS WHEREOF, this Amendment No. 2 to the Agreement has been executed as of the date indicated above.

**KERN COUNTY HOSPITAL AUTHORITY**

By \_\_\_\_\_  
Chairman, Board of Governors  
"KCHA"

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

**SKARPHOL/FRANK ASSOCIATES**

By  \_\_\_\_\_  
Paul Skarphol  
"Consultant"

Date: 6-10-24

**APPROVED AS TO CONTENT:**  
Responsible KCHA Department

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

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

**APPROVED AS TO FORM:**  
Legal Services Department

By  \_\_\_\_\_  
Hospital Counsel  
Kern County Hospital Authority

Date: 6-10-24



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

July 17, 2024

**Subject:** Proposed Amendment No. 4 to Personal/Professional Services Agreement 21218 with Thyssenkrupp Elevator Corporation

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

**Summary:**

Kern Medical requests your Board approve the proposed Amendment No. 4 to the Personal/Professional Services Agreement with Thyssenkrupp Elevator Corporation, an independent contractor, for elevator repair and maintenance service. This Amendment will insure that elevator repair services are available 24 hours a day, 365 days per year and a maximum call time of 1 hour for emergency items.

On August 3, 2018, Kern Medical entered into an agreement for elevator services in the amount of \$62,000.

Amendment No. 1 (15720) increased total contract value of \$178,000 to \$240,000 from April 1, 2020 until June 30, 2021 for all maintenance elevator services.

Amendment No. 2 (17821) increased total contract value of \$240,000 to \$480,000 from June 30, 2021 to June 30, 2024 for maintenance monthly rates changes.

Amendment No. 3 (009.2024) increased total contract value of \$480,000 to \$730,000 until June 30, 2024 for maintenance and repairs.

Amendment No. 4 will increase the total dollar value of \$49,178 to \$779,178 from July 1, 2024 through October 30, 2024 for repairs to the C-Wing elevators.

Therefore, it is recommended that your Board approve the proposed Amendment No. 4 to the Personal/Professional Services Agreement 21218 with Thyssenkrupp Elevator Corporation from July 1, 2024 through October 30, 2024, increasing the maximum payable by \$49,178, from \$730,000 to \$779,178 and authorize the Chairman to sign.

S

**AMENDMENT NO. 4  
TO  
PERSONAL/PROFESSIONAL SERVICES AGREEMENT  
(Kern County Hospital Authority–Thyssenkrupp Elevator Corporation)**

THIS AMENDMENT TO AGREEMENT, effective July 17, 2024, is between the Kern County Hospital Authority, a local unit of government ("KCHA"), which owns and operates Kern Medical Center ("KMC"), and Thyssenkrupp Elevator Corporation ("Consultant") with its principal place of business located at 114 Town Park Drive NW, Suite 300, Kennesaw, GA 30144.

WITNESSETH:

WHEREAS, KCHA and Consultant entered into a Personal/Professional Services Agreement dated August 3, 2018 (KCHA Agt. #21218), Amendment No. 1 dated April 1, 2020 (KCHA Agt. #15720), Amendment No. 2 (KCHA Agt. #17821), and Amendment No. 3 (KCHA Agt. #009-2024) ("Agreement"), for the period July 1, 2018 through June 30, 2024; and

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

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

- X   **Term.** The Agreement shall be extended from July 1, 2024 to October 30, 2024 unless sooner terminated as provided for in the Agreement.
- X   **Fees** payable by KCHA under the Agreement shall increase by \$49,178, from \$730,000 to \$779,178.
- Travel Expenses** payable by KCHA under the Agreement shall increase from by \$, from \$ to \$.
- Services.** See Exhibits A-1 and B-1, attached hereto and incorporated herein by this reference, for revised Services.
- Other**

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

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

**KERN COUNTY HOSPITAL AUTHORITY**

By \_\_\_\_\_  
Chairman, Board of Governors  
"KCHA"

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

**APPROVED AS TO CONTENT:**

Responsible KCHA Department

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

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

**THYSSENKRUPP ELEVATOR CORPORATION**

By \_\_\_\_\_  
Name: Rob Preston  
Title: "Consultant"

Date: 7/2/2024

**APPROVED AS TO FORM:**

Legal Services Department

By \_\_\_\_\_  
Hospital Counsel  
Kern County Hospital Authority

Date: 7/8/24



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

July 17, 2024

**Subject:** Proposed Agreement with Patton Sheet Metal Works, Inc., dba Patton Air Conditioning

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

**Summary:**

Kern Medical requests your Board approve the proposed Agreement with Patton Sheet Metal Works, Inc., dba Patton Air Conditioning to install steam lines from the Central Plant to the E Wing Hot Room at the Kern Medical campus.

The Agreement is effective as of July 17, 2024, with construction anticipated to be complete within six months of commencement. The projected construction cost for this project is \$263,202, which includes future change orders of up to 10% of the original contract price of \$239,274.

The original budget for this project was projected at \$700,438, including a construction estimate of \$500,000. Now that the construction bids have been received, Kern Medical is now projecting a new total project budget of \$381,000, which includes this proposed Agreement.

Therefore, it is recommended that your Board make a finding that the project is exempt from further CEQA review per sections 15301, 15302 and 15061(b)(3) of state CEQA guidelines, approve the Agreement, authorize the Chief Executive Officer to sign future change orders in an amount not to exceed 10% of the total contract price of \$239,274 for approval of up to \$263,202, and authorize the Chairman to sign.

**DOCUMENT 00500**

**AGREEMENT**

THIS AGREEMENT, dated this **17th** day of **July 2024**, is by and between **Patton Sheet Metal Works, Inc., dba Patton Air Conditioning**, whose place of business is located at **272 Palm Avenue, Fresno, CA 93701** ("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:

**Kern Medical Steam Room Piping and 10081**

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 **two hundred thirty-nine thousand, two hundred seventy-four dollars (\$239,274)** 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 **65** **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 (\$500) 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:

KERN COUNTY HOSPITAL AUTHORITY

By Phillip Jenkins  
Phillips Jenkins, Hospital Counsel

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

"AUTHORITY"

APPROVED AS TO CONTENT:  
KERN MEDICAL HOSPITAL

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

Contractor's Name  
Patton Sheet Metal Works, Inc., dba  
Patton Air Conditioning  
Type of Entity  
(corporation, partnership, sole proprietorship)

By Justin Fortmeyer  
Signature

Justin Fortmeyer

Typed Name

Vice President

Title of Individual Executing  
Document on behalf of Firm

"CONTRACTOR"

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

END OF DOCUMENT



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

July 17, 2024

**Subject:** Proposed Ordering Document CPQ-3488140 with Oracle America, Inc. to secure equipment, equipment support, sublicensed software, and sublicensed software support for the management of vital signs devices at Kern Medical's Columbus out-patient clinics

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

**Summary:**

Kern Medical requests that your Board approve the proposed Ordering Document CPQ-3488140 with Oracle America, Inc., in an amount not to exceed \$3,948 plus taxes and fees, beginning on July 17, 2024 through the end of the underlying Cerner business contract HA#2016-36, December 31, 2027.

Oracle will provide licensed software, bidirectional interfaces, and implementation services for the installation and operation of management of vital signs devices at the Columbus clinics.

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

The proposed software will integrate a currently manual process into the electronic health record, reducing human error and creating a safer environment for our patients, therefore, it is recommended that your Board approve the proposed Ordering Document CPQ-3488140 with Oracle America, Inc. for the purchase of equipment, equipment support, sublicensed software, and sublicensed software support, with a maximum payable of \$3,948 plus taxes and fees, for the remainder of the term of the underlying Cerner Business Agreement, and authorize the Chairman to sign.

**Kern County Hospital Authority**  
1830 Flower St  
Bakersfield CA, 93305  
US

**Oracle America, Inc.**  
500 Oracle Parkway  
Redwood Shores, CA  
94065

**Contact**  
Adriana Cadena  
661-326-5652  
Adriana.Cadena@kernmedical.com

Fee Summary

Fee Description	Net Fees	Monthly Fees	Annual Fees
Equipment and Equipment Support	3,396.75	0.00	0.00
Sublicensed Software and Sublicensed Software Support	550.41	0.00	0.00
Total Fees	3,947.16	0.00	0.00

## Billing Frequency

Description	% of Total Due	Payment Due
Equipment	100%	Upon delivery
Sublicensed Software	100%	Upon shipment

## Ordered Items

### Equipment and Equipment Support

Part Number	Description	Term	Pass-Through Code	Quantity	Unit Net Price	Extended Net Fees	Annual Fees
7607595	Connex Accessory Cable Management Stand. Includes Welch Allyn 1-year Standard Equipment Warranty [Mfg Part Num: 4800-60]	--	3rd Party	1	296.53	296.53	--
7607642	CVSM 6800, Sp02 (Masimo), SureTemp, NIBP. Includes Welch Allyn 2-year Standard Equipment Warranty [Mfg Part Num: 68MXTX-B]	--	3rd Party	1	2,687.72	2,687.72	--
7607943	HS1-M 2D, Gen 6 Barcode Scanner for W_A CVSM. Includes Welch Allyn 3-month Standard Equipment Warranty [Mfg Part Num: 6000-916HS]	--	3rd Party	1	412.50	412.50	--
B59411	Hardware Freight Fee	--	--	1	--	0.00	--
Subtotal						3,396.75	0.00

### Sublicensed Software and Sublicensed Software Support

Part Number	Description	Term	Pass-Through Code	Quantity	Unit Net Price	Extended Net Fees	Annual Fees
L121171	Oracle Health Connectivity Software Suite - Acute - Each Perpetual [Mfg Part Num: 1000510]	--	3rd Party	1	550.41	550.41	--
Subtotal						550.41	0.00

## Permitted Facilities

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

## **A. Terms of Your Order**

### **1. Applicable Agreement**

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

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

### **2. Fees and Payments**

a. Listed above is a summary of net fees due under this order. All fees on this order are in US Dollars.

b. Fees will be invoiced in accordance with the Billing Frequency table above.

c. You are responsible for all shipping and handling fees.

d. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the items You ordered, except for taxes based on Oracle's income. If You will be claiming an exemption from these taxes, You will provide to Oracle a valid certificate of tax exemption in advance of, or at the time of, the execution of this order. You are responsible to ensure that You provide Oracle with timely notification of any tax exemption status changes and to timely provide updated exemption certificates in the event any previously provided exemption certificate expires during the term of this order.

e. Once placed, Your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement and this order.

### **3. Terms Applicable to Ordered Items**

#### **a. Scope of Use.**

You will use the Ordered Items in this order in accordance with the Documentation and subject to the quantity of the item specified in the Ordered Items table(s) above. This order incorporates by reference the scope of use metric, definition, and any rules applicable to the Ordered Item as described in the Oracle Health Definitions and Rules Booklet v031524 which may be viewed at <http://www.oracle.com/contracts> on the Oracle Health tab.

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

Where applicable, scope of use will be measured periodically by Oracle's system tools, or, for metrics that cannot be measured by system tools or obtained through industry available reporting sources (e.g., FTEs or locations), You will provide the relevant information (including records to verify the information) to Oracle at least once per year. You agree that if an event occurs that will affect Your scope of use (such as the acquisition of a new hospital or other new facility), You will notify Oracle in writing of such event no later than 30 days following the effective date of such event so that Your scope of use can be reviewed. Any additional fees due under this section will be payable within 30 days following Your receipt of an invoice for such fees. Any additional monthly fees will begin on the date the limit was exceeded and shall be paid annually (pro-rated for any partial month).

#### **b. Third-Party Products and Services and Pass-Through Provisions.**

Certain products and services are provided by third-party suppliers (the "Third-Party Offerings"). Third-Party Offerings You have ordered, if any, are identified with pass-through code(s) in the Ordered Items table(s) above and will be provided under the applicable terms required by the third-party supplier. Applicable pass-through terms for each supplier are available at <http://www.oracle.com/contracts> on the Oracle Health tab and are incorporated into this order by reference.

Oracle is not liable under this order for any damages of any kind or nature related to or arising out of the Third-Party Offerings. Oracle does not warrant or provide any indemnities on Third-Party Offerings. To the extent that any third-party pass-through provisions contain liability limitations with respect to the Third-Party Offerings, such limitations state the total maximum liability of Oracle (and then only to the extent that Oracle can collect from supplier for Your benefit) and each supplier with respect to the Third-Party Offerings.

#### **c. Shared Computing Services.**

You understand that Oracle may deliver the products and services on this order in a Shared Computing Services model. The policies that govern the Shared Computing Services model are available at <http://www.oracle.com/contracts> on the Oracle Health tab and are incorporated into this order by reference.

#### **d. Permitted Facilities.**

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

## **4. Equipment and Equipment Support**

### **a. Delivery, Installation and Acceptance of Equipment.**

(i) You are responsible for installation of the Ordered Items identified as Equipment in the table(s) above unless You purchase installation services from Oracle for that Equipment.

(ii) Oracle will deliver the Equipment in accordance with Oracle's Order and Delivery Policies which are in effect at the time of Your order, and which are available at <http://www.oracle.com/contracts> on the Oracle Health tab. Oracle will use the delivery address specified by You on this order.

(iii) The Equipment You have ordered will be delivered: DDP; Freight prepaid and charged back via delivery method HARDWARE - STANDARD.

(iv) Acceptance of the Equipment is deemed to occur on delivery.

(v) Oracle may make and invoice You for partial deliveries.

- (vi) Oracle may make substitutions and modifications to the Equipment and Equipment Support based on availability or technological advancements.
- (vii) Oracle will use its reasonable commercial efforts to deliver the Equipment within the timeframes specified in this order.

**b. Transfer of Title.**

Title to the Equipment will transfer upon delivery.

**c. Warranty.**

In the event that a warranty is provided by Oracle or a third-party, such warranty will be identified in the description of the Equipment ordered and details of the warranty will be available in the Oracle Health Equipment Warranty Policies which are available at <http://www.oracle.com/contracts> on the Oracle Health tab.

**d. Equipment Support.**

If ordered, support for Your Equipment will be provided in accordance with the Oracle Health technical support policies which are available at <http://www.oracle.com/contracts> on the Oracle Health tab.

**5. Sublicensed Software and Sublicensed Software Support**

a. Ordered Items in the Sublicensed Software and Sublicensed Software Support table(s) above are Third-Party Offerings and will be provided in accordance with the Third-Party Products and Services and Pass-Through Provisions section above.

**6. Order of Precedence**


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

**7. Effective Date**

a. If accepting this order electronically, the effective date of this order is the date You click to accept the order. If accepting this order via E-sign, the effective date of this order is the date You adopt and sign. If accepting this order via Download and Sign, the effective date is the date You return the document to Oracle. Otherwise, the effective date is the last signed date stated below.

**8. Offer Validity**

a. This offer is valid through 31-Aug-2024 and shall become binding upon execution by You and acceptance by Oracle.

Kern County Hospital Authority		Oracle America, Inc.	
Signature	_____	Signature	
Name	<u>Phil McLaughlin</u>	Name	<u>Teresa Waller</u>
Title	<u>Chairman, Board of Governors</u>	Title	<u>Sr Director, Contract Management</u>
Signature Date	<u>July 17, 2024</u>	Signature Date	<u>6-14-2024</u>

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By Shannon Hochstein  
Kern County Hospital Authority

## Bill To / Ship To Contact Information

### Bill To Contact

Customer Name	Customer Address	Contact Name / Phone / Email
Kern County Hospital Authority	1830 Flower St Bakersfield, CA US 93305	Adriana Cadena 661-326-5652 Adriana.Cadena@kernmedical.com

### Ship To Contact

Customer Name	Customer Address	Contact Name / Phone / Email
Kern County Hospital Authority	Kern Medical Center 1700 Mount Vernon Ave Bakersfield, CA US 93306	Adriana Cadena 661-326-5652 Adriana.Cadena@kernmedical.com



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

July 17, 2024

**Subject:** Proposed Ordering Document CPQ-3488331 with Oracle America, Inc. to secure equipment, equipment support, sublicensed software, and sublicensed software support for the management of vital signs devices at Kern Medical's Columbus out-patient clinics

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

**Summary:**

Kern Medical requests that your Board approve the proposed Ordering Document CPQ-3488331 with Oracle America, Inc., in an amount not to exceed \$3,948 plus taxes and fees, beginning on July 17, 2024 through the end of the underlying Cerner business contract HA#2016-36, December 31, 2027.

Oracle will provide licensed software, bidirectional interfaces, and implementation services for the installation and operation of management of vital signs devices at the Columbus clinics.

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

The proposed software will integrate a currently manual process into the electronic health record, reducing human error and creating a safer environment for our patients, therefore, it is recommended that your Board approve the proposed Ordering Document CPQ-3488331 with Oracle America, Inc. for the purchase of equipment, equipment support, sublicensed software, and sublicensed software support, with a maximum payable of \$3,948 plus taxes and fees, for the remainder of the term of the underlying Cerner Business Agreement, and authorize the Chairman to sign.

**Kern County Hospital Authority**  
1830 Flower St  
Bakersfield CA, 93305  
US

**Oracle America, Inc.**  
500 Oracle Parkway  
Redwood Shores, CA  
94065

**Contact**  
Adriana Cadena  
661-326-5652  
Adriana.Cadena@kernmedical.com

Fee Summary

Fee Description	Net Fees	Monthly Fees	Annual Fees
Equipment and Equipment Support	3,396.75	0.00	0.00
Sublicensed Software and Sublicensed Software Support	550.41	0.00	0.00
Total Fees	3,947.16	0.00	0.00

## Billing Frequency

Description	% of Total Due	Payment Due
Equipment	100%	Upon delivery
Sublicensed Software	100%	Upon shipment

## Ordered Items

### Equipment and Equipment Support

Part Number	Description	Term	Pass-Through Code	Quantity	Unit Net Price	Extended Net Fees	Annual Fees
7607595	Connex Accessory Cable Management Stand. Includes Welch Allyn 1-year Standard Equipment Warranty [Mfg Part Num: 4800-60]	--	3rd Party	1	296.53	296.53	--
7607642	CVSM 6800, Sp02 (Masimo), SureTemp, NIBP. Includes Welch Allyn 2-year Standard Equipment Warranty [Mfg Part Num: 68MXTX-B]	--	3rd Party	1	2,687.72	2,687.72	--
7607943	HS1-M 2D, Gen 6 Barcode Scanner for W_A CVSM. Includes Welch Allyn 3-month Standard Equipment Warranty [Mfg Part Num: 6000-916HS]	--	3rd Party	1	412.50	412.50	--
B59411	Hardware Freight Fee	--	--	1	--	0.00	--
Subtotal						3,396.75	0.00

### Sublicensed Software and Sublicensed Software Support

Part Number	Description	Term	Pass-Through Code	Quantity	Unit Net Price	Extended Net Fees	Annual Fees
L121171	Oracle Health Connectivity Software Suite - Acute - Each Perpetual [Mfg Part Num: 1000510]	--	3rd Party	1	550.41	550.41	--
Subtotal						550.41	0.00

## Permitted Facilities

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

## **A. Terms of Your Order**

### **1. Applicable Agreement**

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

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

### **2. Fees and Payments**

a. Listed above is a summary of net fees due under this order. All fees on this order are in US Dollars.

b. Fees will be invoiced in accordance with the Billing Frequency table above.

c. You are responsible for all shipping and handling fees.

d. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the items You ordered, except for taxes based on Oracle's income. If You will be claiming an exemption from these taxes, You will provide to Oracle a valid certificate of tax exemption in advance of, or at the time of, the execution of this order. You are responsible to ensure that You provide Oracle with timely notification of any tax exemption status changes and to timely provide updated exemption certificates in the event any previously provided exemption certificate expires during the term of this order.

e. Once placed, Your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement and this order.

### **3. Terms Applicable to Ordered Items**

#### **a. Scope of Use.**

You will use the Ordered Items in this order in accordance with the Documentation and subject to the quantity of the item specified in the Ordered Items table(s) above. This order incorporates by reference the scope of use metric, definition, and any rules applicable to the Ordered Item as described in the Oracle Health Definitions and Rules Booklet v031524 which may be viewed at <http://www.oracle.com/contracts> on the Oracle Health tab.

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

Where applicable, scope of use will be measured periodically by Oracle's system tools, or, for metrics that cannot be measured by system tools or obtained through industry available reporting sources (e.g., FTEs or locations), You will provide the relevant information (including records to verify the information) to Oracle at least once per year. You agree that if an event occurs that will affect Your scope of use (such as the acquisition of a new hospital or other new facility), You will notify Oracle in writing of such event no later than 30 days following the effective date of such event so that Your scope of use can be reviewed. Any additional fees due under this section will be payable within 30 days following Your receipt of an invoice for such fees. Any additional monthly fees will begin on the date the limit was exceeded and shall be paid annually (pro-rated for any partial month).

#### **b. Third-Party Products and Services and Pass-Through Provisions.**

Certain products and services are provided by third-party suppliers (the "Third-Party Offerings"). Third-Party Offerings You have ordered, if any, are identified with pass-through code(s) in the Ordered Items table(s) above and will be provided under the applicable terms required by the third-party supplier. Applicable pass-through terms for each supplier are available at <http://www.oracle.com/contracts> on the Oracle Health tab and are incorporated into this order by reference.

Oracle is not liable under this order for any damages of any kind or nature related to or arising out of the Third-Party Offerings. Oracle does not warrant or provide any indemnities on Third-Party Offerings. To the extent that any third-party pass-through provisions contain liability limitations with respect to the Third-Party Offerings, such limitations state the total maximum liability of Oracle (and then only to the extent that Oracle can collect from supplier for Your benefit) and each supplier with respect to the Third-Party Offerings.

#### **c. Shared Computing Services.**

You understand that Oracle may deliver the products and services on this order in a Shared Computing Services model. The policies that govern the Shared Computing Services model are available at <http://www.oracle.com/contracts> on the Oracle Health tab and are incorporated into this order by reference.

#### **d. Permitted Facilities.**

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

## **4. Equipment and Equipment Support**

### **a. Delivery, Installation and Acceptance of Equipment.**

(i) You are responsible for installation of the Ordered Items identified as Equipment in the table(s) above unless You purchase installation services from Oracle for that Equipment.

(ii) Oracle will deliver the Equipment in accordance with Oracle's Order and Delivery Policies which are in effect at the time of Your order, and which are available at <http://www.oracle.com/contracts> on the Oracle Health tab. Oracle will use the delivery address specified by You on this order.

(iii) The Equipment You have ordered will be delivered: DDP; Freight prepaid and charged back via delivery method HARDWARE - STANDARD.

(iv) Acceptance of the Equipment is deemed to occur on delivery.

(v) Oracle may make and invoice You for partial deliveries.

- (vi) Oracle may make substitutions and modifications to the Equipment and Equipment Support based on availability or technological advancements.
- (vii) Oracle will use its reasonable commercial efforts to deliver the Equipment within the timeframes specified in this order.

**b. Transfer of Title.**

Title to the Equipment will transfer upon delivery.

**c. Warranty.**

In the event that a warranty is provided by Oracle or a third-party, such warranty will be identified in the description of the Equipment ordered and details of the warranty will be available in the Oracle Health Equipment Warranty Policies which are available at <http://www.oracle.com/contracts> on the Oracle Health tab.

**d. Equipment Support.**

If ordered, support for Your Equipment will be provided in accordance with the Oracle Health technical support policies which are available at <http://www.oracle.com/contracts> on the Oracle Health tab.

**5. Sublicensed Software and Sublicensed Software Support**

a. Ordered Items in the Sublicensed Software and Sublicensed Software Support table(s) above are Third-Party Offerings and will be provided in accordance with the Third-Party Products and Services and Pass-Through Provisions section above.

**6. Order of Precedence**


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

**7. Effective Date**

a. If accepting this order electronically, the effective date of this order is the date You click to accept the order. If accepting this order via E-sign, the effective date of this order is the date You adopt and sign. If accepting this order via Download and Sign, the effective date is the date You return the document to Oracle. Otherwise, the effective date is the last signed date stated below.

**8. Offer Validity**

a. This offer is valid through 31-Aug-2024 and shall become binding upon execution by You and acceptance by Oracle.

Kern County Hospital Authority		Oracle America, Inc.	
Signature	_____	Signature	
Name	<u>Phil McLaughlin</u>	Name	<u>Teresa Waller</u>
Title	<u>Chairman, Board of Governors</u>	Title	<u>Sr Director, Contract Management</u>
Signature Date	<u>July 17, 2024</u>	Signature Date	<u>6-14-2024</u>

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By Shannon Hochstein  
Kern County Hospital Authority

## Bill To / Ship To Contact Information

### Bill To Contact

Customer Name	Customer Address	Contact Name / Phone / Email
Kern County Hospital Authority	1830 Flower St Bakersfield, CA US 93305	Adriana Cadena 661-326-5652 Adriana.Cadena@kernmedical.com

### Ship To Contact

Customer Name	Customer Address	Contact Name / Phone / Email
Kern County Hospital Authority	Kern Medical Center 1700 Mount Vernon Ave Bakersfield, CA US 93306	Adriana Cadena 661-326-5652 Adriana.Cadena@kernmedical.com



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

July 17, 2024

**Subject:** Proposed Ordering Document CPQ-3488385 with Oracle America, Inc. to secure equipment, equipment support, sublicensed software, and sublicensed software support for the management of vital signs devices at Kern Medical's Columbus out-patient clinics

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

**Summary:**

Kern Medical requests that your Board approve the proposed Ordering Document CPQ-3488385 with Oracle America, Inc., in an amount not to exceed \$3,948 plus taxes and fees, beginning on July 17, 2024 through the end of the underlying Cerner business contract HA#2016-36, December 31, 2027.

Oracle will provide licensed software, bidirectional interfaces, and implementation services for the installation and operation of management of vital signs devices at the Columbus clinics.

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

The proposed software will integrate a currently manual process into the electronic health record, reducing human error and creating a safer environment for our patients, therefore, it is recommended that your Board approve the proposed Ordering Document CPQ-3488385 with Oracle America, Inc. for the purchase of equipment, equipment support, sublicensed software, and sublicensed software support, with a maximum payable of \$3,948 plus taxes and fees, for the remainder of the term of the underlying Cerner Business Agreement, and authorize the Chairman to sign.

**Kern County Hospital Authority**  
1830 Flower St  
Bakersfield CA, 93305  
US

**Oracle America, Inc.**  
500 Oracle Parkway  
Redwood Shores, CA  
94065

**Contact**  
Adriana Cadena  
661-326-5652  
Adriana.Cadena@kernmedical.com

Fee Summary

Fee Description	Net Fees	Monthly Fees	Annual Fees
Equipment and Equipment Support	3,396.75	0.00	0.00
Sublicensed Software and Sublicensed Software Support	550.41	0.00	0.00
Total Fees	3,947.16	0.00	0.00

## Billing Frequency

Description	% of Total Due	Payment Due
Equipment	100%	Upon delivery
Sublicensed Software	100%	Upon shipment

## Ordered Items

### Equipment and Equipment Support

Part Number	Description	Term	Pass-Through Code	Quantity	Unit Net Price	Extended Net Fees	Annual Fees
7607595	Connex Accessory Cable Management Stand. Includes Welch Allyn 1-year Standard Equipment Warranty [Mfg Part Num: 4800-60]	--	3rd Party	1	296.53	296.53	--
7607642	CVSM 6800, Sp02 (Masimo), SureTemp, NIBP. Includes Welch Allyn 2-year Standard Equipment Warranty [Mfg Part Num: 68MXTX-B]	--	3rd Party	1	2,687.72	2,687.72	--
7607943	HS1-M 2D, Gen 6 Barcode Scanner for W_A CVSM. Includes Welch Allyn 3-month Standard Equipment Warranty [Mfg Part Num: 6000-916HS]	--	3rd Party	1	412.50	412.50	--
B59411	Hardware Freight Fee	--	--	1	--	0.00	--
Subtotal						3,396.75	0.00

### Sublicensed Software and Sublicensed Software Support

Part Number	Description	Term	Pass-Through Code	Quantity	Unit Net Price	Extended Net Fees	Annual Fees
L121171	Oracle Health Connectivity Software Suite - Acute - Each Perpetual [Mfg Part Num: 1000510]	--	3rd Party	1	550.41	550.41	--
Subtotal						550.41	0.00

## Permitted Facilities

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

## **A. Terms of Your Order**

### **1. Applicable Agreement**

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

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

### **2. Fees and Payments**

a. Listed above is a summary of net fees due under this order. All fees on this order are in US Dollars.

b. Fees will be invoiced in accordance with the Billing Frequency table above.

c. You are responsible for all shipping and handling fees.

d. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the items You ordered, except for taxes based on Oracle's income. If You will be claiming an exemption from these taxes, You will provide to Oracle a valid certificate of tax exemption in advance of, or at the time of, the execution of this order. You are responsible to ensure that You provide Oracle with timely notification of any tax exemption status changes and to timely provide updated exemption certificates in the event any previously provided exemption certificate expires during the term of this order.

e. Once placed, Your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement and this order.

### **3. Terms Applicable to Ordered Items**

#### **a. Scope of Use.**

You will use the Ordered Items in this order in accordance with the Documentation and subject to the quantity of the item specified in the Ordered Items table(s) above. This order incorporates by reference the scope of use metric, definition, and any rules applicable to the Ordered Item as described in the Oracle Health Definitions and Rules Booklet v031524 which may be viewed at <http://www.oracle.com/contracts> on the Oracle Health tab.

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

Where applicable, scope of use will be measured periodically by Oracle's system tools, or, for metrics that cannot be measured by system tools or obtained through industry available reporting sources (e.g., FTEs or locations), You will provide the relevant information (including records to verify the information) to Oracle at least once per year. You agree that if an event occurs that will affect Your scope of use (such as the acquisition of a new hospital or other new facility), You will notify Oracle in writing of such event no later than 30 days following the effective date of such event so that Your scope of use can be reviewed. Any additional fees due under this section will be payable within 30 days following Your receipt of an invoice for such fees. Any additional monthly fees will begin on the date the limit was exceeded and shall be paid annually (pro-rated for any partial month).

#### **b. Third-Party Products and Services and Pass-Through Provisions.**

Certain products and services are provided by third-party suppliers (the "Third-Party Offerings"). Third-Party Offerings You have ordered, if any, are identified with pass-through code(s) in the Ordered Items table(s) above and will be provided under the applicable terms required by the third-party supplier. Applicable pass-through terms for each supplier are available at <http://www.oracle.com/contracts> on the Oracle Health tab and are incorporated into this order by reference.

Oracle is not liable under this order for any damages of any kind or nature related to or arising out of the Third-Party Offerings. Oracle does not warrant or provide any indemnities on Third-Party Offerings. To the extent that any third-party pass-through provisions contain liability limitations with respect to the Third-Party Offerings, such limitations state the total maximum liability of Oracle (and then only to the extent that Oracle can collect from supplier for Your benefit) and each supplier with respect to the Third-Party Offerings.

#### **c. Shared Computing Services.**

You understand that Oracle may deliver the products and services on this order in a Shared Computing Services model. The policies that govern the Shared Computing Services model are available at <http://www.oracle.com/contracts> on the Oracle Health tab and are incorporated into this order by reference.

#### **d. Permitted Facilities.**

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

## **4. Equipment and Equipment Support**

### **a. Delivery, Installation and Acceptance of Equipment.**

(i) You are responsible for installation of the Ordered Items identified as Equipment in the table(s) above unless You purchase installation services from Oracle for that Equipment.

(ii) Oracle will deliver the Equipment in accordance with Oracle's Order and Delivery Policies which are in effect at the time of Your order, and which are available at <http://www.oracle.com/contracts> on the Oracle Health tab. Oracle will use the delivery address specified by You on this order.

(iii) The Equipment You have ordered will be delivered: DDP; Freight prepaid and charged back via delivery method HARDWARE - STANDARD.

(iv) Acceptance of the Equipment is deemed to occur on delivery.

(v) Oracle may make and invoice You for partial deliveries.

- (vi) Oracle may make substitutions and modifications to the Equipment and Equipment Support based on availability or technological advancements.
- (vii) Oracle will use its reasonable commercial efforts to deliver the Equipment within the timeframes specified in this order.

**b. Transfer of Title.**

Title to the Equipment will transfer upon delivery.

**c. Warranty.**

In the event that a warranty is provided by Oracle or a third-party, such warranty will be identified in the description of the Equipment ordered and details of the warranty will be available in the Oracle Health Equipment Warranty Policies which are available at <http://www.oracle.com/contracts> on the Oracle Health tab.

**d. Equipment Support.**

If ordered, support for Your Equipment will be provided in accordance with the Oracle Health technical support policies which are available at <http://www.oracle.com/contracts> on the Oracle Health tab.

**5. Sublicensed Software and Sublicensed Software Support**

a. Ordered Items in the Sublicensed Software and Sublicensed Software Support table(s) above are Third-Party Offerings and will be provided in accordance with the Third-Party Products and Services and Pass-Through Provisions section above.

**6. Order of Precedence**


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

**7. Effective Date**

a. If accepting this order electronically, the effective date of this order is the date You click to accept the order. If accepting this order via E-sign, the effective date of this order is the date You adopt and sign. If accepting this order via Download and Sign, the effective date is the date You return the document to Oracle. Otherwise, the effective date is the last signed date stated below.

**8. Offer Validity**

a. This offer is valid through 31-Aug-2024 and shall become binding upon execution by You and acceptance by Oracle.

Kern County Hospital Authority		Oracle America, Inc.	
Signature	_____	Signature	
Name	<u>Phil McLaughlin</u>	Name	<u>Teresa Waller</u>
Title	<u>Chairman, Board of Governors</u>	Title	<u>Sr Director, Contract Management</u>
Signature Date	_____	Signature Date	<u>6-14-2024</u>

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By Shannon Hochstein  
Kern County Hospital Authority

## Bill To / Ship To Contact Information

### Bill To Contact

Customer Name	Customer Address	Contact Name / Phone / Email
Kern County Hospital Authority	1830 Flower St Bakersfield, CA US 93305	Adriana Cadena 661-326-5652 Adriana.Cadena@kernmedical.com

### Ship To Contact

Customer Name	Customer Address	Contact Name / Phone / Email
Kern County Hospital Authority	Kern Medical Center 1700 Mount Vernon Ave Bakersfield, CA US 93306	Adriana Cadena 661-326-5652 Adriana.Cadena@kernmedical.com



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

July 17, 2024

**Subject:** Proposed Ordering Document CPQ-3488412 with Oracle America, Inc. to secure equipment, equipment support, sublicensed software, and sublicensed software support for the management of vital signs devices at Kern Medical's Columbus out-patient clinics

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

**Summary:**

Kern Medical requests that your Board approve the proposed Ordering Document CPQ-3488412 with Oracle America, Inc., in an amount not to exceed \$3,948 plus taxes and fees, beginning on July 17, 2024 through the end of the underlying Cerner business contract HA#2016-36, December 31, 2027.

Oracle will provide licensed software, bidirectional interfaces, and implementation services for the installation and operation of management of vital signs devices at the Columbus clinics.

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

The proposed software will integrate a currently manual process into the electronic health record, reducing human error and creating a safer environment for our patients, therefore, it is recommended that your Board approve the proposed Ordering Document CPQ-3488412 with Oracle America, Inc. for the purchase of equipment, equipment support, sublicensed software, and sublicensed software support, with a maximum payable of \$3,948 plus taxes and fees, for the remainder of the term of the underlying Cerner Business Agreement, and authorize the Chairman to sign.

**Kern County Hospital Authority**  
1830 Flower St  
Bakersfield CA, 93305  
US

**Oracle America, Inc.**  
500 Oracle Parkway  
Redwood Shores, CA  
94065

**Contact**  
Adriana Cadena  
661-326-5652  
Adriana.Cadena@kernmedical.com

Fee Summary

Fee Description	Net Fees	Monthly Fees	Annual Fees
Equipment and Equipment Support	3,396.75	0.00	0.00
Sublicensed Software and Sublicensed Software Support	550.41	0.00	0.00
Total Fees	3,947.16	0.00	0.00

## Billing Frequency

Description	% of Total Due	Payment Due
Equipment	100%	Upon delivery
Sublicensed Software	100%	Upon shipment

## Ordered Items

### Equipment and Equipment Support

Part Number	Description	Term	Pass-Through Code	Quantity	Unit Net Price	Extended Net Fees	Annual Fees
7607595	Connex Accessory Cable Management Stand. Includes Welch Allyn 1-year Standard Equipment Warranty [Mfg Part Num: 4800-60]	--	3rd Party	1	296.53	296.53	--
7607642	CVSM 6800, Sp02 (Masimo), SureTemp, NIBP. Includes Welch Allyn 2-year Standard Equipment Warranty [Mfg Part Num: 68MXTX-B]	--	3rd Party	1	2,687.72	2,687.72	--
7607943	HS1-M 2D, Gen 6 Barcode Scanner for W_A CVSM. Includes Welch Allyn 3-month Standard Equipment Warranty [Mfg Part Num: 6000-916HS]	--	3rd Party	1	412.50	412.50	--
B59411	Hardware Freight Fee	--	--	1	--	0.00	--
Subtotal						3,396.75	0.00

### Sublicensed Software and Sublicensed Software Support

Part Number	Description	Term	Pass-Through Code	Quantity	Unit Net Price	Extended Net Fees	Annual Fees
L121171	Oracle Health Connectivity Software Suite - Acute - Each Perpetual [Mfg Part Num: 1000510]	--	3rd Party	1	550.41	550.41	--
Subtotal						550.41	0.00

## Permitted Facilities

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

## **A. Terms of Your Order**

### **1. Applicable Agreement**

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

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

### **2. Fees and Payments**

a. Listed above is a summary of net fees due under this order. All fees on this order are in US Dollars.

b. Fees will be invoiced in accordance with the Billing Frequency table above.

c. You are responsible for all shipping and handling fees.

d. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the items You ordered, except for taxes based on Oracle's income. If You will be claiming an exemption from these taxes, You will provide to Oracle a valid certificate of tax exemption in advance of, or at the time of, the execution of this order. You are responsible to ensure that You provide Oracle with timely notification of any tax exemption status changes and to timely provide updated exemption certificates in the event any previously provided exemption certificate expires during the term of this order.

e. Once placed, Your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement and this order.

### **3. Terms Applicable to Ordered Items**

#### **a. Scope of Use.**

You will use the Ordered Items in this order in accordance with the Documentation and subject to the quantity of the item specified in the Ordered Items table(s) above. This order incorporates by reference the scope of use metric, definition, and any rules applicable to the Ordered Item as described in the Oracle Health Definitions and Rules Booklet v031524 which may be viewed at <http://www.oracle.com/contracts> on the Oracle Health tab.

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

Where applicable, scope of use will be measured periodically by Oracle's system tools, or, for metrics that cannot be measured by system tools or obtained through industry available reporting sources (e.g., FTEs or locations), You will provide the relevant information (including records to verify the information) to Oracle at least once per year. You agree that if an event occurs that will affect Your scope of use (such as the acquisition of a new hospital or other new facility), You will notify Oracle in writing of such event no later than 30 days following the effective date of such event so that Your scope of use can be reviewed. Any additional fees due under this section will be payable within 30 days following Your receipt of an invoice for such fees. Any additional monthly fees will begin on the date the limit was exceeded and shall be paid annually (pro-rated for any partial month).

#### **b. Third-Party Products and Services and Pass-Through Provisions.**

Certain products and services are provided by third-party suppliers (the "Third-Party Offerings"). Third-Party Offerings You have ordered, if any, are identified with pass-through code(s) in the Ordered Items table(s) above and will be provided under the applicable terms required by the third-party supplier. Applicable pass-through terms for each supplier are available at <http://www.oracle.com/contracts> on the Oracle Health tab and are incorporated into this order by reference.

Oracle is not liable under this order for any damages of any kind or nature related to or arising out of the Third-Party Offerings. Oracle does not warrant or provide any indemnities on Third-Party Offerings. To the extent that any third-party pass-through provisions contain liability limitations with respect to the Third-Party Offerings, such limitations state the total maximum liability of Oracle (and then only to the extent that Oracle can collect from supplier for Your benefit) and each supplier with respect to the Third-Party Offerings.

#### **c. Shared Computing Services.**

You understand that Oracle may deliver the products and services on this order in a Shared Computing Services model. The policies that govern the Shared Computing Services model are available at <http://www.oracle.com/contracts> on the Oracle Health tab and are incorporated into this order by reference.

#### **d. Permitted Facilities.**

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

## **4. Equipment and Equipment Support**

### **a. Delivery, Installation and Acceptance of Equipment.**

(i) You are responsible for installation of the Ordered Items identified as Equipment in the table(s) above unless You purchase installation services from Oracle for that Equipment.

(ii) Oracle will deliver the Equipment in accordance with Oracle's Order and Delivery Policies which are in effect at the time of Your order, and which are available at <http://www.oracle.com/contracts> on the Oracle Health tab. Oracle will use the delivery address specified by You on this order.

(iii) The Equipment You have ordered will be delivered: DDP; Freight prepaid and charged back via delivery method HARDWARE - STANDARD.

(iv) Acceptance of the Equipment is deemed to occur on delivery.

(v) Oracle may make and invoice You for partial deliveries.

- (vi) Oracle may make substitutions and modifications to the Equipment and Equipment Support based on availability or technological advancements.
- (vii) Oracle will use its reasonable commercial efforts to deliver the Equipment within the timeframes specified in this order.

**b. Transfer of Title.**

Title to the Equipment will transfer upon delivery.

**c. Warranty.**

In the event that a warranty is provided by Oracle or a third-party, such warranty will be identified in the description of the Equipment ordered and details of the warranty will be available in the Oracle Health Equipment Warranty Policies which are available at <http://www.oracle.com/contracts> on the Oracle Health tab.

**d. Equipment Support.**

If ordered, support for Your Equipment will be provided in accordance with the Oracle Health technical support policies which are available at <http://www.oracle.com/contracts> on the Oracle Health tab.

**5. Sublicensed Software and Sublicensed Software Support**

a. Ordered Items in the Sublicensed Software and Sublicensed Software Support table(s) above are Third-Party Offerings and will be provided in accordance with the Third-Party Products and Services and Pass-Through Provisions section above.

**6. Order of Precedence**



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

**7. Effective Date**

a. If accepting this order electronically, the effective date of this order is the date You click to accept the order. If accepting this order via E-sign, the effective date of this order is the date You adopt and sign. If accepting this order via Download and Sign, the effective date is the date You return the document to Oracle. Otherwise, the effective date is the last signed date stated below.

**8. Offer Validity**

a. This offer is valid through 31-Aug-2024 and shall become binding upon execution by You and acceptance by Oracle.

Kern County Hospital Authority		Oracle America, Inc.	
Signature		Signature	
Name	Phil McLaughlin	Name	Teresa Waller
Title	Chairman, Board of Governors	Title	Sr Director, Contract Management
Signature Date	July 17, 2024	Signature Date	6-14-2024

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By   
Kern County Hospital Authority

## Bill To / Ship To Contact Information

### Bill To Contact

Customer Name	Customer Address	Contact Name / Phone / Email
Kern County Hospital Authority	1830 Flower St Bakersfield, CA US 93305	Adriana Cadena 661-326-5652 Adriana.Cadena@kernmedical.com

### Ship To Contact

Customer Name	Customer Address	Contact Name / Phone / Email
Kern County Hospital Authority	Kern Medical Center 1700 Mount Vernon Ave Bakersfield, CA US 93306	Adriana Cadena 661-326-5652 Adriana.Cadena@kernmedical.com



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

July 17, 2024

**Subject:** Proposed Ordering Document CPQ-3488445 with Oracle America, Inc. to secure equipment, equipment support, sublicensed software, and sublicensed software support for the management of vital signs devices at Kern Medical's Columbus out-patient clinics

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

**Summary:**

Kern Medical requests that your Board approve the proposed Ordering Document CPQ-3488445 with Oracle America, Inc., in an amount not to exceed \$3,948 plus taxes and fees, beginning on July 17, 2024 through the end of the underlying Cerner business contract HA#2016-36, December 31, 2027.

Oracle will provide licensed software, bidirectional interfaces, and implementation services for the installation and operation of management of vital signs devices at the Columbus clinics.

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

The proposed software will integrate a currently manual process into the electronic health record, reducing human error and creating a safer environment for our patients, therefore, it is recommended that your Board approve the proposed Ordering Document CPQ-3488445 with Oracle America, Inc. for the purchase of equipment, equipment support, sublicensed software, and sublicensed software support, with a maximum payable of \$3,948 plus taxes and fees, for the remainder of the term of the underlying Cerner Business Agreement, and authorize the Chairman to sign.

**Kern County Hospital Authority**  
1830 Flower St  
Bakersfield CA, 93305  
US

**Oracle America, Inc.**  
500 Oracle Parkway  
Redwood Shores, CA  
94065

**Contact**  
Adriana Cadena  
661-326-5652  
Adriana.Cadena@kernmedical.com

Fee Summary

Fee Description	Net Fees	Monthly Fees	Annual Fees
Equipment and Equipment Support	3,396.75	0.00	0.00
Sublicensed Software and Sublicensed Software Support	550.41	0.00	0.00
Total Fees	3,947.16	0.00	0.00

## Billing Frequency

Description	% of Total Due	Payment Due
Equipment	100%	Upon delivery
Sublicensed Software	100%	Upon shipment

## Ordered Items

### Equipment and Equipment Support

Part Number	Description	Term	Pass-Through Code	Quantity	Unit Net Price	Extended Net Fees	Annual Fees
7607595	Connex Accessory Cable Management Stand. Includes Welch Allyn 1-year Standard Equipment Warranty [Mfg Part Num: 4800-60]	--	3rd Party	1	296.53	296.53	--
7607642	CVSM 6800, Sp02 (Masimo), SureTemp, NIBP. Includes Welch Allyn 2-year Standard Equipment Warranty [Mfg Part Num: 68MXTX-B]	--	3rd Party	1	2,687.72	2,687.72	--
7607943	HS1-M 2D, Gen 6 Barcode Scanner for W_A CVSM. Includes Welch Allyn 3-month Standard Equipment Warranty [Mfg Part Num: 6000-916HS]	--	3rd Party	1	412.50	412.50	--
B59411	Hardware Freight Fee	--	--	1	--	0.00	--
Subtotal						3,396.75	0.00

### Sublicensed Software and Sublicensed Software Support

Part Number	Description	Term	Pass-Through Code	Quantity	Unit Net Price	Extended Net Fees	Annual Fees
L121171	Oracle Health Connectivity Software Suite - Acute - Each Perpetual [Mfg Part Num: 1000510]	--	3rd Party	1	550.41	550.41	--
Subtotal						550.41	0.00

## Permitted Facilities

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

## **A. Terms of Your Order**

### **1. Applicable Agreement**

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

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

### **2. Fees and Payments**

a. Listed above is a summary of net fees due under this order. All fees on this order are in US Dollars.

b. Fees will be invoiced in accordance with the Billing Frequency table above.

c. You are responsible for all shipping and handling fees.

d. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the items You ordered, except for taxes based on Oracle's income. If You will be claiming an exemption from these taxes, You will provide to Oracle a valid certificate of tax exemption in advance of, or at the time of, the execution of this order. You are responsible to ensure that You provide Oracle with timely notification of any tax exemption status changes and to timely provide updated exemption certificates in the event any previously provided exemption certificate expires during the term of this order.

e. Once placed, Your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement and this order.

### **3. Terms Applicable to Ordered Items**

#### **a. Scope of Use.**

You will use the Ordered Items in this order in accordance with the Documentation and subject to the quantity of the item specified in the Ordered Items table(s) above. This order incorporates by reference the scope of use metric, definition, and any rules applicable to the Ordered Item as described in the Oracle Health Definitions and Rules Booklet v031524 which may be viewed at <http://www.oracle.com/contracts> on the Oracle Health tab.

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

Where applicable, scope of use will be measured periodically by Oracle's system tools, or, for metrics that cannot be measured by system tools or obtained through industry available reporting sources (e.g., FTEs or locations), You will provide the relevant information (including records to verify the information) to Oracle at least once per year. You agree that if an event occurs that will affect Your scope of use (such as the acquisition of a new hospital or other new facility), You will notify Oracle in writing of such event no later than 30 days following the effective date of such event so that Your scope of use can be reviewed. Any additional fees due under this section will be payable within 30 days following Your receipt of an invoice for such fees. Any additional monthly fees will begin on the date the limit was exceeded and shall be paid annually (pro-rated for any partial month).

#### **b. Third-Party Products and Services and Pass-Through Provisions.**

Certain products and services are provided by third-party suppliers (the "Third-Party Offerings"). Third-Party Offerings You have ordered, if any, are identified with pass-through code(s) in the Ordered Items table(s) above and will be provided under the applicable terms required by the third-party supplier. Applicable pass-through terms for each supplier are available at <http://www.oracle.com/contracts> on the Oracle Health tab and are incorporated into this order by reference.

Oracle is not liable under this order for any damages of any kind or nature related to or arising out of the Third-Party Offerings. Oracle does not warrant or provide any indemnities on Third-Party Offerings. To the extent that any third-party pass-through provisions contain liability limitations with respect to the Third-Party Offerings, such limitations state the total maximum liability of Oracle (and then only to the extent that Oracle can collect from supplier for Your benefit) and each supplier with respect to the Third-Party Offerings.

#### **c. Shared Computing Services.**

You understand that Oracle may deliver the products and services on this order in a Shared Computing Services model. The policies that govern the Shared Computing Services model are available at <http://www.oracle.com/contracts> on the Oracle Health tab and are incorporated into this order by reference.

#### **d. Permitted Facilities.**

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

## **4. Equipment and Equipment Support**

### **a. Delivery, Installation and Acceptance of Equipment.**

(i) You are responsible for installation of the Ordered Items identified as Equipment in the table(s) above unless You purchase installation services from Oracle for that Equipment.

(ii) Oracle will deliver the Equipment in accordance with Oracle's Order and Delivery Policies which are in effect at the time of Your order, and which are available at <http://www.oracle.com/contracts> on the Oracle Health tab. Oracle will use the delivery address specified by You on this order.

(iii) The Equipment You have ordered will be delivered: DDP; Freight prepaid and charged back via delivery method HARDWARE - STANDARD.

(iv) Acceptance of the Equipment is deemed to occur on delivery.

(v) Oracle may make and invoice You for partial deliveries.

- (vi) Oracle may make substitutions and modifications to the Equipment and Equipment Support based on availability or technological advancements.
- (vii) Oracle will use its reasonable commercial efforts to deliver the Equipment within the timeframes specified in this order.

**b. Transfer of Title.**

Title to the Equipment will transfer upon delivery.

**c. Warranty.**

In the event that a warranty is provided by Oracle or a third-party, such warranty will be identified in the description of the Equipment ordered and details of the warranty will be available in the Oracle Health Equipment Warranty Policies which are available at <http://www.oracle.com/contracts> on the Oracle Health tab.

**d. Equipment Support.**

If ordered, support for Your Equipment will be provided in accordance with the Oracle Health technical support policies which are available at <http://www.oracle.com/contracts> on the Oracle Health tab.

**5. Sublicensed Software and Sublicensed Software Support**

a. Ordered Items in the Sublicensed Software and Sublicensed Software Support table(s) above are Third-Party Offerings and will be provided in accordance with the Third-Party Products and Services and Pass-Through Provisions section above.

**6. Order of Precedence**


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

**7. Effective Date**

a. If accepting this order electronically, the effective date of this order is the date You click to accept the order. If accepting this order via E-sign, the effective date of this order is the date You adopt and sign. If accepting this order via Download and Sign, the effective date is the date You return the document to Oracle. Otherwise, the effective date is the last signed date stated below.

**8. Offer Validity**

a. This offer is valid through 31-Aug-2024 and shall become binding upon execution by You and acceptance by Oracle.

Kern County Hospital Authority	Oracle America, Inc.
Signature _____	Signature  _____
Name <u>Phil McLaughlin</u>	Name <u>Teresa Waller</u>
Title <u>Chairman, Board of Governors</u>	Title <u>Sr Director, Contract Management</u>
Signature Date <u>July 17, 2024</u>	Signature Date <u>6-14-2024</u>

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By Shannon Hochstein  
Kern County Hospital Authority

## Bill To / Ship To Contact Information

### Bill To Contact

Customer Name	Customer Address	Contact Name / Phone / Email
Kern County Hospital Authority	1830 Flower St Bakersfield, CA US 93305	Adriana Cadena 661-326-5652 Adriana.Cadena@kernmedical.com

### Ship To Contact

Customer Name	Customer Address	Contact Name / Phone / Email
Kern County Hospital Authority	Kern Medical Center 1700 Mount Vernon Ave Bakersfield, CA US 93306	Adriana Cadena 661-326-5652 Adriana.Cadena@kernmedical.com



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

July 17, 2024

**Subject:** Propose Sales Terms with Utah Medical

**Recommended Action:** Approve Terms; Authorize Chief Executive Officer to Sign Future Sales Order

**Summary:**

Kern Medical requests your Board approve the proposed Sales Terms with Utah Medical Products for the purchase Umbilical Catheter Lumens for our Maternal Child Services Department for an amount not to exceed \$7,500. Kern Medical currently purchases lumens for NICU from Utah Medical Products.

The Sales Terms includes the unchanged non-standard terms of the vendor which is governed by Utah law. Under California law public entities, such as the Authority, are afforded procedural protections before a party can initiate litigation. California law also prescribes several statutory immunities that shield public entities from liability in many instances. These protections afford the Authority the opportunity to investigate, settle, prepare defenses, and possibly avoid litigation all together. The Sales Terms also provides a limited window of 30 days to notify the vendor of any claim of indemnity. Counsel attempted to negotiate these terms but was unsuccessful.

Utah Medical Products is our current vendor for these necessary Umbilical Catheter Lumens and is the preferred vendor of our Maternal Child Services Department.

Therefore, it is recommended that your Board approve the Sales Terms with Utah Medical Products for Umbilical Catheter Lumens, with an amount not-to-exceed \$7,500 and authorize the Chief Executive Officer to sign future Sales Orders.



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## Orders

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To ensure accurate processing of your order, please provide the following information:

- |   |  |
|---|--|
| 1. Purchase order number  | 5. Quantity and price  |
| 2. Name and address of hospital/clinic for both shipping and billing purposes | 6. Shipping insurance and special shipping instructions, if applicable |
| 3. Telephone and fax number (when applicable)                                 | 7. Signed exemption certificate, if tax exempt                         |
| 4. UTMD product description and part number                                   |  |

Minimum order is one (1) box or case. To place an order, contact Customer Service by phone, fax, or email:

Utah Medical Products, Inc.	Phone: (800) 533-4984
7043 South 300 West	Fax: (801) 566-2062
Midvale, UT 84047 USA	Email: <a href="mailto:customer@utahmed.com">customer@utahmed.com</a>

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## Standard Terms & Conditions of Sale (T&C)

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The T&C below supersede the terms and conditions of any customer purchase orders or similar documents with respect to the purchase of UTMD products listed on the reverse side of this order acknowledgement or invoice, except as per paragraph 12 below. No terms or provisions of any purchase orders or similar documents submitted by the Purchaser and no waiver, alteration, modification of any of the terms and provisions below shall be effective or binding on UTMD, unless in writing and signed by an authorized officer of UTMD. Acceptance of the products by Purchaser constitutes an agreement by Purchaser to be bound by these T&C.

1. **Acceptance of Orders**

All customer purchase orders are subject to acceptance by UTMD at Midvale, UT.

2. **Terms of Payment**

Net thirty (30) days from date of invoice, which is the date of shipment from UTMD. UTMD reserves the right to charge a service charge of 1.5% per month (or the maximum rate permitted by law, if less) on unpaid balances over thirty days. Purchaser agrees to reimburse UTMD for any legal fees incurred by UTMD to collect amounts to which it is entitled.

3. **Product Specifications**

UTMD reserves the right to change or modify product specifications for its standard products in its sole discretion from time to time provided, however, that no such change or modification shall be applicable to orders previously accepted by UTMD. Changes in specifications to custom products shall be made only with prior mutual agreement of Purchaser and UTMD.

4. **Product Liability Indemnification**

Upon written notice to UTMD provided within thirty (30) days of the date Purchaser first learns of a potential claim arising out of the use of UTMD's product, UTMD shall indemnify, save harmless, and at Purchaser's written request defend Purchaser against any and all claims, loss, damages, liabilities, costs, expenses (including reasonable attorneys' fees) incurred in connection with personal injury (including death) or damage to property caused by a defect in a UTMD product or the willful misconduct or negligence of UTMD or its agents or employees; provided, however, that UTMD shall have no obligation to indemnify a Purchaser with respect to any Claim arising out of the negligence or willful misconduct of such Purchaser or its employees, agents and partners; such negligence or willful misconduct shall include, without limitation, use of a UTMD product other than as labeled and/or other than in a manner consistent with the product's Instructions for Use. A Purchaser shall be entitled to indemnity hereunder only if: (i) the Purchaser notifies UTMD promptly in writing within thirty (30) days of the date Purchaser first learns of a Claim or potential Claim; (ii) UTMD has sole control over the defense of the Claim and any negotiation for its settlement or compromise; (iii) the Purchaser has not taken and does not take any action that is contrary to UTMD's interest; and (iv) the Purchaser cooperates with UTMD in the investigation and defense of any Claim covered by this indemnity. In the event that a Claim is caused by the negligence of UTMD and Purchaser (or their respective employees and agents), UTMD and Purchaser agree that liability for such Claim shall be allocated between them based on a comparative negligence standard.

5. **Other Indemnification**

UTMD shall also indemnify Purchaser from any third party claims of infringement of any copyright or patent related to Purchaser's use of UTMD's products.

6. **Warranty, Disclaimer and Limitation of Liability**

UTMD warrants its Products from date of shipment to be free from defects in workmanship and material, and in material compliance with all published product specifications in effect on the date of shipment for a period of thirty (30) days for supplies, or for twelve (12) or twenty-four (24) months, as applicable per the operator's manual, for equipment. UTMD also warrants its sterile products to be sterile for the period designated on the product label as long as the pouch containing such device has not been opened or damaged. During the warranty period UTMD shall, at its option, replace any products shown to UTMD's reasonable satisfaction to be defective at no expense to the Purchaser or refund the purchase price. The foregoing remedies shall be Purchaser's sole and exclusive remedies under this warranty. In the event that Purchaser makes any modifications or alterations to the Products, the foregoing warranties shall be void and of no further force or effect. EXCEPT FOR THE FOREGOING WARRANTIES, THE PRODUCTS ARE SOLD AS-IS AND WITHOUT ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER. UTMD HAS NOT MADE AND DOES NOT MAKE ANY OTHER REPRESENTATION, WARRANTY, GUARANTY, OR COVENANT, EXPRESS OR IMPLIED WITH RESPECT TO THE DESIGN, CONDITION, DURABILITY, SUITABILITY, FITNESS FOR USE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY OF THE PRODUCTS IN ANY RESPECT, UNDER NO CIRCUMSTANCES AND IN NO EVENT WHETHER AS A RESULT OF BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE SHALL UTMD BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR OTHER ECONOMIC LOSS. IN NO EVENT SHALL UTMD'S LIABILITY TO THE PURCHASER WITH RESPECT TO THIS WARRANTY WITH RESPECT TO THE PURCHASE OF A PRODUCT EXCEED THE PURCHASE PRICE FOR SUCH PRODUCT.

7. **Returns**

Purchaser must obtain a return authorization number from UTMD Customer Service prior to returning any products. To qualify for credit, products must be returned, transportation prepaid, within thirty (30) days of original shipment date in same condition as received, and in original cartons. Restocking charges may be imposed for any product which is returned after more than 30 days from the original shipment date.

8. **Taxes**

The amount of any present or future federal, state, or local taxes required to be collected or paid by UTMD will be added to the invoice and paid by the Purchaser. Tax exempt institutions must provide UTMD with a signed tax exemption certificate, or taxes will be added to the invoice.

9. **Shipment and Handling Policies**

All products are sold F.O.B. UTMD's Midvale UT facility, and shipped via United Parcel Service or best way, unless specified in advance per Paragraph 12 below. Freight charges will be prepaid by UTMD and added to the invoice. UTMD reserves the right to make deliveries through its own means where possible. Insurance, if required, must be specified by purchaser at its own cost. UTMD shall not be liable and assumes no responsibility for any loss or damage sustained by Purchaser due to inability to meet a specified delivery date. Shipping discrepancies must be reported within ten (10) days from receipt of merchandise. A two (2) percent handling fee applies to all orders.

10. **Cancellations**

Custom orders cannot be cancelled after acceptance by UTMD except upon terms that will fully compensate UTMD's incurred costs for materials that cannot be used in other devices.

11. **Force Majeure**

UTMD shall not be liable for loss, damage, delay, or failure to deliver caused by accident, labor disputes, flood, earthquakes, riots, fire, civil commotion insurrection, war, the elements, embargoes, failure of carriers, inability to obtain transportation facilities, government regulations, acts of God or the public enemy or limitations of UTMD or its suppliers, production or marketing activities or any other causes or contingencies beyond its control.

12. **Entire Agreement, Amendments, Special Terms**

This Agreement contains the entire and only agreement between the parties respecting sale of products referred to herein, and all prior and collateral representations, promises and conditions in connection therewith are superseded hereby. No modification waiver or termination of any provisions contained in this Agreement or any future representation, promise or conditions in connection with the subject matter hereof shall be binding upon UTMD or Purchaser unless made in writing and signed by an officer or other authorized representative thereof. In some case, a GPO contract may supersede the terms & conditions herein.

13. **Electronic Exchanges**

Customers who use GHX or similar exchange as a method of placing orders with UTMD agree that all transaction data shall remain strictly confidential and shall not be reported to any third party, including the exchange.

14. **Choice of Law**

This Agreement shall be interpreted and construed in accordance with the laws of the state of Utah.

KERN COUNTY HOSPITAL AUTHORITY

By: \_\_\_\_\_  
Chairman, Board of Governors

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

REVIEWED ONLY  
NOT APPROVED AS TO FORM  
By *Phillip Jenkins*  
Kern County Hospital Authority



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

July 17, 2024

**Subject:** Proposed Quote Q-00316807 with Philips Healthcare, a division of Philips North America LLC

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

**Summary:**

Kern Medical requests your Board approve the proposed Quote Q-00316807 with Philips Healthcare, a division of Philips North America LLC for the Diagnostic Treatment Center (DTC) telemetry project upgrade and purchase of seven additional telemetry monitoring systems.

Telemetry expansion/upgrade affords the hospital increased capacity for monitoring patients heart rhythms, ability to monitor patients during any transport throughout the hospital, and for tests such as x-ray. Being a designated Trauma Center where patients have complex patient conditions, this telemetry upgrade/expansion will increase Kern Medical's ability to monitor, thus ensuring safe and quality care. Current devices and systems are out of support, no longer serviced and in need of replacement. It is critical that our current system be upgraded and expanded to meet the needs of the patients we serve.

Kern Medical has had a historical relationship with Philips and Philips has knowledge of Kern Medical's IT infrastructure. Philips has a current inventory/fleet of equipment in operation which affords the ability to optimize their past investment and look to the future with new innovations. Philips is an industry leader in innovation, durability and cybersecurity.

This Agreement includes the non-standard term of twelve percent interest on any overdue amount. Counsel was unsuccessful negotiating these terms.

The cost of the additional telemetry monitor for DTC is \$12,022.

Therefore, it is recommended that your Board approve the purchase of the Philips Telemetry Monitor for DTC with a not-to-exceed amount of \$12,022 and authorize the Chairman to sign.



**Sold to:**

KERN MEDICAL CENTER  
1700 Mount Vernon Ave  
Bakersfield, CA 93306-4018

**Presented By**

Chris Mojarad  
Philips Healthcare a division of Philips North  
America LLC  
414 Union Street  
Nashville, Tennessee 37219  
**Email:** [chris.mojarad@philips.com](mailto:chris.mojarad@philips.com)

**Quote #:** Q-00316807

**Customer #:** 94310879

**Quote Date:** 06/03/24

**Valid Until:** 09/04/24

## DTC Changes

VAS ONLY

This quotation contains confidential and proprietary information of Philips Healthcare, a division of Philips North America LLC ("Philips") and is intended for use only by the customer whose name appears on this quotation. Except as otherwise required by state or federal law after strict compliance with any applicable notification and procedural requirements therein, it may not be disclosed to third parties without the prior written consent of Philips.

**IMPORTANT NOTICE:** Health care providers are reminded that if the transactions herein include or involve a loan or discount (including a rebate or other price reduction), they must fully and accurately report such loan or discount on cost reports or other applicable reports or claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, such as may be required by state or federal law, including but not limited to 42 CFR 1001.952(h).



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1. Financial Overview


Line	Article No.	Description	Qty	List Price	Unit Net Price	Net Price
1	MXU0462	Roll Stand: MX400-800, MP40-70, MP5	14	\$ 9,534.00	\$ 681.00	\$ 9,534.00
2	989803208681	Project Management: Foundation	1	\$ 306.00	\$ 306.00	\$ 306.00
3	989805710138	Labor: Install/De-Install Equipment	6	\$ 1,650.00	\$ 275.00	\$ 1,650.00
4	989805710074	Cable: Patch Cable, Copper, up to 10'	14	\$ 532.00	\$ 38.00	\$ 532.00

Total Section Price : \$ 12,022.00

List Price	Total Price
	\$ 12,022.00
Total Net Price	\$ 12,022.00



## 2. Quote Summary

Line	Article No.	Description	Qty	Unit List Price	Unit Net Price	Net Price
1	MXU0462	Roll Stand: MX400-800, MP40-70, MP5	14	\$ 681.00	\$ 681.00	\$ 9,534.00
 <p>Picture represents product family and may not be the exact configuration quoted.</p>						
2	989803208681	Project Management: Foundation	1	\$ 306.00	\$ 306.00	\$ 306.00
3	989805710138	Labor: Install/De-Install Equipment	6	\$ 275.00	\$ 275.00	\$ 1,650.00
4	989805710074	Cable: Patch Cable, Copper, up to 10'	14	\$ 38.00	\$ 38.00	\$ 532.00
Total Section Price :						\$ 12,022.00

List Price

Total Net Price

Total Price

\$ 12,022.00

\$ 12,022.00

## 3. Local Sales Terms and Conditions

Line	Product Code	Contract Name	Contract No.	Billing Plan
1	MXU0462 Roll Stand: MX400-800, MP40-70, MP5	Value Added Services	Value Added Services	0/0/100
2	989803208681 Project Management: Foundation	Value Added Services	Value Added Services	0/0/100
3	989805710138 Labor: Install/De-Install Equipment	Value Added Services	Value Added Services	0/0/100
4	989805710074 Cable: Patch Cable, Copper, up to 10'	Value Added Services	Value Added Services	0/0/100

Payment Terms US: Net 30 Days

INCO Terms: Carriage and Insurance Paid To Destination

This is a cash price quote, which includes ACH, check, and wire transfer. Any other form of payment will result in different price, which may be higher.

Billing Terms: Are as displayed under the Billing Plan table above. For each item, X/Y/Z milestones are defined as follows (unless an Agreement specifying alternative payment terms has been negotiated between the parties):

X is the percentage invoiced upon signed acceptance of quotation or upon receipt of Customer Purchase Order

Y is the percentage invoiced upon delivery of major components to Customer designated location or Philips warehouse.

Z is the percentage invoiced upon completion of installation or product available for first patient use, whichever occurs first.

If DEMO Equipment is included in this quotation it is sold under the Contact No. Contract Name/Contract Number ("Contract") of the products/solution included in this quotation.

If the quote includes a Unit Net Price, the Net Price listed on the quote is the binding price. The Unit Net Price may have a minimal pricing discrepancy when the quantity purchased is greater than 1.

All amounts in this quote are in USD



## 4. Signature Page

Invoice to:  
KERN MEDICAL CENTER  
1700 Mount Vernon Ave  
Bakersfield, CA 93306-4018

Total Net Price

\$ 12,022.00

### Acceptance by Parties

Each Quotation solution is issued pursuant to and will reference a specific Contract Name/Contract Number ("Contract") representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. Philips Standard Terms and Conditions for Value Added Services (VAS) and Connected Care Warranty is located at <http://www.usa.philips.com/healthcare/about/terms-conditions>. Any PO for the items herein will be accepted subject to the terms of that Contract. If no Contract is shown, Philips Terms and Conditions of Sale including applicable product warranty or Philips Terms of Service ("Philips Terms") located in the Philips Standard Terms and Conditions of the quotation shall solely apply to the quoted solution. **Issuance by customer of a non-contingent signed purchase order(s) referencing the quote and master agreement (as applicable) expressly represents customer's acceptance of the quotation and the associated terms in lieu of the customer signature on this quotation.** Each equipment system and/or service listed on purchase order/orders represents a separate and distinct financial transaction.

We understand and agree that each transaction is to be individually billed and paid. This quotation contains confidential and proprietary information of Philips Healthcare, a division of Philips North America LLC ("Philips") and is intended for use only by the customer whose name appears on this quotation. Except as otherwise required by state or federal law after strict compliance with any applicable notification and procedural requirements therein, it may not be disclosed to third parties without the prior written consent of Philips. This quotation provides contract agreement discounts and does not reflect rebates that may be earned by Customer, under separate written rebate agreements, from cumulative volume purchases beyond the individual quantity being ordered under this quote. Customer is reminded that rebates constitute discounts under government laws which are reportable by Customers.

The price above does not include sales tax.

Please fill in the below if applicable:

1. Tax Status: Taxable \_\_\_\_\_ Tax Exempt \_\_\_\_\_  
If Exempt, please indicate the Exemption Certification Number: \_\_\_\_\_, and  
attach a copy of the certificate.
2. Requested equipment delivery date \_\_\_\_\_
3. If you do not issue formal purchase orders indicate by initialing here: \_\_\_\_\_
4. For Recurring Maintenance Service & Support Agreements with New Equipment Purchases: Our facility does issue formal purchase orders; however, due to our business/system limitation, we cannot issue a formal purchase order for the service agreement until 90 days prior to standard warranty expiration. Our facility agrees to submit the service agreement purchase order at such time.  
Initialed: \_\_\_\_\_

#### CUSTOMER SIGNATURE

by its authorized representative

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By Phillip Jenkins  
Kern County Hospital Authority



**GENERAL TERMS AND CONDITIONS OF SALE AND SOFTWARE LICENSE**  
**("Conditions of Sale") Rev 23**

**1. Initial Provisions.**

- 1.1** The Products (equipment, service, and software) offered on the quotation by the Philips legal entity identified thereon are subject to these Conditions of Sale.
- 1.2** The purchase prices set out on the quotation excludes all taxes. All taxes on the Products will be borne by the Customer unless Customer provides a tax exemption certification reasonably in advance of the date the Order is invoiced, otherwise, Philips will invoice Customer for those taxes and Customer shall pay those taxes in accordance with the terms of the invoice.

**2. Quotation, Order and Payment.**

- 2.1** Any quotation on the Products will be open for acceptance within the period indicated therein and may be amended or revoked by Philips prior to Customer's acceptance. Any purchase orders shall be subject to Philips' confirmation. Any terms and conditions set forth on the Customer's purchase order or otherwise issued by the Customer shall not apply to the Products.
- 2.2** The prices and payment terms are set out on the quotation. Orders are subject to Philips' ongoing credit review and approval.
- 2.3** Interest will apply to any late payments. Customer shall pay interest on any overdue amount not actively disputed paid at the annual rate of twelve percent (12%), or at the maximum rate permitted by applicable law, which may be billed monthly. If the Customer fails to pay any amounts due or breaches these Conditions of Sale, Philips will be entitled to suspend the performance of its obligations and deduct the unpaid amount from any amounts otherwise owed to Customer by Philips, in addition to any other rights or remedies available to Philips. Philips shall be entitled to recover all costs and expenses, including reasonable attorneys' fees related to the enforcement of its rights or remedies.
- 2.4** Customer has no right to cancel an order, unless such cancellation right is granted to the Customer by mandatory law.
  - 2.4.1** If the Customer cancels the order prior to the order being sent to the factory for manufacturing, then the Customer shall pay the costs incurred by Philips up to the date of cancellation or 15% of the net selling price of the product(s), whichever is less.
  - 2.4.2** If the Customer cancels the order after the order is sent to the factory for manufacturing, then Customer shall pay the full net selling price of the product(s) ordered.
  - 2.4.3** If Customer has not taken delivery date for each product contained in Philips quotation and Customer's purchase order, or in-lieu of purchase order, within 30 months from Philips' receipt of Customer's purchase order, or in-lieu of purchase order, then the product shall be deemed cancelled and Customer shall be subject to the cancellation fee in section 2.4.1.
- 2.5** Philips may make partial or early shipments and Customer will pay such invoice based on the date of invoice for each product in accordance with the payment terms set forth in the quotation.
- 2.6** Payments may be made by check, ACH or wire. Philips does not accept transaction fees for any electronic fund transfers or any other payment method; Philips imposes a surcharge on credit cards of 2%, which is not greater than our cost of acceptance. All check payments over \$50,000 USD must be paid via eCheck or via Philips prepaid FedEx account with tracking to secure against fraud and misappropriation.

**3. Philips Security Interest until Full Payment.**

- 3.1** Philips is entitled to retain a security interest in the Philips products, until Philips receives full payment.

**4. Technical changes.**

- 4.1** Philips shall be entitled to make changes to the design or specifications of the Products at any time, provided such change does not adversely affect the performance of the Products.

**5. Lease and Trade In.**

- 5.1** If the Customer desires to convert the purchase of any Products to a lease the Customer shall within ninety (90) prior to the delivery of the Products provide all relevant rental documents for review and approval by Philips. The Customer is responsible for converting the transaction to a lease and is required to secure the leasing company's approval of all these Conditions of Sale. No product will be delivered to the Customer

until Philips has received copies of the fully executed lease documents and has approved the same. For any lease, if the lease does not fund then:

**5.1.1** Customer guarantees the payment of all monies due or that may become due under these Conditions of Sale;

**5.1.2** Philips may convert the lease back to a purchase and invoice Customer; accordingly, and

**5.1.3** Customer will pay all such invoiced amounts per the invoice terms. In the event that there are multiple Products on one quote, the Product with the longest period for converting the transaction to a lease shall prevail.

**5.2** Philips may provide a rental agreement at its discretion.

**5.3** In the event Customer will be trading-in equipment ("Trade-In"), the Customer will provide the following:

**5.3.1** Customer undertakes to possess good and marketable title to the Trade-In as of the date of the quotation and when Philips takes possession of the Trade-in from Customer's site. In the event Customer is in breach of this undertaking, Customer shall not be entitled to keep a trade-in credit for such Trade-In and shall promptly refund Philips such credited amounts upon receipt of an invoice from Philips.

**5.3.2** The trade-in value set forth on the Philips quotation is conditioned upon Customer providing Trade-In no later than the date Philips makes the new Product listed on such quotation available for first patient use. Customer shall bear the costs of any reduction in trade-in value arising due to a delay by the Customer causing the trade-in not to occur by the expected date and promptly pay the revised invoice.

**5.3.3** In the event Philips receives a Trade-In having a different configuration (including software version) or model number than the Trade-In described on the Philips quotation, Philips reserves the right to adjust the trade in value and revise the invoice accordingly and Customer shall pay such revised invoice promptly upon receipt.

**5.3.4** Customer undertakes to

**5.3.4.1** clean and sanitize all components that may be infected and all biological fluids from the Trade-In;

**5.3.4.2** drain any applicable chiller lines and cap any associated plumbing and

**5.3.4.3** delete all personal data in the Trade-In. Customer agrees to reimburse Philips against any out-of-pocket costs incurred by Philips arising from Customer's breach of its obligations herein.

## **6. Shipment and Delivery Date.**

**6.1** Philips shall deliver the Products in accordance with the Incoterms set forth on the quotation. If Philips and the Customer agree to any other terms of delivery, additional costs shall be for the account of the Customer. Title (subject to Section 3 entitled Philips Security Interest) to any product (excluding software), and risk of loss shall pass to the Customer upon delivery to the shipping carrier. However, Philips shall pay the cost of freight and risk insurance (during transport to destination). Customer shall obtain and pay for insurance covering such risks at destination.

**6.2** Philips will make reasonable efforts to meet delivery dates quoted or acknowledged. Failure to deliver by the specified date will not be a sufficient cause for cancellation nor will Philips be liable for any penalty, loss, or expense due to delay in delivery. If the Customer causes the delay, any reasonable expenses incurred by Philips will be paid for by Customer, including all storage fees, transportation expenses, and related costs. Customer shall pay the 80% installment payment; upon delivery to Customer site or Philips warehouse. For the purposes of clarification, "Delay" in this section shall mean a date later than the Customer agreed delivery date identified via confirmation of the delivery date with Customer prior to releasing the Product for production.

## **7. Installation.**

**7.1** If Philips has undertaken installation of the Products, the Customer shall be responsible for the following at its sole expense and risk:

**7.1.1** The provision of adequate and lockable storage for the Products on or near the installation site. Additionally, Customers shall consider the manufacturing labeling requirements for environmental

and storage conditions. The Customer will repair or replace any lost or damaged item during the storage period.

**7.1.2** Philips or its (affiliate's) representative shall have access to the installation site without obstacle or hindrance in due time to start the installation work at the scheduled date.

**7.1.3** The timely execution and completion of the preparatory works, in conformity with Philips' installation requirements. The Customer shall ensure the prepared site shall comply with all safety, electrical and building codes relevant to the Products and installation thereof.

**7.1.4** The proper removal and disposal of any hazardous material at the installation site prior to installation by Philips.

**7.1.5** The timely provision of all visa, entry, exit, residence, work or any other permits and licenses necessary for Philips' or Philips' representatives' personnel and for the import and export of tools, equipment, Products, and materials necessary for the installation works and subsequent testing.

**7.1.6** The assistance to Philips or Philips' representative for moving the Products from the entrance of the Customer's premises to the installation site. The Customer shall be responsible, at its expense, for rigging, the removal of partitions or other obstacles, and restoration work.

**7.2** If Products are connected to a computer network, the Customer shall be responsible for network security, including but not limited to, using secure administrative passwords, installing the latest validated security updates of operating software and web browsers, running a Customer firewall as well as maintaining up-to-date drivers, and validated anti-virus and anti-spyware software. Unauthorized Updates, as defined in the Product Schedules, may adversely affect the functionality and performance of the Licensed Software.

**7.3** If any of the above conditions are not complied with, Philips or Philips' representative may interrupt the installation and subsequent testing for reasons not attributable to Philips and the parties shall extend the period for completing the installation. Any additional costs shall be for the Customer's account and Philips shall have no liability for any damage resulting from or in connection with the delayed installation.

**7.4** Philips shall have no liability for the fitness or adequacy of the premises or the utilities available at the premises for installation or storage of the Products.

## **8. Product Damages and Returns.**

**8.1** The following shall apply solely to medical consumables:

The Customer shall notify Philips in writing substantiating its complaints within ten (10) days from its receipt of the Products. If Philips accepts the claim as valid, Philips shall issue a return authorization notice and the Customer shall return the Products. Each returned Product shall be packed in its original packaging.

## **9. Product Warranty.**

**9.1** In the absence of any specific Product warranty attached to the quotation, the following warranty provisions will apply to the Product.

**9.2** Hardware Products. Philips warrants to Customer that the Product shall materially comply with its product specification on the quotation and the user documentation accompanying the shipment of such Product for a period of one year from the date of acceptance or first clinical use, whichever occurs first, but under any circumstances, no more than fifteen (15) months from the date of shipment, provided the Product has been subject to proper use and maintenance. Any disposable Product intended for single use supplied by Philips to the Customer will be of good quality until the expiration date applicable to such Product.

**9.3** Stand-alone Licensed Software Products. Philips warrants that the Stand-alone Licensed Software shall substantially conform to the technical specification for a period of ninety (90) days from the date Philips makes such Stand-alone Licensed Software available to the Customer. "Stand-alone Licensed Software" means Licensed Software sold without a contemporaneous purchase of a server for the Licensed Software.

**9.4** Service. Philips warrants that all services will be carried out with reasonable care and skill. Philips' sole liability and Customer's sole remedy for breach of this warranty shall be at its option to give credit for or re-perform the services in question. This warranty shall only extend for a period of ninety (90) days after the completion of the services.

**9.5** Customer shall only be entitled to make a Product warranty claim if Philips receives written notice of the defect during the warranty period within ten (10) days from the Customer discovering the defect and, if

required the Product or the defective parts shall be returned to an address stated by Philips. Such defective parts shall be the property of Philips after their replacement.

- 9.6** Philips' warranty obligations and Customer's sole remedy for the Product shall be limited, at Philips' option, to the repair or replacement of the Product or any part thereof, in which case the spare parts shall be new or equivalent to new in performance, or to the refund of a pro rata portion of the purchase price paid by the Customer solely after a reasonable cure period is given to Philips.
- 9.7** Philips' warranty obligations shall not apply to any defects resulting from:
- 9.7.1** improper or unsuitable maintenance, configuration or calibration by the Customer or its agents.
  - 9.7.2** use, operation, modification, or maintenance of the Product not in accordance with the Product specification and the applicable written instructions of Philips or performed prior to the completion of Philips' validation process.
  - 9.7.3** abuse, negligence, accident, damages (including damage in transit) caused by the Customer.
  - 9.7.4** improper site preparation, including corrosion to Product caused by Customer.
  - 9.7.5** any damage to the Product or any medical data or other data stored, caused by an external source (including viruses or similar software interference) resulting from the connection of the Product to a Customer network, Customer client devices, a third-party product or use of removable devices.
- 9.8** Philips is not responsible for the warranty for the third-party product provided by Philips to the Customer and Customer shall make any warranty claims directly with such vendors. However, if Philips, under its license agreement or purchase agreement with such third party, has right to warranties and service solutions, Philips shall make reasonable efforts to extend to the Customer the third-party warranty and service solutions for such Products.
- 9.9** During the term of the warranty and any customer service arrangement the Customer shall provide Philips with a dedicated high-speed broadband internet connection suitable to establish a remote connection to the Products in order for Philips to provide remote servicing of the Products by:
- 9.9.1** supporting the installation of a Philips approved router (or a Customer-owned router acceptable for Philips) for connection to the Products and Customer network (which router remains Philips property if provided by Philips and is only provided during the warranty term).
  - 9.9.2** maintaining a secure location for hardware to connect the Products to the Philips Remote Service Data Center (PRSDC).
  - 9.9.3** providing and maintaining a free IP address within the site network to be used to connect the Products to the Customer's network
  - 9.9.4** maintaining the established connection throughout the applicable period.
  - 9.9.5** facilitating the reconnection to Philips in case any temporary disconnection occurs.
  - 9.9.6** If Customer fails to provide the access described in this section and the Product is not connected to the PRSDC (including any temporary disconnection), Customer accepts any related impact on Products availability, additional cost, and speed of resolution.
  - 9.9.7** THE WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS OF SALE AND QUOTATION ARE THE SOLE WARRANTIES MADE BY PHILIPS IN CONNECTION WITH THE PRODUCT, ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PHILIPS EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MOREOVER, PHILIPS DOES NOT WARRANT ANY PRODUCT USING THE CLOUD TO BE UNINTERRUPTED OR ERROR FREE.

## **10. Limitation of Liability.**

- 10.1** THE TOTAL LIABILITY OF PHILIPS ARISING UNDER OR IN CONNECTION WITH THE PRODUCT FOR ANY BREACH OF CONTRACTUAL OBLIGATIONS, WARRANTY, NEGLIGENCE, UNLAWFUL ACT OR OTHERWISE IN CONNECTION WITH THE PRODUCT IS LIMITED TO THE ACTUAL PURCHASE PRICE RECEIVED FOR THE PRODUCT THAT GAVE RISE TO THE CLAIM.
- 10.2** PHILIPS SHALL NOT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES AND/OR FOR ANY DAMAGES INCLUDING, LOSS OF DATA, PROFITS, REVENUE, BUSINESS INTERRUPTION OR USE IN CONNECTION WITH OR ARISING OUT OF THESE CONDITIONS OF SALE, REGARDLESS OF WHETHER THEY ARE FORESEEABLE OR NOT AND WHETHER THE CLAIM IS MADE IN TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, INDEMNITY, AT LAW OR IN EQUITY. NEITHER PHILIPS

NOR PHILIPS' SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OR INABILITY TO USE MEDICAL OR OTHER DATA STORED ON OR BY THE PRODUCT.

**10.3** THE EXCLUSION OF LIABILITY IN THESE CONDITIONS OF SALE SHALL ONLY APPLY TO THE EXTENT ALLOWED UNDER THE APPLICABLE LAW.

**10.4** FOR US CUSTOMERS, THE FOLLOWING ARE NOT SUBJECT TO THE LIMITATIONS OF LIABILITY UNDER SECTION 10.1:

**10.4.1** THIRD PARTY CLAIMS FOR DIRECT DAMAGES FOR BODILY INJURY OR DEATH TO THE EXTENT CAUSED BY PHILIPS' NEGLIGENCE OR PROVEN PRODUCT DEFECT.

**10.4.2** CLAIMS OF TANGIBLE PROPERTY DAMAGE REPRESENTING THE ACTUAL COST TO REPAIR OR REPLACE PHYSICAL PROPERTY TO THE EXTENT CAUSED BY PHILIPS NEGLIGENCE OR PROVEN PRODUCT DEFECT.

**10.4.3** OUT OF POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXTENT SUCH NOTICES ARE CAUSED BY PHILIPS UNAUTHORIZED DISCLOSURE OF PROTECTED HEALTH INFORMATION.

**10.4.4** FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS' UNAUTHORIZED DISCLOSURE OF PROTECTED HEALTH INFORMATION AS THE BASIS OF THE FINE/PENALTY, ANY SUCH FINES OR PENALTIES SHALL CONSTITUTE DIRECT DAMAGES.

## **11. Infringement of Intellectual Property Rights to the Products.**

**11.1** Philips will, at its option and expense, defend or settle any suit or proceeding brought against Customer based on any third-party claim that any Product or use thereof for its intended purpose constitutes an infringement of any intellectual property rights in the country where the Product is delivered by Philips.

**11.2** Customer will promptly give Philips written notice of such claim and the authority, information and assistance needed to defend such claim. Philips shall have the full and exclusive authority to defend and settle such claim. Customer shall not make any admission which might be prejudicial to Philips and shall not enter a settlement without Philips' prior written consent.

**11.3** If the Product is held to constitute infringement of any intellectual property right and its use by Customer is enjoined, Philips will, at its option and expense, either:

**11.3.1** procure for Customer the right to continue using the Product;

**11.3.2** replace it with an equivalent non-infringing Product;

**11.3.3** modify the Product so it becomes non-infringing; or

**11.3.4** refund to the Customer a pro rata portion of the Products' purchase price upon the return of the original Products.

**11.4** Philips will have no duty or obligation under this clause 11 if the infringement is caused by a Product being:

**11.4.1** supplied in accordance with Customer's design, specifications or instructions and compliance therewith has caused Philips to deviate from its normal course of performance.

**11.4.2** modified by Customer or its contractors after delivery.

**11.4.3** not updated by Customer in accordance with instructions provided by Philips (e.g. software updates).

**11.4.4** combined by Customer or its contractors with devices, software, methods, systems, or processes not furnished hereunder and the third-party claim is based on such modification or combination. The above states Philips' sole liability and Customer's exclusive remedy in respect of third-party intellectual property claims.

## **12. Use and exclusivity of Product documents.**

**12.1** All documents and manuals including technical information related to the Products and its maintenance as delivered by Philips is the proprietary information of Philips, covered by Philips' copyright, and remains the property of Philips, and as such, it shall not be copied, reproduced, transmitted, or disclosed to or used by third parties without the prior written consent of Philips.

## **13. Export Control and Product Resale.**

**13.1** Customer agrees to comply with relevant export control and sanction laws and regulations, including the UN, EU or US ("Export Laws"), to ensure that the Products are not

**13.1.1** exported or re-exported directly or indirectly in violation of Export Laws; or

**13.1.2** used for any purposes prohibited by the Export Laws, including military end-use, human rights abuses, nuclear, chemical or biological weapons proliferation.

**13.2** Customer represents that

**13.2.1** Customer is not located in a country that is subject to a UN, US or EU embargo and trade restriction; and

**13.2.2** Customer is not listed on any UN, EU, US export and sanctions list of prohibited or restricted parties.

**13.3** Philips may suspend its obligation to fulfil any order or subsequent service if the delivery is restricted under Export Laws or an export/import license is not granted by relevant authorities.

**14. License Software Terms.**

**14.1** Subject to any usage limitations set forth on the quotation, Philips grants to Customer a non-exclusive, non-transferable license, without the right to grant sub-licenses, to incorporate and use the Licensed Software (as specified on the quotation, whether embedded or stand-alone) in Licensed Products and the permitted use (as referenced in the quotation) in accordance with these Conditions of Sale.

**14.2** The Licensed Software is licensed and not sold. All intellectual property rights in the Licensed Software shall remain with Philips.

**14.3** Customer may make one copy of the Licensed Software in machine-readable form solely for backup purposes. Philips reserves the right to charge for backup copies created by Philips. Customer may not reproduce, sell, assign, transfer or sublicense the Licensed Software. Customer shall preserve the confidential nature of the Licensed Software and shall not disclose or transfer any portion of the Licensed Software to any third party.

**14.4** Customer shall maintain Philips' copyright notice or other proprietary legends on any copies of the Licensed Software. Customer shall not (and shall not allow any third party to) decompile, disassemble, or reverse engineer the Licensed Software.

**14.5** The Licensed Software may only be used in relation to Licensed Products or systems certified by Philips. If Customer modifies the Licensed Software in any manner, all warranties associated with the Licensed Software and the Products shall become null and void. Customer installation of Philips' issued patches or updates shall not be deemed to be a modification.

**14.6** Philips and its affiliates shall be free to use any feedback or suggestions for modification or enhancement of the Licensed Software provided by Customer, for the purpose of modifying or enhancing the Licensed Software as well as for licensing such enhancements to third parties.

**14.7** With respect to any third-party licensed software, the Customer agrees to comply with the terms applicable to such licensed software. Customer shall indemnify Philips for any damage arising from its failure to comply with such terms. If the third-party licensor terminates the third party license, Philips shall be entitled to terminate the third party license with the Customer and make reasonable effort to procure a solution.

**15. Confidentiality.**

**15.1** If any of the parties have access to confidential information of the other party, it shall keep this information confidential. Such information shall only be used if and to the extent that it is necessary to carry out the concerned transactions. This obligation does not extend to public domain information and/or information that is disclosed by operation of law or court order.

**16. Compliance with Laws and Privacy.**

**16.1** Each party shall comply with all laws, rules, and regulations applicable to the party in connection with the performance of its obligations in connection with the transactions contemplated by the quotation, including, but not limited to, those relating to employment practices federal and state anti-discrimination laws (including Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended and the Veterans Readjustment ACT of 1972 as amended), E-Verify, FDA, Medicare fraud and abuse, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Health care providers are reminded that if the purchase includes a discount or loan, they must fully and accurately report such discount or loan on cost reports or other applicable claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, as required by federal law (see 42 CFR 1001.952[h]).

- 16.2** Processing of personal data: In relation to the provision of services, Philips may process information, in any form, that can relate to identified or identifiable individuals, which may qualify as personal data. Philips and/or its affiliates will: a) process any protected health information (PHI) as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) on behalf and by instruction of the Customer, the terms, rights and responsibilities of the Parties for such processing of PHI are set forth in a Business Associate Agreement between the parties and b) process information such as log files or device parameters (which may contain personal data), to provide the services and to enable its compliance with and performance of its task as manufacturer of (medical) devices under the applicable regulations and standards (including but not limited to the performance of vigilance, post market surveillance and clinical evaluation related activities).
- 16.3** Customer agrees that Philips and/or its affiliates may use any data, other than personal data, generated by a Product and/or otherwise provided by Customer to Philips for Philips' own legitimate business purposes including, but not limited to, for data analytics activities to determine trends of usage and advise on the use of products and services, for research, product and service development and improvement (including the development of new offerings), substantiation of marketing claims and for benchmarking purposes.

**17. Force Majeure.**

- 17.1** Each party shall not be liable in respect of the non-performance of any of its obligations to the extent such performance is prevented by any circumstances beyond its reasonable control, including, but not limited to, acts of God, war, civil war, insurrection, fire, flood, labor disputes, epidemics, pandemic, cyber-attack, act of terrorism, governmental regulations and/or similar acts, embargoes, export control sanctions or restrictions, Philips' unavailability regarding any required permits, licenses and/or authorizations, default or force majeure of suppliers or subcontractors.
- 17.2** If force majeure prevents Philips from fulfilling any order from the Customer or otherwise performing any obligation arising out of the sale, Philips shall not be liable to the Customer for any compensation, reimbursement, or damages.

**18. Miscellaneous.**

- 18.1** Any newly manufactured Product provided may contain selected remanufactured parts equivalent to new in terms of performance.
- 18.2** If the Customer becomes insolvent, unable to pay its debts as they fall due, files for bankruptcy or is subject to it, has appointed a recipient, is subject to a late fee on payments (temporary or permanent), or has its assets assigned or frozen, Philips may cancel any unfulfilled obligations or suspend its performance; provided that, however, the Customer's financial obligations to Philips shall remain in full force and effect.
- 18.3** If any provision of these Conditions of Sale is found to be unlawful, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall remain in full force and effect. In lieu of any provision deemed to be unlawful, unenforceable, or invalid, in whole or in part, a provision reflecting the original intent of these Conditions of Sale, to the extent permitted by the applicable law, shall be deemed to be a substitute for that provision.
- 18.4** Notices or other communications shall be given in writing and shall be deemed effective if they are delivered in person or if they are sent by courier or mail to the relevant party.
- 18.5** The failure by the Customer or Philips at any time to require compliance with any obligation shall not affect the right to require its enforcement at any time thereafter.
- 18.6** Philips may assign or novate its rights and obligations in whole or in part, to any of its affiliates or may assign any of its accounts receivable to any party without Customer's consent. Customer agrees to execute any documents that may be necessary to complete Philips' assignment or novation. The Customer shall not, without the prior written consent of Philips, transfer or assign any of its rights or obligations.
- 18.7** The Customer's obligations do not depend on any other obligations it may have under any other agreement or arrangement with Philips. The Customer shall not exercise any offset right in the quotation or sale in relation to any other agreement or arrangement with Philips.
- 18.8** These Conditions of Sale shall be governed by the laws of the state of California.  
, and the parties submit to the exclusive jurisdiction of the courts of Kern County, California.

The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (UCITA), in any form, is expressly excluded.

- 18.9** Customer will report immediately to Philips any event of which Customer becomes aware that suggests that any Products provided by Philips, for any reason:
- 18.9.1** may have caused or contributed to a death or serious injury, or
  - 18.9.2** have malfunctioned where such malfunctions would likely cause or contribute to a death or serious injury if the malfunction were to occur again. Additionally, Customer will also report to Philips complaints it receives from its personnel and patients or any other person regarding the identity, quality, performance, reliability, safety, effectiveness, labels, or instructions for use of the Products provided by Philips. Philips shall be solely responsible for submitting any filings or reports to any governmental authorities with respect to the Products provided by Philips hereunder, unless otherwise required by law.
- 18.10** To the extent applicable to your country or state, Philips and Customer shall comply with the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and its implementing regulations (42 CFR, Part 420). Philips agrees that until the expiration of four (4) years after furnishing Products pursuant to these Conditions of Sale, Philips shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, these Conditions of Sale and the books, documents and records of Philips that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Philips further agrees that if Philips carries out any of the duties of these Conditions of Sale through a subcontract with a value or cost of ten-thousand U.S. dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such Products pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs. This paragraph relating to the retention and production of documents is included because of possible application of Section 1861(v) (1) (1) of the Social Security Act (42 U.S.C. 1395x (v) (1) (I) (1989)), as amended from time to time to these Conditions of Sale. If Section 1861(v) (1) (1) should be found to be inapplicable, then this paragraph shall be deemed inoperative and without force and effect.
- 18.11** As of the date of the sale of this Product, Philips represents and warrants that Philips, its employees and subcontractors, are not debarred, excluded, suspended or otherwise ineligible to participate in a federal or state health care program, nor have they been convicted of any health care related crime for Products provided under these Conditions of Sale (an "Excluded Provider"). Philips shall promptly notify Customer if it becomes aware that Philips or any of its employees or subcontractors providing Products hereunder have become an Excluded Provider under a federal or state healthcare program, whereupon Customer shall provide Philips with a reasonable opportunity to discuss and attempt to resolve in good faith with Customer any Customer related concerns in relation thereto, and/or will give Philips a reasonable opportunity to dispute its, or its employee's or subcontractor's, designation as an Excluded Provider. In the event that the parties are unable to resolve any such Customer concerns of the applicable party's designation as an Excluded Provider, then Customer may terminate this order by express written notice for Products not yet shipped or rendered prior to a date of exclusion.
- 18.12** To the extent applicable to your country or state, it is Customer's responsibility to notify Philips if any portion of the order is funded under the American Reinvestment and Recovery Act (ARRA). To ensure compliance with the ARRA regulation, Customer shall include a clause stating that the order is funded under ARRA on its purchase order or other document issued by Customer.
- 18.13** To the extent applicable, Customer acknowledges it shall comply with all Medicare, Medicaid or state cost reporting requirements, including discounts afforded to Customer under these Conditions of Sale, for any Products purchased hereunder.
- 18.14** Entire Agreement. These Terms and Conditions of Sale, the terms and conditions set forth in the quotation and the applicable Philips' product-specific warranty constitute the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the quotation and supersede

any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the quotation. The pricing in the quotation is based upon the terms and conditions in the quotation. No additional terms, conditions, consents, waivers, alterations, or modifications shall be binding unless in writing and signed by the parties. Customer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and shall not apply to the transactions contemplated by the quotation.

**19. Product specific terms.**

Product specific schedules are incorporated herein as they apply to the Products listed in the quotation and their additional terms shall apply solely to the Products specified therein. If any terms set forth in the Product specific schedules conflict with terms expressly set forth in these Conditions of Sale, the terms expressly set forth in the Product specific schedule shall govern in such instance.

20. Liability of Customer. The liabilities or obligations of Customer with respect to its activities pursuant to this Contract 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.

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

22. Health Insurance Portability and Accountability Act-HITECH. Philips understands that CUSTOMER is a Covered Entity that provides medical and mental health services and that I have no authorization to obtain access to any Protected Health Information ("PHI") in any form. If, in the course of my services, I see or hear any PHI, this PHI is to be treated as private and confidential, including the fact that a person has visited this facility(ies) or receives (or previously received) services from CUSTOMER. The privacy and confidentiality of CUSTOMER's patients are protected by CUSTOMER policies and procedures, state laws and regulations and Federal HIPAA Regulations. If appropriate Philips agrees to execute a business associate agreement with CUSTOMER to supplement this Agreement if requested, subject to the Parties' agreement upon terms and conditions of the business associate agreement.



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

July 17, 2024

**Subject:** Proposed Agreement with Philips Healthcare, a division of Philips North America LLC

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

**Summary:**

Kern Medical requests your Board approve the proposed Agreement with Philips Healthcare, a division of Philips North America LLC for Kern Medical's telemetry software upgrades and maintenance (IBE SMA Standard).

Telemetry expansion/upgrade affords the hospital increased capacity for monitoring patients heart rhythms, ability to monitor patients during any transport throughout the hospital, and for tests, such as x-ray. Being a designated Trauma Center where patients have complex patient conditions this telemetry upgrade/expansion will increase Kern Medical's ability to monitor, thus ensuring safe and quality care. Current devices and systems are out of support, no longer serviced and in need of replacement. It is critical that our current system be upgraded and expanded to meet the needs of the patients we serve.

Kern Medical has had a historical relationship with Philips and Philips has knowledge of Kern Medical's IT infrastructure. Philips has a current inventory/fleet of equipment in operation which affords Kern Medical the ability to optimize their past investment and look to the future with new innovations. Philips is an industry leader in innovation, durability and cybersecurity.

This Agreement includes the non-standard term of twelve percent interest on any overdue amount. Counsel was unsuccessful negotiating these terms.

Therefore, it is recommended that your Board approve the Software Maintenance Agreement for Professional Services with Philips Healthcare from August 1, 2024 through July 31, 2028, in an amount not to exceed \$30,120.00 and authorize the Chairman to sign.

## Customer Care Solution Center

Customer: **Kern Medical Center**Address: 1830 Flower St  
City, State/Zip: Bakersfield, CA 93305Payment Terms: Net 30  
Agreement Quote Date: 6/6/2024  
Prior Agreement #: **Billable Conversion**  
Agreement Start Date: 8/1/2024  
Agreement End Date: 7/31/2028  
Billing Schedule: Yearly  
Multi-yr Discount: 17%  
**Valid for 90 days**

Philips Representative:

Aaron Stewart

Email:

aaron.stewart@philips.com

Date:

6/6/2024

Quote #:

0088604-3

Model	Description	Qty	Sq Ft	Site Name	Start Date	End Date		Subtotal Net \$
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## IBE Standard

IBE SMA Standard: Software Maintenance Agreement IBE will include Upgrades and Updates with implementation for every software upgrade and every update on your current revision (remotely), Remote software technical support 24 x 7, Philips Remote Services (PRS), and OnSite software escalation M-F 8 x 5 (local time) next business day are also included (if issues can not be resolved remotely)

ESMAS IBE	Enterprise SMA for IBE	216	Existing Sectors	8/1/2024	7/31/2028		
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Net Charge Year 1							\$7,529.76
Net Charge Year 2							\$7,529.76
Net Charge Year 3							\$7,529.76
Net Charge Year 4							\$7,529.76

Quotation Total							<b>\$30,119.04</b>
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**Prices exclude taxes. Applicable taxes will be added to the invoice. Subject to credit approval.**

**IMPORTANT NOTICE:** A signed copy of this agreement, for the services and prices quoted herein, is Customers acceptance that the Service Agreement Terms and Conditions and applicable Exhibit are the sole terms applicable to the services quoted. The acceptance of this quotation is not binding upon Philips until further review by Philips contract administration. The information contained in this document is confidential and is provided to the entity listed as the customer solely in connection with the evaluation of the purchase and sale. This information shall not be disclosed to any other party. The Philips Service Agreement Terms and Conditions applicable to the service quoted herein are available via [http://www.healthcare.philips.com/main/terms\\_conditions/](http://www.healthcare.philips.com/main/terms_conditions/)

("Terms and Conditions"). Health Care providers are reminded that if the transactions herein include or involve a loan or discount (including a rebate or other price reduction), they must fully and accurately report such loan or discount on cost reports or other applicable reports or claims for payment submitted health care program, including but not limited to Medicare and Medicaid, such as may be required by state or federal law, including under any federal or state but not limited to 42 CFR 1001.952(h). Philips reserves all rights with regard to this information. Reserved.

## Customer Agreement as Quoted

Upon customer signing and an authorized Philips representative accepting, this quotation constitutes a contract and Customer is bound by all terms and conditions hereof.

Philips by its acceptance hereof, agrees to provide maintenance services for the equipment listed above in accordance with the following terms set forth herein.

Authorized Signature _____	Authorized Signature _____
Printed Name _____	Title _____
Title _____	Date _____
Date _____	Customer PO # _____
	(Please attach copy of original PO)

Our facility does not issue formal purchase orders. We authorize payments 'In lieu of a Purchase Order' for services as described in Philips

Healthcare Service Agreement authorized herein. Initialed: \_\_\_\_\_

Billing Address: Customer Name: _____	For service entitlement, please reference the following contract number when calling into our Customer Care Service Center at the number listed above:	<b>REVIEWED ONLY</b> <b>NOT APPROVED AS TO FORM</b>  By <i>Phillip Jenkins</i> Kern County Hospital Authority
Address: _____		
City, State, Zip: _____	Philips Entitlement Contract Number: _____	
Contact: _____		

prepared by: Constance Qualls

Mail Purchase Order &amp; Quote To: Philips Global Business Services, North America, Contract Operations, Customer Order Fulfillment Center,

414 Union Street, Philips Plaza 6th Floor, Nashville, TN 37219

**GENERAL TERMS AND CONDITIONS OF SALE AND SOFTWARE LICENSE**  
**("Conditions of Sale") Rev 23**

**1. Initial Provisions.**

- 1.1** The Products (equipment, service, and software) offered on the quotation by the Philips legal entity identified thereon are subject to these Conditions of Sale.
- 1.2** The purchase prices set out on the quotation excludes all taxes. All taxes on the Products will be borne by the Customer unless Customer provides a tax exemption certification reasonably in advance of the date the Order is invoiced, otherwise, Philips will invoice Customer for those taxes and Customer shall pay those taxes in accordance with the terms of the invoice.

**2. Quotation, Order and Payment.**

- 2.1** Any quotation on the Products will be open for acceptance within the period indicated therein and may be amended or revoked by Philips prior to Customer's acceptance. Any purchase orders shall be subject to Philips' confirmation. Any terms and conditions set forth on the Customer's purchase order or otherwise issued by the Customer shall not apply to the Products.
- 2.2** The prices and payment terms are set out on the quotation. Orders are subject to Philips' ongoing credit review and approval.
- 2.3** Interest will apply to any late payments. Customer shall pay interest on any overdue amount not actively disputed paid at the annual rate of twelve percent (12%), or at the maximum rate permitted by applicable law, which may be billed monthly. If the Customer fails to pay any amounts due or breaches these Conditions of Sale, Philips will be entitled to suspend the performance of its obligations and deduct the unpaid amount from any amounts otherwise owed to Customer by Philips, in addition to any other rights or remedies available to Philips. Philips shall be entitled to recover all costs and expenses, including reasonable attorneys' fees related to the enforcement of its rights or remedies.
- 2.4** Customer has no right to cancel an order, unless such cancellation right is granted to the Customer by mandatory law.
  - 2.4.1** If the Customer cancels the order prior to the order being sent to the factory for manufacturing, then the Customer shall pay the costs incurred by Philips up to the date of cancellation or 15% of the net selling price of the product(s), whichever is less.
  - 2.4.2** If the Customer cancels the order after the order is sent to the factory for manufacturing, then Customer shall pay the full net selling price of the product(s) ordered.
  - 2.4.3** If Customer has not taken delivery date for each product contained in Philips quotation and Customer's purchase order, or in-lieu of purchase order, within 30 months from Philips' receipt of Customer's purchase order, or in-lieu of purchase order, then the product shall be deemed cancelled and Customer shall be subject to the cancellation fee in section 2.4.1.
- 2.5** Philips may make partial or early shipments and Customer will pay such invoice based on the date of invoice for each product in accordance with the payment terms set forth in the quotation.
- 2.6** Payments may be made by check, ACH or wire. Philips does not accept transaction fees for any electronic fund transfers or any other payment method; Philips imposes a surcharge on credit cards of 2%, which is not greater than our cost of acceptance. All check payments over \$50,000 USD must be paid via eCheck or via Philips prepaid FedEx account with tracking to secure against fraud and misappropriation.

**3. Philips Security Interest until Full Payment.**

- 3.1** Philips is entitled to retain a security interest in the Philips products, until Philips receives full payment.

**4. Technical changes.**

- 4.1** Philips shall be entitled to make changes to the design or specifications of the Products at any time, provided such change does not adversely affect the performance of the Products.

**5. Lease and Trade In.**

- 5.1** If the Customer desires to convert the purchase of any Products to a lease the Customer shall within ninety (90) prior to the delivery of the Products provide all relevant rental documents for review and approval by Philips. The Customer is responsible for converting the transaction to a lease and is required to secure the leasing company's approval of all these Conditions of Sale. No product will be delivered to the Customer

until Philips has received copies of the fully executed lease documents and has approved the same. For any lease, if the lease does not fund then:

**5.1.1** Customer guarantees the payment of all monies due or that may become due under these Conditions of Sale;

**5.1.2** Philips may convert the lease back to a purchase and invoice Customer; accordingly, and

**5.1.3** Customer will pay all such invoiced amounts per the invoice terms. In the event that there are multiple Products on one quote, the Product with the longest period for converting the transaction to a lease shall prevail.

**5.2** Philips may provide a rental agreement at its discretion.

**5.3** In the event Customer will be trading-in equipment ("Trade-In"), the Customer will provide the following:

**5.3.1** Customer undertakes to possess good and marketable title to the Trade-In as of the date of the quotation and when Philips takes possession of the Trade-in from Customer's site. In the event Customer is in breach of this undertaking, Customer shall not be entitled to keep a trade-in credit for such Trade-In and shall promptly refund Philips such credited amounts upon receipt of an invoice from Philips.

**5.3.2** The trade-in value set forth on the Philips quotation is conditioned upon Customer providing Trade-In no later than the date Philips makes the new Product listed on such quotation available for first patient use. Customer shall bear the costs of any reduction in trade-in value arising due to a delay by the Customer causing the trade-in not to occur by the expected date and promptly pay the revised invoice.

**5.3.3** In the event Philips receives a Trade-In having a different configuration (including software version) or model number than the Trade-In described on the Philips quotation, Philips reserves the right to adjust the trade in value and revise the invoice accordingly and Customer shall pay such revised invoice promptly upon receipt.

**5.3.4** Customer undertakes to

**5.3.4.1** clean and sanitize all components that may be infected and all biological fluids from the Trade-In;

**5.3.4.2** drain any applicable chiller lines and cap any associated plumbing and

**5.3.4.3** delete all personal data in the Trade-In. Customer agrees to reimburse Philips against any out-of-pocket costs incurred by Philips arising from Customer's breach of its obligations herein.

## **6. Shipment and Delivery Date.**

**6.1** Philips shall deliver the Products in accordance with the Incoterms set forth on the quotation. If Philips and the Customer agree to any other terms of delivery, additional costs shall be for the account of the Customer. Title (subject to Section 3 entitled Philips Security Interest) to any product (excluding software), and risk of loss shall pass to the Customer upon delivery to the shipping carrier. However, Philips shall pay the cost of freight and risk insurance (during transport to destination). Customer shall obtain and pay for insurance covering such risks at destination.

**6.2** Philips will make reasonable efforts to meet delivery dates quoted or acknowledged. Failure to deliver by the specified date will not be a sufficient cause for cancellation nor will Philips be liable for any penalty, loss, or expense due to delay in delivery. If the Customer causes the delay, any reasonable expenses incurred by Philips will be paid for by Customer, including all storage fees, transportation expenses, and related costs. Customer shall pay the 80% installment payment; upon delivery to Customer site or Philips warehouse. For the purposes of clarification, "Delay" in this section shall mean a date later than the Customer agreed delivery date identified via confirmation of the delivery date with Customer prior to releasing the Product for production.

## **7. Installation.**

**7.1** If Philips has undertaken installation of the Products, the Customer shall be responsible for the following at its sole expense and risk:

**7.1.1** The provision of adequate and lockable storage for the Products on or near the installation site. Additionally, Customers shall consider the manufacturing labeling requirements for environmental

and storage conditions. The Customer will repair or replace any lost or damaged item during the storage period.

**7.1.2** Philips or its (affiliate's) representative shall have access to the installation site without obstacle or hindrance in due time to start the installation work at the scheduled date.

**7.1.3** The timely execution and completion of the preparatory works, in conformity with Philips' installation requirements. The Customer shall ensure the prepared site shall comply with all safety, electrical and building codes relevant to the Products and installation thereof.

**7.1.4** The proper removal and disposal of any hazardous material at the installation site prior to installation by Philips.

**7.1.5** The timely provision of all visa, entry, exit, residence, work or any other permits and licenses necessary for Philips' or Philips' representatives' personnel and for the import and export of tools, equipment, Products, and materials necessary for the installation works and subsequent testing.

**7.1.6** The assistance to Philips or Philips' representative for moving the Products from the entrance of the Customer's premises to the installation site. The Customer shall be responsible, at its expense, for rigging, the removal of partitions or other obstacles, and restoration work.

**7.2** If Products are connected to a computer network, the Customer shall be responsible for network security, including but not limited to, using secure administrative passwords, installing the latest validated security updates of operating software and web browsers, running a Customer firewall as well as maintaining up-to-date drivers, and validated anti-virus and anti-spyware software. Unauthorized Updates, as defined in the Product Schedules, may adversely affect the functionality and performance of the Licensed Software.

**7.3** If any of the above conditions are not complied with, Philips or Philips' representative may interrupt the installation and subsequent testing for reasons not attributable to Philips and the parties shall extend the period for completing the installation. Any additional costs shall be for the Customer's account and Philips shall have no liability for any damage resulting from or in connection with the delayed installation.

**7.4** Philips shall have no liability for the fitness or adequacy of the premises or the utilities available at the premises for installation or storage of the Products.

## **8. Product Damages and Returns.**

**8.1** The following shall apply solely to medical consumables:

The Customer shall notify Philips in writing substantiating its complaints within ten (10) days from its receipt of the Products. If Philips accepts the claim as valid, Philips shall issue a return authorization notice and the Customer shall return the Products. Each returned Product shall be packed in its original packaging.

## **9. Product Warranty.**

**9.1** In the absence of any specific Product warranty attached to the quotation, the following warranty provisions will apply to the Product.

**9.2** Hardware Products. Philips warrants to Customer that the Product shall materially comply with its product specification on the quotation and the user documentation accompanying the shipment of such Product for a period of one year from the date of acceptance or first clinical use, whichever occurs first, but under any circumstances, no more than fifteen (15) months from the date of shipment, provided the Product has been subject to proper use and maintenance. Any disposable Product intended for single use supplied by Philips to the Customer will be of good quality until the expiration date applicable to such Product.

**9.3** Stand-alone Licensed Software Products. Philips warrants that the Stand-alone Licensed Software shall substantially conform to the technical specification for a period of ninety (90) days from the date Philips makes such Stand-alone Licensed Software available to the Customer. "Stand-alone Licensed Software" means Licensed Software sold without a contemporaneous purchase of a server for the Licensed Software.

**9.4** Service. Philips warrants that all services will be carried out with reasonable care and skill. Philips' sole liability and Customer's sole remedy for breach of this warranty shall be at its option to give credit for or re-perform the services in question. This warranty shall only extend for a period of ninety (90) days after the completion of the services.

**9.5** Customer shall only be entitled to make a Product warranty claim if Philips receives written notice of the defect during the warranty period within ten (10) days from the Customer discovering the defect and, if

required the Product or the defective parts shall be returned to an address stated by Philips. Such defective parts shall be the property of Philips after their replacement.

- 9.6** Philips' warranty obligations and Customer's sole remedy for the Product shall be limited, at Philips' option, to the repair or replacement of the Product or any part thereof, in which case the spare parts shall be new or equivalent to new in performance, or to the refund of a pro rata portion of the purchase price paid by the Customer solely after a reasonable cure period is given to Philips.
- 9.7** Philips' warranty obligations shall not apply to any defects resulting from:
- 9.7.1** improper or unsuitable maintenance, configuration or calibration by the Customer or its agents.
  - 9.7.2** use, operation, modification, or maintenance of the Product not in accordance with the Product specification and the applicable written instructions of Philips or performed prior to the completion of Philips' validation process.
  - 9.7.3** abuse, negligence, accident, damages (including damage in transit) caused by the Customer.
  - 9.7.4** improper site preparation, including corrosion to Product caused by Customer.
  - 9.7.5** any damage to the Product or any medical data or other data stored, caused by an external source (including viruses or similar software interference) resulting from the connection of the Product to a Customer network, Customer client devices, a third-party product or use of removable devices.
- 9.8** Philips is not responsible for the warranty for the third-party product provided by Philips to the Customer and Customer shall make any warranty claims directly with such vendors. However, if Philips, under its license agreement or purchase agreement with such third party, has right to warranties and service solutions, Philips shall make reasonable efforts to extend to the Customer the third-party warranty and service solutions for such Products.
- 9.9** During the term of the warranty and any customer service arrangement the Customer shall provide Philips with a dedicated high-speed broadband internet connection suitable to establish a remote connection to the Products in order for Philips to provide remote servicing of the Products by:
- 9.9.1** supporting the installation of a Philips approved router (or a Customer-owned router acceptable for Philips) for connection to the Products and Customer network (which router remains Philips property if provided by Philips and is only provided during the warranty term).
  - 9.9.2** maintaining a secure location for hardware to connect the Products to the Philips Remote Service Data Center (PRSDC).
  - 9.9.3** providing and maintaining a free IP address within the site network to be used to connect the Products to the Customer's network
  - 9.9.4** maintaining the established connection throughout the applicable period.
  - 9.9.5** facilitating the reconnection to Philips in case any temporary disconnection occurs.
  - 9.9.6** If Customer fails to provide the access described in this section and the Product is not connected to the PRSDC (including any temporary disconnection), Customer accepts any related impact on Products availability, additional cost, and speed of resolution.
  - 9.9.7** THE WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS OF SALE AND QUOTATION ARE THE SOLE WARRANTIES MADE BY PHILIPS IN CONNECTION WITH THE PRODUCT, ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PHILIPS EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MOREOVER, PHILIPS DOES NOT WARRANT ANY PRODUCT USING THE CLOUD TO BE UNINTERRUPTED OR ERROR FREE.

## **10. Limitation of Liability.**

- 10.1** THE TOTAL LIABILITY OF PHILIPS ARISING UNDER OR IN CONNECTION WITH THE PRODUCT FOR ANY BREACH OF CONTRACTUAL OBLIGATIONS, WARRANTY, NEGLIGENCE, UNLAWFUL ACT OR OTHERWISE IN CONNECTION WITH THE PRODUCT IS LIMITED TO THE ACTUAL PURCHASE PRICE RECEIVED FOR THE PRODUCT THAT GAVE RISE TO THE CLAIM.
- 10.2** PHILIPS SHALL NOT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES AND/OR FOR ANY DAMAGES INCLUDING, LOSS OF DATA, PROFITS, REVENUE, BUSINESS INTERRUPTION OR USE IN CONNECTION WITH OR ARISING OUT OF THESE CONDITIONS OF SALE, REGARDLESS OF WHETHER THEY ARE FORESEEABLE OR NOT AND WHETHER THE CLAIM IS MADE IN TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, INDEMNITY, AT LAW OR IN EQUITY. NEITHER PHILIPS

NOR PHILIPS' SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OR INABILITY TO USE MEDICAL OR OTHER DATA STORED ON OR BY THE PRODUCT.

**10.3** THE EXCLUSION OF LIABILITY IN THESE CONDITIONS OF SALE SHALL ONLY APPLY TO THE EXTENT ALLOWED UNDER THE APPLICABLE LAW.

**10.4** FOR US CUSTOMERS, THE FOLLOWING ARE NOT SUBJECT TO THE LIMITATIONS OF LIABILITY UNDER SECTION 10.1:

**10.4.1** THIRD PARTY CLAIMS FOR DIRECT DAMAGES FOR BODILY INJURY OR DEATH TO THE EXTENT CAUSED BY PHILIPS' NEGLIGENCE OR PROVEN PRODUCT DEFECT.

**10.4.2** CLAIMS OF TANGIBLE PROPERTY DAMAGE REPRESENTING THE ACTUAL COST TO REPAIR OR REPLACE PHYSICAL PROPERTY TO THE EXTENT CAUSED BY PHILIPS NEGLIGENCE OR PROVEN PRODUCT DEFECT.

**10.4.3** OUT OF POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXTENT SUCH NOTICES ARE CAUSED BY PHILIPS UNAUTHORIZED DISCLOSURE OF PROTECTED HEALTH INFORMATION.

**10.4.4** FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS' UNAUTHORIZED DISCLOSURE OF PROTECTED HEALTH INFORMATION AS THE BASIS OF THE FINE/PENALTY, ANY SUCH FINES OR PENALTIES SHALL CONSTITUTE DIRECT DAMAGES.

## **11. Infringement of Intellectual Property Rights to the Products.**

**11.1** Philips will, at its option and expense, defend or settle any suit or proceeding brought against Customer based on any third-party claim that any Product or use thereof for its intended purpose constitutes an infringement of any intellectual property rights in the country where the Product is delivered by Philips.

**11.2** Customer will promptly give Philips written notice of such claim and the authority, information and assistance needed to defend such claim. Philips shall have the full and exclusive authority to defend and settle such claim. Customer shall not make any admission which might be prejudicial to Philips and shall not enter a settlement without Philips' prior written consent.

**11.3** If the Product is held to constitute infringement of any intellectual property right and its use by Customer is enjoined, Philips will, at its option and expense, either:

**11.3.1** procure for Customer the right to continue using the Product;

**11.3.2** replace it with an equivalent non-infringing Product;

**11.3.3** modify the Product so it becomes non-infringing; or

**11.3.4** refund to the Customer a pro rata portion of the Products' purchase price upon the return of the original Products.

**11.4** Philips will have no duty or obligation under this clause 11 if the infringement is caused by a Product being:

**11.4.1** supplied in accordance with Customer's design, specifications or instructions and compliance therewith has caused Philips to deviate from its normal course of performance.

**11.4.2** modified by Customer or its contractors after delivery.

**11.4.3** not updated by Customer in accordance with instructions provided by Philips (e.g. software updates).

**11.4.4** combined by Customer or its contractors with devices, software, methods, systems, or processes not furnished hereunder and the third-party claim is based on such modification or combination. The above states Philips' sole liability and Customer's exclusive remedy in respect of third-party intellectual property claims.

## **12. Use and exclusivity of Product documents.**

**12.1** All documents and manuals including technical information related to the Products and its maintenance as delivered by Philips is the proprietary information of Philips, covered by Philips' copyright, and remains the property of Philips, and as such, it shall not be copied, reproduced, transmitted, or disclosed to or used by third parties without the prior written consent of Philips.

## **13. Export Control and Product Resale.**

**13.1** Customer agrees to comply with relevant export control and sanction laws and regulations, including the UN, EU or US ("Export Laws"), to ensure that the Products are not

**13.1.1** exported or re-exported directly or indirectly in violation of Export Laws; or

**13.1.2** used for any purposes prohibited by the Export Laws, including military end-use, human rights abuses, nuclear, chemical or biological weapons proliferation.

**13.2** Customer represents that

**13.2.1** Customer is not located in a country that is subject to a UN, US or EU embargo and trade restriction; and

**13.2.2** Customer is not listed on any UN, EU, US export and sanctions list of prohibited or restricted parties.

**13.3** Philips may suspend its obligation to fulfil any order or subsequent service if the delivery is restricted under Export Laws or an export/import license is not granted by relevant authorities.

**14. License Software Terms.**

**14.1** Subject to any usage limitations set forth on the quotation, Philips grants to Customer a non-exclusive, non-transferable license, without the right to grant sub-licenses, to incorporate and use the Licensed Software (as specified on the quotation, whether embedded or stand-alone) in Licensed Products and the permitted use (as referenced in the quotation) in accordance with these Conditions of Sale.

**14.2** The Licensed Software is licensed and not sold. All intellectual property rights in the Licensed Software shall remain with Philips.

**14.3** Customer may make one copy of the Licensed Software in machine-readable form solely for backup purposes. Philips reserves the right to charge for backup copies created by Philips. Customer may not reproduce, sell, assign, transfer or sublicense the Licensed Software. Customer shall preserve the confidential nature of the Licensed Software and shall not disclose or transfer any portion of the Licensed Software to any third party.

**14.4** Customer shall maintain Philips' copyright notice or other proprietary legends on any copies of the Licensed Software. Customer shall not (and shall not allow any third party to) decompile, disassemble, or reverse engineer the Licensed Software.

**14.5** The Licensed Software may only be used in relation to Licensed Products or systems certified by Philips. If Customer modifies the Licensed Software in any manner, all warranties associated with the Licensed Software and the Products shall become null and void. Customer installation of Philips' issued patches or updates shall not be deemed to be a modification.

**14.6** Philips and its affiliates shall be free to use any feedback or suggestions for modification or enhancement of the Licensed Software provided by Customer, for the purpose of modifying or enhancing the Licensed Software as well as for licensing such enhancements to third parties.

**14.7** With respect to any third-party licensed software, the Customer agrees to comply with the terms applicable to such licensed software. Customer shall indemnify Philips for any damage arising from its failure to comply with such terms. If the third-party licensor terminates the third party license, Philips shall be entitled to terminate the third party license with the Customer and make reasonable effort to procure a solution.

**15. Confidentiality.**

**15.1** If any of the parties have access to confidential information of the other party, it shall keep this information confidential. Such information shall only be used if and to the extent that it is necessary to carry out the concerned transactions. This obligation does not extend to public domain information and/or information that is disclosed by operation of law or court order.

**16. Compliance with Laws and Privacy.**

**16.1** Each party shall comply with all laws, rules, and regulations applicable to the party in connection with the performance of its obligations in connection with the transactions contemplated by the quotation, including, but not limited to, those relating to employment practices federal and state anti-discrimination laws (including Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended and the Veterans Readjustment ACT of 1972 as amended), E-Verify, FDA, Medicare fraud and abuse, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Health care providers are reminded that if the purchase includes a discount or loan, they must fully and accurately report such discount or loan on cost reports or other applicable claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, as required by federal law (see 42 CFR 1001.952[h]).

- 16.2** Processing of personal data: In relation to the provision of services, Philips may process information, in any form, that can relate to identified or identifiable individuals, which may qualify as personal data. Philips and/or its affiliates will: a) process any protected health information (PHI) as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) on behalf and by instruction of the Customer, the terms, rights and responsibilities of the Parties for such processing of PHI are set forth in a Business Associate Agreement between the parties and b) process information such as log files or device parameters (which may contain personal data), to provide the services and to enable its compliance with and performance of its task as manufacturer of (medical) devices under the applicable regulations and standards (including but not limited to the performance of vigilance, post market surveillance and clinical evaluation related activities).
- 16.3** Customer agrees that Philips and/or its affiliates may use any data, other than personal data, generated by a Product and/or otherwise provided by Customer to Philips for Philips' own legitimate business purposes including, but not limited to, for data analytics activities to determine trends of usage and advise on the use of products and services, for research, product and service development and improvement (including the development of new offerings), substantiation of marketing claims and for benchmarking purposes.

**17. Force Majeure.**

- 17.1** Each party shall not be liable in respect of the non-performance of any of its obligations to the extent such performance is prevented by any circumstances beyond its reasonable control, including, but not limited to, acts of God, war, civil war, insurrection, fire, flood, labor disputes, epidemics, pandemic, cyber-attack, act of terrorism, governmental regulations and/or similar acts, embargoes, export control sanctions or restrictions, Philips' unavailability regarding any required permits, licenses and/or authorizations, default or force majeure of suppliers or subcontractors.
- 17.2** If force majeure prevents Philips from fulfilling any order from the Customer or otherwise performing any obligation arising out of the sale, Philips shall not be liable to the Customer for any compensation, reimbursement, or damages.

**18. Miscellaneous.**

- 18.1** Any newly manufactured Product provided may contain selected remanufactured parts equivalent to new in terms of performance.
- 18.2** If the Customer becomes insolvent, unable to pay its debts as they fall due, files for bankruptcy or is subject to it, has appointed a recipient, is subject to a late fee on payments (temporary or permanent), or has its assets assigned or frozen, Philips may cancel any unfulfilled obligations or suspend its performance; provided that, however, the Customer's financial obligations to Philips shall remain in full force and effect.
- 18.3** If any provision of these Conditions of Sale is found to be unlawful, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall remain in full force and effect. In lieu of any provision deemed to be unlawful, unenforceable, or invalid, in whole or in part, a provision reflecting the original intent of these Conditions of Sale, to the extent permitted by the applicable law, shall be deemed to be a substitute for that provision.
- 18.4** Notices or other communications shall be given in writing and shall be deemed effective if they are delivered in person or if they are sent by courier or mail to the relevant party.
- 18.5** The failure by the Customer or Philips at any time to require compliance with any obligation shall not affect the right to require its enforcement at any time thereafter.
- 18.6** Philips may assign or novate its rights and obligations in whole or in part, to any of its affiliates or may assign any of its accounts receivable to any party without Customer's consent. Customer agrees to execute any documents that may be necessary to complete Philips' assignment or novation. The Customer shall not, without the prior written consent of Philips, transfer or assign any of its rights or obligations.
- 18.7** The Customer's obligations do not depend on any other obligations it may have under any other agreement or arrangement with Philips. The Customer shall not exercise any offset right in the quotation or sale in relation to any other agreement or arrangement with Philips.
- 18.8** These Conditions of Sale shall be governed by the laws of the state of California.  
, and the parties submit to the exclusive jurisdiction of the courts of Kern County, California.

The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (UCITA), in any form, is expressly excluded.

- 18.9** Customer will report immediately to Philips any event of which Customer becomes aware that suggests that any Products provided by Philips, for any reason:
- 18.9.1** may have caused or contributed to a death or serious injury, or
  - 18.9.2** have malfunctioned where such malfunctions would likely cause or contribute to a death or serious injury if the malfunction were to occur again. Additionally, Customer will also report to Philips complaints it receives from its personnel and patients or any other person regarding the identity, quality, performance, reliability, safety, effectiveness, labels, or instructions for use of the Products provided by Philips. Philips shall be solely responsible for submitting any filings or reports to any governmental authorities with respect to the Products provided by Philips hereunder, unless otherwise required by law.
- 18.10** To the extent applicable to your country or state, Philips and Customer shall comply with the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and its implementing regulations (42 CFR, Part 420). Philips agrees that until the expiration of four (4) years after furnishing Products pursuant to these Conditions of Sale, Philips shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, these Conditions of Sale and the books, documents and records of Philips that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Philips further agrees that if Philips carries out any of the duties of these Conditions of Sale through a subcontract with a value or cost of ten-thousand U.S. dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such Products pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs. This paragraph relating to the retention and production of documents is included because of possible application of Section 1861(v) (1) (1) of the Social Security Act (42 U.S.C. 1395x (v) (1) (I) (1989)), as amended from time to time to these Conditions of Sale. If Section 1861(v) (1) (1) should be found to be inapplicable, then this paragraph shall be deemed inoperative and without force and effect.
- 18.11** As of the date of the sale of this Product, Philips represents and warrants that Philips, its employees and subcontractors, are not debarred, excluded, suspended or otherwise ineligible to participate in a federal or state health care program, nor have they been convicted of any health care related crime for Products provided under these Conditions of Sale (an "Excluded Provider"). Philips shall promptly notify Customer if it becomes aware that Philips or any of its employees or subcontractors providing Products hereunder have become an Excluded Provider under a federal or state healthcare program, whereupon Customer shall provide Philips with a reasonable opportunity to discuss and attempt to resolve in good faith with Customer any Customer related concerns in relation thereto, and/or will give Philips a reasonable opportunity to dispute its, or its employee's or subcontractor's, designation as an Excluded Provider. In the event that the parties are unable to resolve any such Customer concerns of the applicable party's designation as an Excluded Provider, then Customer may terminate this order by express written notice for Products not yet shipped or rendered prior to a date of exclusion.
- 18.12** To the extent applicable to your country or state, it is Customer's responsibility to notify Philips if any portion of the order is funded under the American Reinvestment and Recovery Act (ARRA). To ensure compliance with the ARRA regulation, Customer shall include a clause stating that the order is funded under ARRA on its purchase order or other document issued by Customer.
- 18.13** To the extent applicable, Customer acknowledges it shall comply with all Medicare, Medicaid or state cost reporting requirements, including discounts afforded to Customer under these Conditions of Sale, for any Products purchased hereunder.
- 18.14** Entire Agreement. These Terms and Conditions of Sale, the terms and conditions set forth in the quotation and the applicable Philips' product-specific warranty constitute the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the quotation and supersede

any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the quotation. The pricing in the quotation is based upon the terms and conditions in the quotation. No additional terms, conditions, consents, waivers, alterations, or modifications shall be binding unless in writing and signed by the parties. Customer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and shall not apply to the transactions contemplated by the quotation.

**19. Product specific terms.**

Product specific schedules are incorporated herein as they apply to the Products listed in the quotation and their additional terms shall apply solely to the Products specified therein. If any terms set forth in the Product specific schedules conflict with terms expressly set forth in these Conditions of Sale, the terms expressly set forth in the Product specific schedule shall govern in such instance.

20. Liability of Customer. The liabilities or obligations of Customer with respect to its activities pursuant to this Contract 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.

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

22. Health Insurance Portability and Accountability Act-HITECH. Philips understands that CUSTOMER is a Covered Entity that provides medical and mental health services and that I have no authorization to obtain access to any Protected Health Information ("PHI") in any form. If, in the course of my services, I see or hear any PHI, this PHI is to be treated as private and confidential, including the fact that a person has visited this facility(ies) or receives (or previously received) services from CUSTOMER. The privacy and confidentiality of CUSTOMER's patients are protected by CUSTOMER policies and procedures, state laws and regulations and Federal HIPAA Regulations. If appropriate Philips agrees to execute a business associate agreement with CUSTOMER to supplement this Agreement if requested, subject to the Parties' agreement upon terms and conditions of the business associate agreement.



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

July 17, 2024

**Subject:** Proposed Quote 2301406246 with Philips Healthcare, a division of Philips North America LLC

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

**Summary:**

Kern Medical requests your Board approve the proposed Quote 2301406246 with Philips Healthcare, a division of Philips North America LLC for the 2 Center nursing unit mirror and telemetry equipment purchase for the telemetry project to upgrade and purchase telemetry monitoring systems.

Telemetry expansion/upgrade affords the hospital increased capacity for monitoring patients heart rhythms, ability to monitor patients during any transport throughout the hospital, and for tests such as x-ray. Being a designated Trauma Center where patients have complex patient conditions this telemetry upgrade/expansion will increase Kern Medical's ability to monitor, thus ensuring safe and quality care. Current devices and systems are out of support, no longer serviced and in need of replacement. It is critical that our current system be upgraded and expanded to meet the needs of the patients we serve.

Kern Medical has had a historical relationship with Philips and Philips has knowledge of Kern Medical's IT infrastructure. Philips has a current inventory/fleet of equipment in operation which affords Kern Medical the ability to optimize their past investment and look to the future with new innovations. Philips is an industry leader in innovation, durability and cybersecurity.

This Agreement includes the non-standard term of twelve percent interest on any overdue amount. Counsel was unsuccessful negotiating these terms.

Therefore, it is recommended that your Board approve the purchase of the Philips mirror and telemetry equipment for the 2 Center nursing unit in amount not to exceed \$13,934 and authorize the Chairman to sign.



## Formal Quotation

Document number: 2301406246

Date of issue: 04/19/2024

### Sold to (94310879):

KERN MEDICAL CENTER  
1700 Mount Vernon Ave  
BAKERSFIELD CA 93306-4018  
UNITED STATES

Last updated: 04/19/2024 15:40:15

Expiration date: 07/18/2024

### Our contact details

Account Manager: Chris Mojarad

Email: chris.mojarad@philips.com

Incoterms: CIP BAKERSFIELD

Payment terms: Within 30 Days Due Net

Item	Product and Description	Quantity	UoM	Price/Unit	Amount
					Currency: USD
2nd Floor Mirror Station					
10	865053	2	PCE	List Price	345.00/1 PCE 690.00
	Remote IIC Speaker Kit			Agreement Discount (44%)	-303.60
	UPC code: 884838022607			Net amount	193.20/1 PCE 386.40
	Agreement number: HPG-500111				
20	866424	1	PCE		
	PIC iX Hardware				
	NEW Hardware or OS	1	PCE	0.00/1 PCE	0.00
	RVC PIC iX C	1	PCE	0.00/1 PCE	0.00
	SPK Second Speaker	1	PCE	94.00/1 PCE	94.00
				Gross amount	94.00/1 PCE 94.00
	UPC code: 884838052130			Agreement Discount (44%)	-41.36
	Agreement number: HPG-500111			Net amount	52.64/1 PCE 52.64
30	866424	1	PCE		
	PIC iX Hardware				
	HPS Lithium Ion UPS	1	PCE	1,254.00/1 PCE	1,254.00
	NEW Hardware or OS	1	PCE	0.00/1 PCE	0.00
	RVC PIC iX C	1	PCE	0.00/1 PCE	0.00
				Gross amount	1,254.00/1 PCE 1,254.00
	UPC code: 884838052130			Agreement Discount (44%)	-551.76
	Agreement number: HPG-500111			Net amount	702.24/1 PCE 702.24

PMSNA-Customer Service SPS Americas  
222 Jacobs St  
Cambridge, MA 02141-2296  
US

Via ACH/EFT:  
Payee: Philips Healthcare  
Bank: Bank of America  
Account#: 3750202223  
ABA#: 1110-0001-2

Via Check:  
Philips Healthcare  
P.O. Box 100355  
Atlanta, GA 30384-0355





## Formal Quotation

Document number: 2301406246

Date of issue: 04/19/2024

Item	Product and Description	Quantity	UoM		Price/Unit	Amount Currency: USD
40	989805710006 Display: 27" Acer, Touch/Non-Touch, 2560	1	PCE	List Price	1,900.00/1 PCE	1,900.00
				Net amount	1,900.00/1 PCE	1,900.00
50	989803207011 2560: Multi-Video Mirror Sender 4	1	PCE	List Price	1,314.00/1 PCE	1,314.00
				Net amount	1,314.00/1 PCE	1,314.00
60	989803207031 2560: Multi-Video Mirror Receiver	1	PCE	List Price	1,251.00/1 PCE	1,251.00
				Net amount	1,251.00/1 PCE	1,251.00
70	989803206981 2560: Remote Sender	1	PCE	List Price	2,472.00/1 PCE	2,472.00
				Net amount	2,472.00/1 PCE	2,472.00
80	989803206991 2560: Remote Receiver	1	PCE	List Price	2,412.00/1 PCE	2,412.00
				Net amount	2,412.00/1 PCE	2,412.00
90	989805710132 Rack: 23" Double Sided Shelf	1	PCE	List Price	279.00/1 PCE	279.00
				Net amount	279.00/1 PCE	279.00
100	989803208681 Project Management: Foundation	4	PCE	List Price	306.00/1 PCE	1,224.00
				Net amount	306.00/1 PCE	1,224.00
110	989805710138 Labor: Standard Time	5	PCE	List Price	275.00/1 PCE	1,375.00
				Net amount	275.00/1 PCE	1,375.00
120	989805710041 UPS: Mounting Brackets for 500VA	1	PCE	List Price	185.00/1 PCE	185.00
				Net amount	185.00/1 PCE	185.00
130	989805710074 Cable: Patch Cable, Copper, up to 25'	10	PCE	List Price	38.00/1 PCE	380.00
				Net amount	38.00/1 PCE	380.00
Total net amount						13,933.28

Philips Healthcare is pleased to inform you that financing of its products and services is available to qualified applicants. To obtain more information contact Philips Medical Capital @ 866-513-4PMC.

PMSNA-Customer Service SPS Americas  
222 Jacobs St  
Cambridge, MA 02141-2296  
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Via Check:  
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P.O. Box 100355  
Atlanta, GA 30384-0355





## Formal Quotation

Document number: 2301406246

Date of issue: 04/19/2024

Contract information for: HEALTHTRUST ACCESS PLUS INVIVO ENHANCED

Prices quoted are subject to and reflect applicable discounts per the terms and conditions of the following contract:

Contract #GTLHT00030 Expiration: 01/31/2026

MD Buyline -- Please be aware that MD Buyline utilizes Philips current list prices as the basis of calculation for discount comparisons. If you are a customer utilizing a GPO contract with fixed pricing, it is likely that the list price on this quotation is based on an older published price list, and may be considerably less than the current list pricing that MD Buyline uses in its analysis. As such, the MD Buyline discount recommendation may be higher than the Philips offering for your particular purchase. If you have a question, please ask your Sales Representative for clarification. Should you have concerns or want additional information relative to how discount comparisons are calculated at MD Buyline, please call your analyst at MD Buyline.

All work is scheduled within normal working hours; Monday through Friday, 8 a.m. to 5 p.m. excluding Philips holidays. All pricing is based on travel zones 1-3. For travel zones beyond 1-3, consult your Philips sales rep for alternate pricing. It is the customer's responsibility to provide Philips with the access necessary to complete the quoted work in a continuous start to finish manner. Excessive delays and multiple visits will result in additional charges. All prices are based upon 'adequate access' to work areas that are free from obstruction. If it is determined, during the implementation that asbestos removal is required; Philips will suspend performance until the Customer remediates the asbestos. Philips will work with the customer's staff to reduce the downtime during the system transition.

Products are for USA end-use only. Taxes, if applicable, are not included unless noted but will be added to the invoice. The Purchase Order must reference the Quote Number and your Purchase Agreement. Please indicate your requested delivery date and your preference, if any, to accept and pay for partial shipments. If this quote includes Value-Added Services, they may be invoiced separately. Additional sold training must be completed within twelve months of delivery/installation. System cabling, if included, is specified at the standard grade unless noted otherwise.

This quote specifically excludes Licensing & Permit Fees, Prevailing Wage Compensation and Union Labor.

**IMPORTANT NOTICE:** Health care providers are reminded that if the transactions herein include or involve a loan or a discount (including a rebate or other price reduction), they must fully and accurately report such loan or discount on cost reports or other applicable reports or claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, such as maybe required by state or federal law, including but not limited to 42 CFR 1001.952(h).

**Cancellation:** Order(s) are cancellable with written notice to Philips. Cancellation is subject to a 10% penalty unless one of the following is true: 1. Non-installable products, consumables, off-the-self software, and infringing products, not shipped; or, 2. Services not commenced; or 3. Force Majeure; or, 4. Philips receives notice 5 days prior to the start of SOW or project; 5. Products failing to comply with the HealthTrust Agreement or applicable law or regulation or subject to a recall; or, 6. Philips' breach of Warranty exclusions in section 14.9 of HealthTrust Agreement.

**In order to facilitate the processing of your order, please include the Philips Quote number and Requested Delivery Date on your Purchase Order. Please email Purchase Orders to: [Healthcare.Orders@philips.com](mailto:Healthcare.Orders@philips.com) and copy (Cc:) your local sales representative.**

If a Premier or Vizient group purchasing organization Contract # is listed above, this Formal Quotation (Quotation) and any related accepted purchase order (PO) are subject to the terms and conditions of such Premier or Vizient Contract #, as well as Philips Terms and Conditions of Sale posted at <http://www.usa.philips.com/healthcare/about/terms-conditions> ("Philips Terms"). If a Contract # is listed above with no reference to Premier or Vizient, this Quotation and any related accepted PO are subject to the terms and conditions of such Contract #. If no specific Contract # is listed above, this Quotation and any related accepted PO are subject to Philips Terms.

This Quotation contains confidential and proprietary information of Philips Healthcare and is intended for use only by the customer whose name appears on this Quotation. It may not be disclosed to third parties without prior written consent of Philips Healthcare.

PMSNA-Customer Service SPS Americas  
222 Jacobs St  
Cambridge, MA 02141-2296  
US

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Atlanta, GA 30384-0355



**Formal Quotation**

Document number: 2301406246

Date of issue: 04/19/2024

Save time and effort on your next order.

Try online ordering!

The Philips Healthcare Store has many of the consumables and supplies you order as a healthcare professional. Check out the store today; it's easy to register!

<http://www.patientcare.shop.philips.com/>**Please send purchase orders via email, fax or mail to:**Email: [Healthcare.Orders@philips.com](mailto:Healthcare.Orders@philips.com)

Fax: 1-800-947-3299

Philips Healthcare  
A division of Philips North America LLC  
414 Union St, 2nd Floor  
Nashville, TN 37219

KERN COUNTY HOSPITAL AUTHORITY

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By: \_\_\_\_\_  
Chairman, Board of Governors

By Phillip Jenkins  
Kern County Hospital Authority

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

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**GENERAL TERMS AND CONDITIONS OF SALE AND SOFTWARE LICENSE**  
**("Conditions of Sale") Rev 23**

**1. Initial Provisions.**

- 1.1** The Products (equipment, service, and software) offered on the quotation by the Philips legal entity identified thereon are subject to these Conditions of Sale.
- 1.2** The purchase prices set out on the quotation excludes all taxes. All taxes on the Products will be borne by the Customer unless Customer provides a tax exemption certification reasonably in advance of the date the Order is invoiced, otherwise, Philips will invoice Customer for those taxes and Customer shall pay those taxes in accordance with the terms of the invoice.

**2. Quotation, Order and Payment.**

- 2.1** Any quotation on the Products will be open for acceptance within the period indicated therein and may be amended or revoked by Philips prior to Customer's acceptance. Any purchase orders shall be subject to Philips' confirmation. Any terms and conditions set forth on the Customer's purchase order or otherwise issued by the Customer shall not apply to the Products.
- 2.2** The prices and payment terms are set out on the quotation. Orders are subject to Philips' ongoing credit review and approval.
- 2.3** Interest will apply to any late payments. Customer shall pay interest on any overdue amount not actively disputed paid at the annual rate of twelve percent (12%), or at the maximum rate permitted by applicable law, which may be billed monthly. If the Customer fails to pay any amounts due or breaches these Conditions of Sale, Philips will be entitled to suspend the performance of its obligations and deduct the unpaid amount from any amounts otherwise owed to Customer by Philips, in addition to any other rights or remedies available to Philips. Philips shall be entitled to recover all costs and expenses, including reasonable attorneys' fees related to the enforcement of its rights or remedies.
- 2.4** Customer has no right to cancel an order, unless such cancellation right is granted to the Customer by mandatory law.
  - 2.4.1** If the Customer cancels the order prior to the order being sent to the factory for manufacturing, then the Customer shall pay the costs incurred by Philips up to the date of cancellation or 15% of the net selling price of the product(s), whichever is less.
  - 2.4.2** If the Customer cancels the order after the order is sent to the factory for manufacturing, then Customer shall pay the full net selling price of the product(s) ordered.
  - 2.4.3** If Customer has not taken delivery date for each product contained in Philips quotation and Customer's purchase order, or in-lieu of purchase order, within 30 months from Philips' receipt of Customer's purchase order, or in-lieu of purchase order, then the product shall be deemed cancelled and Customer shall be subject to the cancellation fee in section 2.4.1.
- 2.5** Philips may make partial or early shipments and Customer will pay such invoice based on the date of invoice for each product in accordance with the payment terms set forth in the quotation.
- 2.6** Payments may be made by check, ACH or wire. Philips does not accept transaction fees for any electronic fund transfers or any other payment method; Philips imposes a surcharge on credit cards of 2%, which is not greater than our cost of acceptance. All check payments over \$50,000 USD must be paid via eCheck or via Philips prepaid FedEx account with tracking to secure against fraud and misappropriation.

**3. Philips Security Interest until Full Payment.**

- 3.1** Philips is entitled to retain a security interest in the Philips products, until Philips receives full payment.

**4. Technical changes.**

- 4.1** Philips shall be entitled to make changes to the design or specifications of the Products at any time, provided such change does not adversely affect the performance of the Products.

**5. Lease and Trade In.**

- 5.1** If the Customer desires to convert the purchase of any Products to a lease the Customer shall within ninety (90) prior to the delivery of the Products provide all relevant rental documents for review and approval by Philips. The Customer is responsible for converting the transaction to a lease and is required to secure the leasing company's approval of all these Conditions of Sale. No product will be delivered to the Customer

until Philips has received copies of the fully executed lease documents and has approved the same. For any lease, if the lease does not fund then:

**5.1.1** Customer guarantees the payment of all monies due or that may become due under these Conditions of Sale;

**5.1.2** Philips may convert the lease back to a purchase and invoice Customer; accordingly, and

**5.1.3** Customer will pay all such invoiced amounts per the invoice terms. In the event that there are multiple Products on one quote, the Product with the longest period for converting the transaction to a lease shall prevail.

**5.2** Philips may provide a rental agreement at its discretion.

**5.3** In the event Customer will be trading-in equipment ("Trade-In"), the Customer will provide the following:

**5.3.1** Customer undertakes to possess good and marketable title to the Trade-In as of the date of the quotation and when Philips takes possession of the Trade-in from Customer's site. In the event Customer is in breach of this undertaking, Customer shall not be entitled to keep a trade-in credit for such Trade-In and shall promptly refund Philips such credited amounts upon receipt of an invoice from Philips.

**5.3.2** The trade-in value set forth on the Philips quotation is conditioned upon Customer providing Trade-In no later than the date Philips makes the new Product listed on such quotation available for first patient use. Customer shall bear the costs of any reduction in trade-in value arising due to a delay by the Customer causing the trade-in not to occur by the expected date and promptly pay the revised invoice.

**5.3.3** In the event Philips receives a Trade-In having a different configuration (including software version) or model number than the Trade-In described on the Philips quotation, Philips reserves the right to adjust the trade in value and revise the invoice accordingly and Customer shall pay such revised invoice promptly upon receipt.

**5.3.4** Customer undertakes to

**5.3.4.1** clean and sanitize all components that may be infected and all biological fluids from the Trade-In;

**5.3.4.2** drain any applicable chiller lines and cap any associated plumbing and

**5.3.4.3** delete all personal data in the Trade-In. Customer agrees to reimburse Philips against any out-of-pocket costs incurred by Philips arising from Customer's breach of its obligations herein.

## **6. Shipment and Delivery Date.**

**6.1** Philips shall deliver the Products in accordance with the Incoterms set forth on the quotation. If Philips and the Customer agree to any other terms of delivery, additional costs shall be for the account of the Customer. Title (subject to Section 3 entitled Philips Security Interest) to any product (excluding software), and risk of loss shall pass to the Customer upon delivery to the shipping carrier. However, Philips shall pay the cost of freight and risk insurance (during transport to destination). Customer shall obtain and pay for insurance covering such risks at destination.

**6.2** Philips will make reasonable efforts to meet delivery dates quoted or acknowledged. Failure to deliver by the specified date will not be a sufficient cause for cancellation nor will Philips be liable for any penalty, loss, or expense due to delay in delivery. If the Customer causes the delay, any reasonable expenses incurred by Philips will be paid for by Customer, including all storage fees, transportation expenses, and related costs. Customer shall pay the 80% installment payment; upon delivery to Customer site or Philips warehouse. For the purposes of clarification, "Delay" in this section shall mean a date later than the Customer agreed delivery date identified via confirmation of the delivery date with Customer prior to releasing the Product for production.

## **7. Installation.**

**7.1** If Philips has undertaken installation of the Products, the Customer shall be responsible for the following at its sole expense and risk:

**7.1.1** The provision of adequate and lockable storage for the Products on or near the installation site. Additionally, Customers shall consider the manufacturing labeling requirements for environmental

and storage conditions. The Customer will repair or replace any lost or damaged item during the storage period.

**7.1.2** Philips or its (affiliate's) representative shall have access to the installation site without obstacle or hindrance in due time to start the installation work at the scheduled date.

**7.1.3** The timely execution and completion of the preparatory works, in conformity with Philips' installation requirements. The Customer shall ensure the prepared site shall comply with all safety, electrical and building codes relevant to the Products and installation thereof.

**7.1.4** The proper removal and disposal of any hazardous material at the installation site prior to installation by Philips.

**7.1.5** The timely provision of all visa, entry, exit, residence, work or any other permits and licenses necessary for Philips' or Philips' representatives' personnel and for the import and export of tools, equipment, Products, and materials necessary for the installation works and subsequent testing.

**7.1.6** The assistance to Philips or Philips' representative for moving the Products from the entrance of the Customer's premises to the installation site. The Customer shall be responsible, at its expense, for rigging, the removal of partitions or other obstacles, and restoration work.

**7.2** If Products are connected to a computer network, the Customer shall be responsible for network security, including but not limited to, using secure administrative passwords, installing the latest validated security updates of operating software and web browsers, running a Customer firewall as well as maintaining up-to-date drivers, and validated anti-virus and anti-spyware software. Unauthorized Updates, as defined in the Product Schedules, may adversely affect the functionality and performance of the Licensed Software.

**7.3** If any of the above conditions are not complied with, Philips or Philips' representative may interrupt the installation and subsequent testing for reasons not attributable to Philips and the parties shall extend the period for completing the installation. Any additional costs shall be for the Customer's account and Philips shall have no liability for any damage resulting from or in connection with the delayed installation.

**7.4** Philips shall have no liability for the fitness or adequacy of the premises or the utilities available at the premises for installation or storage of the Products.

## **8. Product Damages and Returns.**

**8.1** The following shall apply solely to medical consumables:

The Customer shall notify Philips in writing substantiating its complaints within ten (10) days from its receipt of the Products. If Philips accepts the claim as valid, Philips shall issue a return authorization notice and the Customer shall return the Products. Each returned Product shall be packed in its original packaging.

## **9. Product Warranty.**

**9.1** In the absence of any specific Product warranty attached to the quotation, the following warranty provisions will apply to the Product.

**9.2** Hardware Products. Philips warrants to Customer that the Product shall materially comply with its product specification on the quotation and the user documentation accompanying the shipment of such Product for a period of one year from the date of acceptance or first clinical use, whichever occurs first, but under any circumstances, no more than fifteen (15) months from the date of shipment, provided the Product has been subject to proper use and maintenance. Any disposable Product intended for single use supplied by Philips to the Customer will be of good quality until the expiration date applicable to such Product.

**9.3** Stand-alone Licensed Software Products. Philips warrants that the Stand-alone Licensed Software shall substantially conform to the technical specification for a period of ninety (90) days from the date Philips makes such Stand-alone Licensed Software available to the Customer. "Stand-alone Licensed Software" means Licensed Software sold without a contemporaneous purchase of a server for the Licensed Software.

**9.4** Service. Philips warrants that all services will be carried out with reasonable care and skill. Philips' sole liability and Customer's sole remedy for breach of this warranty shall be at its option to give credit for or re-perform the services in question. This warranty shall only extend for a period of ninety (90) days after the completion of the services.

**9.5** Customer shall only be entitled to make a Product warranty claim if Philips receives written notice of the defect during the warranty period within ten (10) days from the Customer discovering the defect and, if

required the Product or the defective parts shall be returned to an address stated by Philips. Such defective parts shall be the property of Philips after their replacement.

- 9.6** Philips' warranty obligations and Customer's sole remedy for the Product shall be limited, at Philips' option, to the repair or replacement of the Product or any part thereof, in which case the spare parts shall be new or equivalent to new in performance, or to the refund of a pro rata portion of the purchase price paid by the Customer solely after a reasonable cure period is given to Philips.
- 9.7** Philips' warranty obligations shall not apply to any defects resulting from:
- 9.7.1** improper or unsuitable maintenance, configuration or calibration by the Customer or its agents.
  - 9.7.2** use, operation, modification, or maintenance of the Product not in accordance with the Product specification and the applicable written instructions of Philips or performed prior to the completion of Philips' validation process.
  - 9.7.3** abuse, negligence, accident, damages (including damage in transit) caused by the Customer.
  - 9.7.4** improper site preparation, including corrosion to Product caused by Customer.
  - 9.7.5** any damage to the Product or any medical data or other data stored, caused by an external source (including viruses or similar software interference) resulting from the connection of the Product to a Customer network, Customer client devices, a third-party product or use of removable devices.
- 9.8** Philips is not responsible for the warranty for the third-party product provided by Philips to the Customer and Customer shall make any warranty claims directly with such vendors. However, if Philips, under its license agreement or purchase agreement with such third party, has right to warranties and service solutions, Philips shall make reasonable efforts to extend to the Customer the third-party warranty and service solutions for such Products.
- 9.9** During the term of the warranty and any customer service arrangement the Customer shall provide Philips with a dedicated high-speed broadband internet connection suitable to establish a remote connection to the Products in order for Philips to provide remote servicing of the Products by:
- 9.9.1** supporting the installation of a Philips approved router (or a Customer-owned router acceptable for Philips) for connection to the Products and Customer network (which router remains Philips property if provided by Philips and is only provided during the warranty term).
  - 9.9.2** maintaining a secure location for hardware to connect the Products to the Philips Remote Service Data Center (PRSDC).
  - 9.9.3** providing and maintaining a free IP address within the site network to be used to connect the Products to the Customer's network
  - 9.9.4** maintaining the established connection throughout the applicable period.
  - 9.9.5** facilitating the reconnection to Philips in case any temporary disconnection occurs.
  - 9.9.6** If Customer fails to provide the access described in this section and the Product is not connected to the PRSDC (including any temporary disconnection), Customer accepts any related impact on Products availability, additional cost, and speed of resolution.
  - 9.9.7** THE WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS OF SALE AND QUOTATION ARE THE SOLE WARRANTIES MADE BY PHILIPS IN CONNECTION WITH THE PRODUCT, ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PHILIPS EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MOREOVER, PHILIPS DOES NOT WARRANT ANY PRODUCT USING THE CLOUD TO BE UNINTERRUPTED OR ERROR FREE.

## **10. Limitation of Liability.**

- 10.1** THE TOTAL LIABILITY OF PHILIPS ARISING UNDER OR IN CONNECTION WITH THE PRODUCT FOR ANY BREACH OF CONTRACTUAL OBLIGATIONS, WARRANTY, NEGLIGENCE, UNLAWFUL ACT OR OTHERWISE IN CONNECTION WITH THE PRODUCT IS LIMITED TO THE ACTUAL PURCHASE PRICE RECEIVED FOR THE PRODUCT THAT GAVE RISE TO THE CLAIM.
- 10.2** PHILIPS SHALL NOT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES AND/OR FOR ANY DAMAGES INCLUDING, LOSS OF DATA, PROFITS, REVENUE, BUSINESS INTERRUPTION OR USE IN CONNECTION WITH OR ARISING OUT OF THESE CONDITIONS OF SALE, REGARDLESS OF WHETHER THEY ARE FORESEEABLE OR NOT AND WHETHER THE CLAIM IS MADE IN TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, INDEMNITY, AT LAW OR IN EQUITY. NEITHER PHILIPS

NOR PHILIPS' SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OR INABILITY TO USE MEDICAL OR OTHER DATA STORED ON OR BY THE PRODUCT.

**10.3** THE EXCLUSION OF LIABILITY IN THESE CONDITIONS OF SALE SHALL ONLY APPLY TO THE EXTENT ALLOWED UNDER THE APPLICABLE LAW.

**10.4** FOR US CUSTOMERS, THE FOLLOWING ARE NOT SUBJECT TO THE LIMITATIONS OF LIABILITY UNDER SECTION 10.1:

**10.4.1** THIRD PARTY CLAIMS FOR DIRECT DAMAGES FOR BODILY INJURY OR DEATH TO THE EXTENT CAUSED BY PHILIPS' NEGLIGENCE OR PROVEN PRODUCT DEFECT.

**10.4.2** CLAIMS OF TANGIBLE PROPERTY DAMAGE REPRESENTING THE ACTUAL COST TO REPAIR OR REPLACE PHYSICAL PROPERTY TO THE EXTENT CAUSED BY PHILIPS NEGLIGENCE OR PROVEN PRODUCT DEFECT.

**10.4.3** OUT OF POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXTENT SUCH NOTICES ARE CAUSED BY PHILIPS UNAUTHORIZED DISCLOSURE OF PROTECTED HEALTH INFORMATION.

**10.4.4** FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS' UNAUTHORIZED DISCLOSURE OF PROTECTED HEALTH INFORMATION AS THE BASIS OF THE FINE/PENALTY, ANY SUCH FINES OR PENALTIES SHALL CONSTITUTE DIRECT DAMAGES.

**11. Infringement of Intellectual Property Rights to the Products.**

**11.1** Philips will, at its option and expense, defend or settle any suit or proceeding brought against Customer based on any third-party claim that any Product or use thereof for its intended purpose constitutes an infringement of any intellectual property rights in the country where the Product is delivered by Philips.

**11.2** Customer will promptly give Philips written notice of such claim and the authority, information and assistance needed to defend such claim. Philips shall have the full and exclusive authority to defend and settle such claim. Customer shall not make any admission which might be prejudicial to Philips and shall not enter a settlement without Philips' prior written consent.

**11.3** If the Product is held to constitute infringement of any intellectual property right and its use by Customer is enjoined, Philips will, at its option and expense, either:

**11.3.1** procure for Customer the right to continue using the Product;

**11.3.2** replace it with an equivalent non-infringing Product;

**11.3.3** modify the Product so it becomes non-infringing; or

**11.3.4** refund to the Customer a pro rata portion of the Products' purchase price upon the return of the original Products.

**11.4** Philips will have no duty or obligation under this clause 11 if the infringement is caused by a Product being:

**11.4.1** supplied in accordance with Customer's design, specifications or instructions and compliance therewith has caused Philips to deviate from its normal course of performance.

**11.4.2** modified by Customer or its contractors after delivery.

**11.4.3** not updated by Customer in accordance with instructions provided by Philips (e.g. software updates).

**11.4.4** combined by Customer or its contractors with devices, software, methods, systems, or processes not furnished hereunder and the third-party claim is based on such modification or combination. The above states Philips' sole liability and Customer's exclusive remedy in respect of third-party intellectual property claims.

**12. Use and exclusivity of Product documents.**

**12.1** All documents and manuals including technical information related to the Products and its maintenance as delivered by Philips is the proprietary information of Philips, covered by Philips' copyright, and remains the property of Philips, and as such, it shall not be copied, reproduced, transmitted, or disclosed to or used by third parties without the prior written consent of Philips.

**13. Export Control and Product Resale.**

**13.1** Customer agrees to comply with relevant export control and sanction laws and regulations, including the UN, EU or US ("Export Laws"), to ensure that the Products are not

**13.1.1** exported or re-exported directly or indirectly in violation of Export Laws; or

**13.1.2** used for any purposes prohibited by the Export Laws, including military end-use, human rights abuses, nuclear, chemical or biological weapons proliferation.

**13.2** Customer represents that

**13.2.1** Customer is not located in a country that is subject to a UN, US or EU embargo and trade restriction; and

**13.2.2** Customer is not listed on any UN, EU, US export and sanctions list of prohibited or restricted parties.

**13.3** Philips may suspend its obligation to fulfil any order or subsequent service if the delivery is restricted under Export Laws or an export/import license is not granted by relevant authorities.

**14. License Software Terms.**

**14.1** Subject to any usage limitations set forth on the quotation, Philips grants to Customer a non-exclusive, non-transferable license, without the right to grant sub-licenses, to incorporate and use the Licensed Software (as specified on the quotation, whether embedded or stand-alone) in Licensed Products and the permitted use (as referenced in the quotation) in accordance with these Conditions of Sale.

**14.2** The Licensed Software is licensed and not sold. All intellectual property rights in the Licensed Software shall remain with Philips.

**14.3** Customer may make one copy of the Licensed Software in machine-readable form solely for backup purposes. Philips reserves the right to charge for backup copies created by Philips. Customer may not reproduce, sell, assign, transfer or sublicense the Licensed Software. Customer shall preserve the confidential nature of the Licensed Software and shall not disclose or transfer any portion of the Licensed Software to any third party.

**14.4** Customer shall maintain Philips' copyright notice or other proprietary legends on any copies of the Licensed Software. Customer shall not (and shall not allow any third party to) decompile, disassemble, or reverse engineer the Licensed Software.

**14.5** The Licensed Software may only be used in relation to Licensed Products or systems certified by Philips. If Customer modifies the Licensed Software in any manner, all warranties associated with the Licensed Software and the Products shall become null and void. Customer installation of Philips' issued patches or updates shall not be deemed to be a modification.

**14.6** Philips and its affiliates shall be free to use any feedback or suggestions for modification or enhancement of the Licensed Software provided by Customer, for the purpose of modifying or enhancing the Licensed Software as well as for licensing such enhancements to third parties.

**14.7** With respect to any third-party licensed software, the Customer agrees to comply with the terms applicable to such licensed software. Customer shall indemnify Philips for any damage arising from its failure to comply with such terms. If the third-party licensor terminates the third party license, Philips shall be entitled to terminate the third party license with the Customer and make reasonable effort to procure a solution.

**15. Confidentiality.**

**15.1** If any of the parties have access to confidential information of the other party, it shall keep this information confidential. Such information shall only be used if and to the extent that it is necessary to carry out the concerned transactions. This obligation does not extend to public domain information and/or information that is disclosed by operation of law or court order.

**16. Compliance with Laws and Privacy.**

**16.1** Each party shall comply with all laws, rules, and regulations applicable to the party in connection with the performance of its obligations in connection with the transactions contemplated by the quotation, including, but not limited to, those relating to employment practices federal and state anti-discrimination laws (including Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended and the Veterans Readjustment ACT of 1972 as amended), E-Verify, FDA, Medicare fraud and abuse, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Health care providers are reminded that if the purchase includes a discount or loan, they must fully and accurately report such discount or loan on cost reports or other applicable claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, as required by federal law (see 42 CFR 1001.952[h]).

- 16.2** Processing of personal data: In relation to the provision of services, Philips may process information, in any form, that can relate to identified or identifiable individuals, which may qualify as personal data. Philips and/or its affiliates will: a) process any protected health information (PHI) as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) on behalf and by instruction of the Customer, the terms, rights and responsibilities of the Parties for such processing of PHI are set forth in a Business Associate Agreement between the parties and b) process information such as log files or device parameters (which may contain personal data), to provide the services and to enable its compliance with and performance of its task as manufacturer of (medical) devices under the applicable regulations and standards (including but not limited to the performance of vigilance, post market surveillance and clinical evaluation related activities).
- 16.3** Customer agrees that Philips and/or its affiliates may use any data, other than personal data, generated by a Product and/or otherwise provided by Customer to Philips for Philips' own legitimate business purposes including, but not limited to, for data analytics activities to determine trends of usage and advise on the use of products and services, for research, product and service development and improvement (including the development of new offerings), substantiation of marketing claims and for benchmarking purposes.

**17. Force Majeure.**

- 17.1** Each party shall not be liable in respect of the non-performance of any of its obligations to the extent such performance is prevented by any circumstances beyond its reasonable control, including, but not limited to, acts of God, war, civil war, insurrection, fire, flood, labor disputes, epidemics, pandemic, cyber-attack, act of terrorism, governmental regulations and/or similar acts, embargoes, export control sanctions or restrictions, Philips' unavailability regarding any required permits, licenses and/or authorizations, default or force majeure of suppliers or subcontractors.
- 17.2** If force majeure prevents Philips from fulfilling any order from the Customer or otherwise performing any obligation arising out of the sale, Philips shall not be liable to the Customer for any compensation, reimbursement, or damages.

**18. Miscellaneous.**

- 18.1** Any newly manufactured Product provided may contain selected remanufactured parts equivalent to new in terms of performance.
- 18.2** If the Customer becomes insolvent, unable to pay its debts as they fall due, files for bankruptcy or is subject to it, has appointed a recipient, is subject to a late fee on payments (temporary or permanent), or has its assets assigned or frozen, Philips may cancel any unfulfilled obligations or suspend its performance; provided that, however, the Customer's financial obligations to Philips shall remain in full force and effect.
- 18.3** If any provision of these Conditions of Sale is found to be unlawful, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall remain in full force and effect. In lieu of any provision deemed to be unlawful, unenforceable, or invalid, in whole or in part, a provision reflecting the original intent of these Conditions of Sale, to the extent permitted by the applicable law, shall be deemed to be a substitute for that provision.
- 18.4** Notices or other communications shall be given in writing and shall be deemed effective if they are delivered in person or if they are sent by courier or mail to the relevant party.
- 18.5** The failure by the Customer or Philips at any time to require compliance with any obligation shall not affect the right to require its enforcement at any time thereafter.
- 18.6** Philips may assign or novate its rights and obligations in whole or in part, to any of its affiliates or may assign any of its accounts receivable to any party without Customer's consent. Customer agrees to execute any documents that may be necessary to complete Philips' assignment or novation. The Customer shall not, without the prior written consent of Philips, transfer or assign any of its rights or obligations.
- 18.7** The Customer's obligations do not depend on any other obligations it may have under any other agreement or arrangement with Philips. The Customer shall not exercise any offset right in the quotation or sale in relation to any other agreement or arrangement with Philips.
- 18.8** These Conditions of Sale shall be governed by the laws of the state of California.  
, and the parties submit to the exclusive jurisdiction of the courts of Kern County, California.

The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (UCITA), in any form, is expressly excluded.

- 18.9** Customer will report immediately to Philips any event of which Customer becomes aware that suggests that any Products provided by Philips, for any reason:
- 18.9.1** may have caused or contributed to a death or serious injury, or
  - 18.9.2** have malfunctioned where such malfunctions would likely cause or contribute to a death or serious injury if the malfunction were to occur again. Additionally, Customer will also report to Philips complaints it receives from its personnel and patients or any other person regarding the identity, quality, performance, reliability, safety, effectiveness, labels, or instructions for use of the Products provided by Philips. Philips shall be solely responsible for submitting any filings or reports to any governmental authorities with respect to the Products provided by Philips hereunder, unless otherwise required by law.
- 18.10** To the extent applicable to your country or state, Philips and Customer shall comply with the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and its implementing regulations (42 CFR, Part 420). Philips agrees that until the expiration of four (4) years after furnishing Products pursuant to these Conditions of Sale, Philips shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, these Conditions of Sale and the books, documents and records of Philips that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Philips further agrees that if Philips carries out any of the duties of these Conditions of Sale through a subcontract with a value or cost of ten-thousand U.S. dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such Products pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs. This paragraph relating to the retention and production of documents is included because of possible application of Section 1861(v) (1) (1) of the Social Security Act (42 U.S.C. 1395x (v) (1) (I) (1989)), as amended from time to time to these Conditions of Sale. If Section 1861(v) (1) (1) should be found to be inapplicable, then this paragraph shall be deemed inoperative and without force and effect.
- 18.11** As of the date of the sale of this Product, Philips represents and warrants that Philips, its employees and subcontractors, are not debarred, excluded, suspended or otherwise ineligible to participate in a federal or state health care program, nor have they been convicted of any health care related crime for Products provided under these Conditions of Sale (an "Excluded Provider"). Philips shall promptly notify Customer if it becomes aware that Philips or any of its employees or subcontractors providing Products hereunder have become an Excluded Provider under a federal or state healthcare program, whereupon Customer shall provide Philips with a reasonable opportunity to discuss and attempt to resolve in good faith with Customer any Customer related concerns in relation thereto, and/or will give Philips a reasonable opportunity to dispute its, or its employee's or subcontractor's, designation as an Excluded Provider. In the event that the parties are unable to resolve any such Customer concerns of the applicable party's designation as an Excluded Provider, then Customer may terminate this order by express written notice for Products not yet shipped or rendered prior to a date of exclusion.
- 18.12** To the extent applicable to your country or state, it is Customer's responsibility to notify Philips if any portion of the order is funded under the American Reinvestment and Recovery Act (ARRA). To ensure compliance with the ARRA regulation, Customer shall include a clause stating that the order is funded under ARRA on its purchase order or other document issued by Customer.
- 18.13** To the extent applicable, Customer acknowledges it shall comply with all Medicare, Medicaid or state cost reporting requirements, including discounts afforded to Customer under these Conditions of Sale, for any Products purchased hereunder.
- 18.14** Entire Agreement. These Terms and Conditions of Sale, the terms and conditions set forth in the quotation and the applicable Philips' product-specific warranty constitute the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the quotation and supersede

any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the quotation. The pricing in the quotation is based upon the terms and conditions in the quotation. No additional terms, conditions, consents, waivers, alterations, or modifications shall be binding unless in writing and signed by the parties. Customer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and shall not apply to the transactions contemplated by the quotation.

**19. Product specific terms.**

Product specific schedules are incorporated herein as they apply to the Products listed in the quotation and their additional terms shall apply solely to the Products specified therein. If any terms set forth in the Product specific schedules conflict with terms expressly set forth in these Conditions of Sale, the terms expressly set forth in the Product specific schedule shall govern in such instance.

20. Liability of Customer. The liabilities or obligations of Customer with respect to its activities pursuant to this Contract 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.

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

22. Health Insurance Portability and Accountability Act-HITECH. Philips understands that CUSTOMER is a Covered Entity that provides medical and mental health services and that I have no authorization to obtain access to any Protected Health Information ("PHI") in any form. If, in the course of my services, I see or hear any PHI, this PHI is to be treated as private and confidential, including the fact that a person has visited this facility(ies) or receives (or previously received) services from CUSTOMER. The privacy and confidentiality of CUSTOMER's patients are protected by CUSTOMER policies and procedures, state laws and regulations and Federal HIPAA Regulations. If appropriate Philips agrees to execute a business associate agreement with CUSTOMER to supplement this Agreement if requested, subject to the Parties' agreement upon terms and conditions of the business associate agreement.



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

July 17, 2024

**Subject:** Proposed Quote Q-00326625 with Philips Healthcare, a division of Philips North America LLC

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

**Summary:**

Kern Medical requests your Board approve the proposed Quote Q-00326625 with Philips Healthcare, a division of Philips North America LLC, for the Operating Room's wall channels for the telemetry monitors for the telemetry project to upgrade and purchase telemetry monitoring systems.

Telemetry expansion/upgrade affords the hospital increased capacity for monitoring patients heart rhythms, ability to monitor patients during any transport throughout the hospital, and for tests such as x-ray. Being a designated Trauma Center where patients have complex patient conditions this telemetry upgrade/expansion will increase Kern Medical's ability to monitor, thus ensuring safe and quality care. Current devices and systems are out of support, no longer serviced and in need of replacement. It is critical that our current system be upgraded and expanded to meet the needs of the patients we serve.

Kern Medical has had a historical relationship with Philips and Philips has knowledge of Kern's IT infrastructure. Philips has a current inventory/fleet of equipment in operation which affords KM the ability to optimize their past investment and look to the future with new innovations. Philips is an industry leader in innovation, durability and cybersecurity.

This Agreement includes the non-standard term of twelve percent interest on any overdue amount. Counsel was unsuccessful negotiating these terms.

Therefore, it is recommended that your Board approve the purchase of the Philips Wall Channels for the Operating Room's telemetry monitors with a not-to-exceed amount of \$100.00 and authorize the Chairman to sign.



**Sold to:**

KERN MEDICAL CENTER  
1700 Mount Vernon Ave  
Bakersfield, CA 93306-4018

**Presented By**

Chris Mojarad  
Philips Healthcare a division of Philips North  
America LLC  
414 Union Street  
Nashville, Tennessee 37219  
**Email:** [chris.mojarad@philips.com](mailto:chris.mojarad@philips.com)

**Quote #:** Q-00326625

**Customer #:** 94310879

**Quote Date:** 06/26/24

**Valid Until:** 09/27/24

## Kern\_Wall Channels\_QTY 2

Dear Valued Customer,

I am pleased to submit the attached proposal for your consideration. Philips Healthcare is transitioning to a new quoting system and you will notice that this quote looks different than the ones you are used to receiving from us.

I would like to point out a specific area of change to you. Promotions are applied to the line item price of individual items, instead of to the total net price as you are used to. As a result the line item prices appear lower than you might expect based on previous quotations. Please note that the list price of the system has not changed and promotion values are subject to availability.

I trust this meets your expectation, however should you have any queries or require further information or clarification, please do not hesitate to contact me using the details shown at the bottom of this letter.

Please note that all necessary initial applications training is included in the offer price. Further application training can be purchased separately by contacting our Customer Care Center.

Orders relating to this proposal should be sent to the address or fax number at the top of this document. **Thank you,**

**Chris Mojarad**

This quotation contains confidential and proprietary information of Philips Healthcare, a division of Philips North America LLC ("Philips") and is intended for use only by the customer whose name appears on this quotation. Except as otherwise required by state or federal law after strict compliance with any applicable notification and procedural requirements therein, it may not be disclosed to third parties without the prior written consent of Philips.

**IMPORTANT NOTICE:** Health care providers are reminded that if the transactions herein include or involve a loan or discount (including a rebate or other price reduction), they must fully and accurately report such loan or discount on cost reports or other applicable reports or claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, such as may be required by state or federal law, including but not limited to 42 CFR 1001.952(h).

Philips Healthcare a division of Philips North America LLC  
414 Union Street  
Nashville, Tennessee 37219



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1. Financial Overview

Implementation Solutions

Line	Article No.	Description	Qty	List Price	Unit Net Price	Net Price
1	989805710357	Wall Channel: 13" Seismic	2	\$ 100.00	\$ 50.00	\$ 100.00

Total Section Price :

\$ 100.00

List Price

Total Net Price

Total Price

\$ 100.00

\$ 100.00



2. Quote Summary

Implementation Solutions

Line	Article No.	Description	Qty	Unit List Price	Unit Net Price	Net Price
1	989805710357	Wall Channel: 13" Seismic	2	\$ 50.00	\$ 50.00	\$ 100.00

Total Section Price : \$ 100.00

List Price	Total Price
	\$ 100.00
Total Net Price	\$ 100.00





3. Local Sales Terms and Conditions

Line	Product Code	Contract Name	Contract No.	Billing Plan
1	989805710357 Wall Channel: 13" Seismic	Value Added Services	Value Added Services	0/0/100

Payment Terms US: Net 30 Days

INCO Terms: Carriage and Insurance Paid To Destination

This is a cash price quote, which includes ACH, check, and wire transfer. Any other form of payment will result in different price, which may be higher.

Billing Terms: Are as displayed under the Billing Plan table above. For each item, X/Y/Z milestones are defined as follows (unless an Agreement specifying alternative payment terms has been negotiated between the parties):

- X is the percentage invoiced upon signed acceptance of quotation or upon receipt of Customer Purchase Order
- Y is the percentage invoiced upon delivery of major components to Customer designated location or Philips warehouse.
- Z is the percentage invoiced upon completion of installation or product available for first patient use, whichever occurs first.

If DEMO Equipment is included in this quotation it is sold under the Contact No. Contract Name/Contract Number ("Contract") of the products/solution included in this quotation.

If the quote includes a Unit Net Price, the Net Price listed on the quote is the binding price. The Unit Net Price may have a minimal pricing discrepancy when the quantity purchased is greater than 1.

All amounts in this quote are in USD





## 4. Signature Page

**Invoice to:**

KERN MEDICAL CENTER  
1700 Mount Vernon Ave  
Bakersfield, CA 93306-4018

Total Price	
Total Net Price	\$ 100.00

### Acceptance by Parties

Each Quotation solution is issued pursuant to and will reference a specific Contract Name/Contract Number ("Contract") representing an agreement containing discounts, fees and any specific terms and conditions which will apply to that single quoted solution. Philips Standard Terms and Conditions for Value Added Services (VAS) and Connected Care Warranty is located at <http://www.usa.philips.com/healthcare/about/terms-conditions>. Any PO for the items herein will be accepted subject to the terms of that Contract. If no Contract is shown, Philips Terms and Conditions of Sale including applicable product warranty or Philips Terms of Service ("Philips Terms") located in the Philips Standard Terms and Conditions of the quotation shall solely apply to the quoted solution. **Issuance by customer of a non-contingent signed purchase order(s) referencing the quote and master agreement (as applicable) expressly represents customer's acceptance of the quotation and the associated terms in lieu of the customer signature on this quotation.** Each equipment system and/or service listed on purchase order/orders represents a separate and distinct financial transaction.

We understand and agree that each transaction is to be individually billed and paid. This quotation contains confidential and proprietary information of Philips Healthcare, a division of Philips North America LLC ("Philips") and is intended for use only by the customer whose name appears on this quotation. Except as otherwise required by state or federal law after strict compliance with any applicable notification and procedural requirements therein, it may not be disclosed to third parties without the prior written consent of Philips. This quotation provides contract agreement discounts and does not reflect rebates that may be earned by Customer, under separate written rebate agreements, from cumulative volume purchases beyond the individual quantity being ordered under this quote. Customer is reminded that rebates constitute discounts under government laws which are reportable by Customers.

The price above does not include sales tax.

Please fill in the below if applicable:

1. Tax Status: Taxable \_\_\_\_\_ Tax Exempt \_\_\_\_\_  
If Exempt, please indicate the Exemption Certification Number: \_\_\_\_\_, and  
attach a copy of the certificate.
2. Requested equipment delivery date \_\_\_\_\_
3. If you do not issue formal purchase orders indicate by initialing here: \_\_\_\_\_
4. For Recurring Maintenance Service & Support Agreements with New Equipment Purchases: Our facility does issue formal purchase orders; however, due to our business/system limitation, we cannot issue a formal purchase order for the service agreement until 90 days prior to standard warranty expiration. Our facility agrees to submit the service agreement purchase order at such time.  
Initialed: \_\_\_\_\_

#### CUSTOMER SIGNATURE

by its authorized representative

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By Phillip Jenkins  
Kern County Hospital Authority



**GENERAL TERMS AND CONDITIONS OF SALE AND SOFTWARE LICENSE**  
**("Conditions of Sale") Rev 23**

**1. Initial Provisions.**

- 1.1** The Products (equipment, service, and software) offered on the quotation by the Philips legal entity identified thereon are subject to these Conditions of Sale.
- 1.2** The purchase prices set out on the quotation excludes all taxes. All taxes on the Products will be borne by the Customer unless Customer provides a tax exemption certification reasonably in advance of the date the Order is invoiced, otherwise, Philips will invoice Customer for those taxes and Customer shall pay those taxes in accordance with the terms of the invoice.

**2. Quotation, Order and Payment.**

- 2.1** Any quotation on the Products will be open for acceptance within the period indicated therein and may be amended or revoked by Philips prior to Customer's acceptance. Any purchase orders shall be subject to Philips' confirmation. Any terms and conditions set forth on the Customer's purchase order or otherwise issued by the Customer shall not apply to the Products.
- 2.2** The prices and payment terms are set out on the quotation. Orders are subject to Philips' ongoing credit review and approval.
- 2.3** Interest will apply to any late payments. Customer shall pay interest on any overdue amount not actively disputed paid at the annual rate of twelve percent (12%), or at the maximum rate permitted by applicable law, which may be billed monthly. If the Customer fails to pay any amounts due or breaches these Conditions of Sale, Philips will be entitled to suspend the performance of its obligations and deduct the unpaid amount from any amounts otherwise owed to Customer by Philips, in addition to any other rights or remedies available to Philips. Philips shall be entitled to recover all costs and expenses, including reasonable attorneys' fees related to the enforcement of its rights or remedies.
- 2.4** Customer has no right to cancel an order, unless such cancellation right is granted to the Customer by mandatory law.
  - 2.4.1** If the Customer cancels the order prior to the order being sent to the factory for manufacturing, then the Customer shall pay the costs incurred by Philips up to the date of cancellation or 15% of the net selling price of the product(s), whichever is less.
  - 2.4.2** If the Customer cancels the order after the order is sent to the factory for manufacturing, then Customer shall pay the full net selling price of the product(s) ordered.
  - 2.4.3** If Customer has not taken delivery date for each product contained in Philips quotation and Customer's purchase order, or in-lieu of purchase order, within 30 months from Philips' receipt of Customer's purchase order, or in-lieu of purchase order, then the product shall be deemed cancelled and Customer shall be subject to the cancellation fee in section 2.4.1.
- 2.5** Philips may make partial or early shipments and Customer will pay such invoice based on the date of invoice for each product in accordance with the payment terms set forth in the quotation.
- 2.6** Payments may be made by check, ACH or wire. Philips does not accept transaction fees for any electronic fund transfers or any other payment method; Philips imposes a surcharge on credit cards of 2%, which is not greater than our cost of acceptance. All check payments over \$50,000 USD must be paid via eCheck or via Philips prepaid FedEx account with tracking to secure against fraud and misappropriation.

**3. Philips Security Interest until Full Payment.**

- 3.1** Philips is entitled to retain a security interest in the Philips products, until Philips receives full payment.

**4. Technical changes.**

- 4.1** Philips shall be entitled to make changes to the design or specifications of the Products at any time, provided such change does not adversely affect the performance of the Products.

**5. Lease and Trade In.**

- 5.1** If the Customer desires to convert the purchase of any Products to a lease the Customer shall within ninety (90) prior to the delivery of the Products provide all relevant rental documents for review and approval by Philips. The Customer is responsible for converting the transaction to a lease and is required to secure the leasing company's approval of all these Conditions of Sale. No product will be delivered to the Customer

until Philips has received copies of the fully executed lease documents and has approved the same. For any lease, if the lease does not fund then:

**5.1.1** Customer guarantees the payment of all monies due or that may become due under these Conditions of Sale;

**5.1.2** Philips may convert the lease back to a purchase and invoice Customer; accordingly, and

**5.1.3** Customer will pay all such invoiced amounts per the invoice terms. In the event that there are multiple Products on one quote, the Product with the longest period for converting the transaction to a lease shall prevail.

**5.2** Philips may provide a rental agreement at its discretion.

**5.3** In the event Customer will be trading-in equipment ("Trade-In"), the Customer will provide the following:

**5.3.1** Customer undertakes to possess good and marketable title to the Trade-In as of the date of the quotation and when Philips takes possession of the Trade-in from Customer's site. In the event Customer is in breach of this undertaking, Customer shall not be entitled to keep a trade-in credit for such Trade-In and shall promptly refund Philips such credited amounts upon receipt of an invoice from Philips.

**5.3.2** The trade-in value set forth on the Philips quotation is conditioned upon Customer providing Trade-In no later than the date Philips makes the new Product listed on such quotation available for first patient use. Customer shall bear the costs of any reduction in trade-in value arising due to a delay by the Customer causing the trade-in not to occur by the expected date and promptly pay the revised invoice.

**5.3.3** In the event Philips receives a Trade-In having a different configuration (including software version) or model number than the Trade-In described on the Philips quotation, Philips reserves the right to adjust the trade in value and revise the invoice accordingly and Customer shall pay such revised invoice promptly upon receipt.

**5.3.4** Customer undertakes to

**5.3.4.1** clean and sanitize all components that may be infected and all biological fluids from the Trade-In;

**5.3.4.2** drain any applicable chiller lines and cap any associated plumbing and

**5.3.4.3** delete all personal data in the Trade-In. Customer agrees to reimburse Philips against any out-of-pocket costs incurred by Philips arising from Customer's breach of its obligations herein.

## **6. Shipment and Delivery Date.**

**6.1** Philips shall deliver the Products in accordance with the Incoterms set forth on the quotation. If Philips and the Customer agree to any other terms of delivery, additional costs shall be for the account of the Customer. Title (subject to Section 3 entitled Philips Security Interest) to any product (excluding software), and risk of loss shall pass to the Customer upon delivery to the shipping carrier. However, Philips shall pay the cost of freight and risk insurance (during transport to destination). Customer shall obtain and pay for insurance covering such risks at destination.

**6.2** Philips will make reasonable efforts to meet delivery dates quoted or acknowledged. Failure to deliver by the specified date will not be a sufficient cause for cancellation nor will Philips be liable for any penalty, loss, or expense due to delay in delivery. If the Customer causes the delay, any reasonable expenses incurred by Philips will be paid for by Customer, including all storage fees, transportation expenses, and related costs. Customer shall pay the 80% installment payment; upon delivery to Customer site or Philips warehouse. For the purposes of clarification, "Delay" in this section shall mean a date later than the Customer agreed delivery date identified via confirmation of the delivery date with Customer prior to releasing the Product for production.

## **7. Installation.**

**7.1** If Philips has undertaken installation of the Products, the Customer shall be responsible for the following at its sole expense and risk:

**7.1.1** The provision of adequate and lockable storage for the Products on or near the installation site. Additionally, Customers shall consider the manufacturing labeling requirements for environmental

and storage conditions. The Customer will repair or replace any lost or damaged item during the storage period.

**7.1.2** Philips or its (affiliate's) representative shall have access to the installation site without obstacle or hindrance in due time to start the installation work at the scheduled date.

**7.1.3** The timely execution and completion of the preparatory works, in conformity with Philips' installation requirements. The Customer shall ensure the prepared site shall comply with all safety, electrical and building codes relevant to the Products and installation thereof.

**7.1.4** The proper removal and disposal of any hazardous material at the installation site prior to installation by Philips.

**7.1.5** The timely provision of all visa, entry, exit, residence, work or any other permits and licenses necessary for Philips' or Philips' representatives' personnel and for the import and export of tools, equipment, Products, and materials necessary for the installation works and subsequent testing.

**7.1.6** The assistance to Philips or Philips' representative for moving the Products from the entrance of the Customer's premises to the installation site. The Customer shall be responsible, at its expense, for rigging, the removal of partitions or other obstacles, and restoration work.

**7.2** If Products are connected to a computer network, the Customer shall be responsible for network security, including but not limited to, using secure administrative passwords, installing the latest validated security updates of operating software and web browsers, running a Customer firewall as well as maintaining up-to-date drivers, and validated anti-virus and anti-spyware software. Unauthorized Updates, as defined in the Product Schedules, may adversely affect the functionality and performance of the Licensed Software.

**7.3** If any of the above conditions are not complied with, Philips or Philips' representative may interrupt the installation and subsequent testing for reasons not attributable to Philips and the parties shall extend the period for completing the installation. Any additional costs shall be for the Customer's account and Philips shall have no liability for any damage resulting from or in connection with the delayed installation.

**7.4** Philips shall have no liability for the fitness or adequacy of the premises or the utilities available at the premises for installation or storage of the Products.

## **8. Product Damages and Returns.**

**8.1** The following shall apply solely to medical consumables:

The Customer shall notify Philips in writing substantiating its complaints within ten (10) days from its receipt of the Products. If Philips accepts the claim as valid, Philips shall issue a return authorization notice and the Customer shall return the Products. Each returned Product shall be packed in its original packaging.

## **9. Product Warranty.**

**9.1** In the absence of any specific Product warranty attached to the quotation, the following warranty provisions will apply to the Product.

**9.2** Hardware Products. Philips warrants to Customer that the Product shall materially comply with its product specification on the quotation and the user documentation accompanying the shipment of such Product for a period of one year from the date of acceptance or first clinical use, whichever occurs first, but under any circumstances, no more than fifteen (15) months from the date of shipment, provided the Product has been subject to proper use and maintenance. Any disposable Product intended for single use supplied by Philips to the Customer will be of good quality until the expiration date applicable to such Product.

**9.3** Stand-alone Licensed Software Products. Philips warrants that the Stand-alone Licensed Software shall substantially conform to the technical specification for a period of ninety (90) days from the date Philips makes such Stand-alone Licensed Software available to the Customer. "Stand-alone Licensed Software" means Licensed Software sold without a contemporaneous purchase of a server for the Licensed Software.

**9.4** Service. Philips warrants that all services will be carried out with reasonable care and skill. Philips' sole liability and Customer's sole remedy for breach of this warranty shall be at its option to give credit for or re-perform the services in question. This warranty shall only extend for a period of ninety (90) days after the completion of the services.

**9.5** Customer shall only be entitled to make a Product warranty claim if Philips receives written notice of the defect during the warranty period within ten (10) days from the Customer discovering the defect and, if

required the Product or the defective parts shall be returned to an address stated by Philips. Such defective parts shall be the property of Philips after their replacement.

- 9.6** Philips' warranty obligations and Customer's sole remedy for the Product shall be limited, at Philips' option, to the repair or replacement of the Product or any part thereof, in which case the spare parts shall be new or equivalent to new in performance, or to the refund of a pro rata portion of the purchase price paid by the Customer solely after a reasonable cure period is given to Philips.
- 9.7** Philips' warranty obligations shall not apply to any defects resulting from:
- 9.7.1** improper or unsuitable maintenance, configuration or calibration by the Customer or its agents.
  - 9.7.2** use, operation, modification, or maintenance of the Product not in accordance with the Product specification and the applicable written instructions of Philips or performed prior to the completion of Philips' validation process.
  - 9.7.3** abuse, negligence, accident, damages (including damage in transit) caused by the Customer.
  - 9.7.4** improper site preparation, including corrosion to Product caused by Customer.
  - 9.7.5** any damage to the Product or any medical data or other data stored, caused by an external source (including viruses or similar software interference) resulting from the connection of the Product to a Customer network, Customer client devices, a third-party product or use of removable devices.
- 9.8** Philips is not responsible for the warranty for the third-party product provided by Philips to the Customer and Customer shall make any warranty claims directly with such vendors. However, if Philips, under its license agreement or purchase agreement with such third party, has right to warranties and service solutions, Philips shall make reasonable efforts to extend to the Customer the third-party warranty and service solutions for such Products.
- 9.9** During the term of the warranty and any customer service arrangement the Customer shall provide Philips with a dedicated high-speed broadband internet connection suitable to establish a remote connection to the Products in order for Philips to provide remote servicing of the Products by:
- 9.9.1** supporting the installation of a Philips approved router (or a Customer-owned router acceptable for Philips) for connection to the Products and Customer network (which router remains Philips property if provided by Philips and is only provided during the warranty term).
  - 9.9.2** maintaining a secure location for hardware to connect the Products to the Philips Remote Service Data Center (PRSDC).
  - 9.9.3** providing and maintaining a free IP address within the site network to be used to connect the Products to the Customer's network
  - 9.9.4** maintaining the established connection throughout the applicable period.
  - 9.9.5** facilitating the reconnection to Philips in case any temporary disconnection occurs.
  - 9.9.6** If Customer fails to provide the access described in this section and the Product is not connected to the PRSDC (including any temporary disconnection), Customer accepts any related impact on Products availability, additional cost, and speed of resolution.
  - 9.9.7** THE WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS OF SALE AND QUOTATION ARE THE SOLE WARRANTIES MADE BY PHILIPS IN CONNECTION WITH THE PRODUCT, ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PHILIPS EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MOREOVER, PHILIPS DOES NOT WARRANT ANY PRODUCT USING THE CLOUD TO BE UNINTERRUPTED OR ERROR FREE.

## **10. Limitation of Liability.**

- 10.1** THE TOTAL LIABILITY OF PHILIPS ARISING UNDER OR IN CONNECTION WITH THE PRODUCT FOR ANY BREACH OF CONTRACTUAL OBLIGATIONS, WARRANTY, NEGLIGENCE, UNLAWFUL ACT OR OTHERWISE IN CONNECTION WITH THE PRODUCT IS LIMITED TO THE ACTUAL PURCHASE PRICE RECEIVED FOR THE PRODUCT THAT GAVE RISE TO THE CLAIM.
- 10.2** PHILIPS SHALL NOT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES AND/OR FOR ANY DAMAGES INCLUDING, LOSS OF DATA, PROFITS, REVENUE, BUSINESS INTERRUPTION OR USE IN CONNECTION WITH OR ARISING OUT OF THESE CONDITIONS OF SALE, REGARDLESS OF WHETHER THEY ARE FORESEEABLE OR NOT AND WHETHER THE CLAIM IS MADE IN TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, INDEMNITY, AT LAW OR IN EQUITY. NEITHER PHILIPS

NOR PHILIPS' SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OR INABILITY TO USE MEDICAL OR OTHER DATA STORED ON OR BY THE PRODUCT.

**10.3** THE EXCLUSION OF LIABILITY IN THESE CONDITIONS OF SALE SHALL ONLY APPLY TO THE EXTENT ALLOWED UNDER THE APPLICABLE LAW.

**10.4** FOR US CUSTOMERS, THE FOLLOWING ARE NOT SUBJECT TO THE LIMITATIONS OF LIABILITY UNDER SECTION 10.1:

**10.4.1** THIRD PARTY CLAIMS FOR DIRECT DAMAGES FOR BODILY INJURY OR DEATH TO THE EXTENT CAUSED BY PHILIPS' NEGLIGENCE OR PROVEN PRODUCT DEFECT.

**10.4.2** CLAIMS OF TANGIBLE PROPERTY DAMAGE REPRESENTING THE ACTUAL COST TO REPAIR OR REPLACE PHYSICAL PROPERTY TO THE EXTENT CAUSED BY PHILIPS NEGLIGENCE OR PROVEN PRODUCT DEFECT.

**10.4.3** OUT OF POCKET COSTS INCURRED BY CUSTOMER TO PROVIDE PATIENT NOTIFICATIONS, REQUIRED BY LAW, TO THE EXTENT SUCH NOTICES ARE CAUSED BY PHILIPS UNAUTHORIZED DISCLOSURE OF PROTECTED HEALTH INFORMATION.

**10.4.4** FINES/PENALTIES LEVIED AGAINST CUSTOMER BY GOVERNMENT AGENCIES CITING PHILIPS' UNAUTHORIZED DISCLOSURE OF PROTECTED HEALTH INFORMATION AS THE BASIS OF THE FINE/PENALTY, ANY SUCH FINES OR PENALTIES SHALL CONSTITUTE DIRECT DAMAGES.

**11. Infringement of Intellectual Property Rights to the Products.**

**11.1** Philips will, at its option and expense, defend or settle any suit or proceeding brought against Customer based on any third-party claim that any Product or use thereof for its intended purpose constitutes an infringement of any intellectual property rights in the country where the Product is delivered by Philips.

**11.2** Customer will promptly give Philips written notice of such claim and the authority, information and assistance needed to defend such claim. Philips shall have the full and exclusive authority to defend and settle such claim. Customer shall not make any admission which might be prejudicial to Philips and shall not enter a settlement without Philips' prior written consent.

**11.3** If the Product is held to constitute infringement of any intellectual property right and its use by Customer is enjoined, Philips will, at its option and expense, either:

**11.3.1** procure for Customer the right to continue using the Product;

**11.3.2** replace it with an equivalent non-infringing Product;

**11.3.3** modify the Product so it becomes non-infringing; or

**11.3.4** refund to the Customer a pro rata portion of the Products' purchase price upon the return of the original Products.

**11.4** Philips will have no duty or obligation under this clause 11 if the infringement is caused by a Product being:

**11.4.1** supplied in accordance with Customer's design, specifications or instructions and compliance therewith has caused Philips to deviate from its normal course of performance.

**11.4.2** modified by Customer or its contractors after delivery.

**11.4.3** not updated by Customer in accordance with instructions provided by Philips (e.g. software updates).

**11.4.4** combined by Customer or its contractors with devices, software, methods, systems, or processes not furnished hereunder and the third-party claim is based on such modification or combination. The above states Philips' sole liability and Customer's exclusive remedy in respect of third-party intellectual property claims.

**12. Use and exclusivity of Product documents.**

**12.1** All documents and manuals including technical information related to the Products and its maintenance as delivered by Philips is the proprietary information of Philips, covered by Philips' copyright, and remains the property of Philips, and as such, it shall not be copied, reproduced, transmitted, or disclosed to or used by third parties without the prior written consent of Philips.

**13. Export Control and Product Resale.**

**13.1** Customer agrees to comply with relevant export control and sanction laws and regulations, including the UN, EU or US ("Export Laws"), to ensure that the Products are not

**13.1.1** exported or re-exported directly or indirectly in violation of Export Laws; or

**13.1.2** used for any purposes prohibited by the Export Laws, including military end-use, human rights abuses, nuclear, chemical or biological weapons proliferation.

**13.2** Customer represents that

**13.2.1** Customer is not located in a country that is subject to a UN, US or EU embargo and trade restriction; and

**13.2.2** Customer is not listed on any UN, EU, US export and sanctions list of prohibited or restricted parties.

**13.3** Philips may suspend its obligation to fulfil any order or subsequent service if the delivery is restricted under Export Laws or an export/import license is not granted by relevant authorities.

**14. License Software Terms.**

**14.1** Subject to any usage limitations set forth on the quotation, Philips grants to Customer a non-exclusive, non-transferable license, without the right to grant sub-licenses, to incorporate and use the Licensed Software (as specified on the quotation, whether embedded or stand-alone) in Licensed Products and the permitted use (as referenced in the quotation) in accordance with these Conditions of Sale.

**14.2** The Licensed Software is licensed and not sold. All intellectual property rights in the Licensed Software shall remain with Philips.

**14.3** Customer may make one copy of the Licensed Software in machine-readable form solely for backup purposes. Philips reserves the right to charge for backup copies created by Philips. Customer may not reproduce, sell, assign, transfer or sublicense the Licensed Software. Customer shall preserve the confidential nature of the Licensed Software and shall not disclose or transfer any portion of the Licensed Software to any third party.

**14.4** Customer shall maintain Philips' copyright notice or other proprietary legends on any copies of the Licensed Software. Customer shall not (and shall not allow any third party to) decompile, disassemble, or reverse engineer the Licensed Software.

**14.5** The Licensed Software may only be used in relation to Licensed Products or systems certified by Philips. If Customer modifies the Licensed Software in any manner, all warranties associated with the Licensed Software and the Products shall become null and void. Customer installation of Philips' issued patches or updates shall not be deemed to be a modification.

**14.6** Philips and its affiliates shall be free to use any feedback or suggestions for modification or enhancement of the Licensed Software provided by Customer, for the purpose of modifying or enhancing the Licensed Software as well as for licensing such enhancements to third parties.

**14.7** With respect to any third-party licensed software, the Customer agrees to comply with the terms applicable to such licensed software. Customer shall indemnify Philips for any damage arising from its failure to comply with such terms. If the third-party licensor terminates the third party license, Philips shall be entitled to terminate the third party license with the Customer and make reasonable effort to procure a solution.

**15. Confidentiality.**

**15.1** If any of the parties have access to confidential information of the other party, it shall keep this information confidential. Such information shall only be used if and to the extent that it is necessary to carry out the concerned transactions. This obligation does not extend to public domain information and/or information that is disclosed by operation of law or court order.

**16. Compliance with Laws and Privacy.**

**16.1** Each party shall comply with all laws, rules, and regulations applicable to the party in connection with the performance of its obligations in connection with the transactions contemplated by the quotation, including, but not limited to, those relating to employment practices federal and state anti-discrimination laws (including Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended and the Veterans Readjustment ACT of 1972 as amended), E-Verify, FDA, Medicare fraud and abuse, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Health care providers are reminded that if the purchase includes a discount or loan, they must fully and accurately report such discount or loan on cost reports or other applicable claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, as required by federal law (see 42 CFR 1001.952[h]).

- 16.2** Processing of personal data: In relation to the provision of services, Philips may process information, in any form, that can relate to identified or identifiable individuals, which may qualify as personal data. Philips and/or its affiliates will: a) process any protected health information (PHI) as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) on behalf and by instruction of the Customer, the terms, rights and responsibilities of the Parties for such processing of PHI are set forth in a Business Associate Agreement between the parties and b) process information such as log files or device parameters (which may contain personal data), to provide the services and to enable its compliance with and performance of its task as manufacturer of (medical) devices under the applicable regulations and standards (including but not limited to the performance of vigilance, post market surveillance and clinical evaluation related activities).
- 16.3** Customer agrees that Philips and/or its affiliates may use any data, other than personal data, generated by a Product and/or otherwise provided by Customer to Philips for Philips' own legitimate business purposes including, but not limited to, for data analytics activities to determine trends of usage and advise on the use of products and services, for research, product and service development and improvement (including the development of new offerings), substantiation of marketing claims and for benchmarking purposes.

**17. Force Majeure.**

- 17.1** Each party shall not be liable in respect of the non-performance of any of its obligations to the extent such performance is prevented by any circumstances beyond its reasonable control, including, but not limited to, acts of God, war, civil war, insurrection, fire, flood, labor disputes, epidemics, pandemic, cyber-attack, act of terrorism, governmental regulations and/or similar acts, embargoes, export control sanctions or restrictions, Philips' unavailability regarding any required permits, licenses and/or authorizations, default or force majeure of suppliers or subcontractors.
- 17.2** If force majeure prevents Philips from fulfilling any order from the Customer or otherwise performing any obligation arising out of the sale, Philips shall not be liable to the Customer for any compensation, reimbursement, or damages.

**18. Miscellaneous.**

- 18.1** Any newly manufactured Product provided may contain selected remanufactured parts equivalent to new in terms of performance.
- 18.2** If the Customer becomes insolvent, unable to pay its debts as they fall due, files for bankruptcy or is subject to it, has appointed a recipient, is subject to a late fee on payments (temporary or permanent), or has its assets assigned or frozen, Philips may cancel any unfulfilled obligations or suspend its performance; provided that, however, the Customer's financial obligations to Philips shall remain in full force and effect.
- 18.3** If any provision of these Conditions of Sale is found to be unlawful, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall remain in full force and effect. In lieu of any provision deemed to be unlawful, unenforceable, or invalid, in whole or in part, a provision reflecting the original intent of these Conditions of Sale, to the extent permitted by the applicable law, shall be deemed to be a substitute for that provision.
- 18.4** Notices or other communications shall be given in writing and shall be deemed effective if they are delivered in person or if they are sent by courier or mail to the relevant party.
- 18.5** The failure by the Customer or Philips at any time to require compliance with any obligation shall not affect the right to require its enforcement at any time thereafter.
- 18.6** Philips may assign or novate its rights and obligations in whole or in part, to any of its affiliates or may assign any of its accounts receivable to any party without Customer's consent. Customer agrees to execute any documents that may be necessary to complete Philips' assignment or novation. The Customer shall not, without the prior written consent of Philips, transfer or assign any of its rights or obligations.
- 18.7** The Customer's obligations do not depend on any other obligations it may have under any other agreement or arrangement with Philips. The Customer shall not exercise any offset right in the quotation or sale in relation to any other agreement or arrangement with Philips.
- 18.8** These Conditions of Sale shall be governed by the laws of the state of California.  
, and the parties submit to the exclusive jurisdiction of the courts of Kern County, California.

The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (UCITA), in any form, is expressly excluded.

- 18.9** Customer will report immediately to Philips any event of which Customer becomes aware that suggests that any Products provided by Philips, for any reason:
- 18.9.1** may have caused or contributed to a death or serious injury, or
  - 18.9.2** have malfunctioned where such malfunctions would likely cause or contribute to a death or serious injury if the malfunction were to occur again. Additionally, Customer will also report to Philips complaints it receives from its personnel and patients or any other person regarding the identity, quality, performance, reliability, safety, effectiveness, labels, or instructions for use of the Products provided by Philips. Philips shall be solely responsible for submitting any filings or reports to any governmental authorities with respect to the Products provided by Philips hereunder, unless otherwise required by law.
- 18.10** To the extent applicable to your country or state, Philips and Customer shall comply with the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and its implementing regulations (42 CFR, Part 420). Philips agrees that until the expiration of four (4) years after furnishing Products pursuant to these Conditions of Sale, Philips shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, these Conditions of Sale and the books, documents and records of Philips that are necessary to verify the nature and extent of the costs charged to Customer hereunder. Philips further agrees that if Philips carries out any of the duties of these Conditions of Sale through a subcontract with a value or cost of ten-thousand U.S. dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such Products pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs. This paragraph relating to the retention and production of documents is included because of possible application of Section 1861(v) (1) (1) of the Social Security Act (42 U.S.C. 1395x (v) (1) (I) (1989)), as amended from time to time to these Conditions of Sale. If Section 1861(v) (1) (1) should be found to be inapplicable, then this paragraph shall be deemed inoperative and without force and effect.
- 18.11** As of the date of the sale of this Product, Philips represents and warrants that Philips, its employees and subcontractors, are not debarred, excluded, suspended or otherwise ineligible to participate in a federal or state health care program, nor have they been convicted of any health care related crime for Products provided under these Conditions of Sale (an "Excluded Provider"). Philips shall promptly notify Customer if it becomes aware that Philips or any of its employees or subcontractors providing Products hereunder have become an Excluded Provider under a federal or state healthcare program, whereupon Customer shall provide Philips with a reasonable opportunity to discuss and attempt to resolve in good faith with Customer any Customer related concerns in relation thereto, and/or will give Philips a reasonable opportunity to dispute its, or its employee's or subcontractor's, designation as an Excluded Provider. In the event that the parties are unable to resolve any such Customer concerns of the applicable party's designation as an Excluded Provider, then Customer may terminate this order by express written notice for Products not yet shipped or rendered prior to a date of exclusion.
- 18.12** To the extent applicable to your country or state, it is Customer's responsibility to notify Philips if any portion of the order is funded under the American Reinvestment and Recovery Act (ARRA). To ensure compliance with the ARRA regulation, Customer shall include a clause stating that the order is funded under ARRA on its purchase order or other document issued by Customer.
- 18.13** To the extent applicable, Customer acknowledges it shall comply with all Medicare, Medicaid or state cost reporting requirements, including discounts afforded to Customer under these Conditions of Sale, for any Products purchased hereunder.
- 18.14** Entire Agreement. These Terms and Conditions of Sale, the terms and conditions set forth in the quotation and the applicable Philips' product-specific warranty constitute the entire understanding and agreement by and between the parties with respect to the transactions contemplated by the quotation and supersede

any previous understandings or agreements between the parties, whether written or oral, regarding the transactions contemplated by the quotation. The pricing in the quotation is based upon the terms and conditions in the quotation. No additional terms, conditions, consents, waivers, alterations, or modifications shall be binding unless in writing and signed by the parties. Customer's additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and shall not apply to the transactions contemplated by the quotation.

**19. Product specific terms.**

Product specific schedules are incorporated herein as they apply to the Products listed in the quotation and their additional terms shall apply solely to the Products specified therein. If any terms set forth in the Product specific schedules conflict with terms expressly set forth in these Conditions of Sale, the terms expressly set forth in the Product specific schedule shall govern in such instance.

20. Liability of Customer. The liabilities or obligations of Customer with respect to its activities pursuant to this Contract 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.

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

22. Health Insurance Portability and Accountability Act-HITECH. Philips understands that CUSTOMER is a Covered Entity that provides medical and mental health services and that I have no authorization to obtain access to any Protected Health Information ("PHI") in any form. If, in the course of my services, I see or hear any PHI, this PHI is to be treated as private and confidential, including the fact that a person has visited this facility(ies) or receives (or previously received) services from CUSTOMER. The privacy and confidentiality of CUSTOMER's patients are protected by CUSTOMER policies and procedures, state laws and regulations and Federal HIPAA Regulations. If appropriate Philips agrees to execute a business associate agreement with CUSTOMER to supplement this Agreement if requested, subject to the Parties' agreement upon terms and conditions of the business associate agreement.



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

July 17, 2024

**Subject:** Proposed Schedule A-9 to the Agreement 039-2021 with Healthcare Performance Group, Inc.

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

**Summary:**

Kern Medical requests that your Board approve the proposed Schedule A-9 to the Agreement for Professional Consulting Services with Healthcare Performance Group, Inc. (HPG), in the amount of \$22,400 plus expenses for additional consulting support to assist with current staffing shortages.

HPG will provide consulting support for the Telcor project, which allows for point of service devices i.e., glucometers to send their data directly to the electronic health record, scheduled to launch on August 20, 2024. The project has been delayed due to unexpected staff absences prior to the original planned launch date. Additional support is required to finish the final work and provide support for the week before the launch and three weeks during and after the launch. The term for these additional services is effective on August 5, 2024 through September 6, 2024 with an estimated payable of \$22,400 plus expenses.

Therefore, it is recommended that your Board approve the proposed Schedule A-9 with Healthcare Performance Group, Inc. for additional consulting services to assist with the Telcor project, beginning on August 5, 2024 to September 6, 2024, increasing the maximum payable by \$22,400 plus expenses, from \$315,360 to \$337,760, and authorize the Chairman to sign.

## **Schedule "A-9", to be attached to the**

### **Kern Medical (Customer) – HPG Agreement, dated September 27, 2022**

Kern Medical (CUSTOMER) and Healthcare Performance Group, Inc (HPG), wish to attach this Schedule as an addendum to the Agreement between the parties in order to define the services to be provided by HPG to CUSTOMER.

#### **Project Background**

CUSTOMER has licensed EHR applications from Oracle Cerner Corporation and is in the process of implementing these applications and associated functionality. CUSTOMER requires additional support in the capacity of HPG's Senior Consultant services. Key responsibilities of support are as follows:

- Provide support, troubleshooting, implementation and documentation for PathNet and MDI applications
- Provide best practice guidance for most efficient processes for PathNet and MDI requests
- Tickets are to be logged by the CUSTOMER for issues
- Conduct meetings with the CUSTOMER for knowledge transfer
- Provide documentation and knowledge transfer for issue resolution
- Provide weekly status reports to designated CUSTOMER contact
- Additional services as mutually agreed upon by HPG and CUSTOMER in writing

#### **Engagement Scope and Approach**

HPG will provide the services of HPG Senior Consultant, Michael Siefert. Michael will assist the CUSTOMER in the project as described above and will report to the appropriate resources as defined by CUSTOMER. Michael will start the engagement on August 5 through September 6, with the exception of any approved vacation/holidays (August 9-16 and September 2). Should the CUSTOMER wish to extend these services, written notification is required by the CUSTOMER.

HPG Associates are required to submit a weekly status report to a designated contact for timely signatory approval of services performed. Customer agrees to review and approve all status reports within four (4) business days of receipt, or the status report will be considered approved. CUSTOMER is responsible for full payment of any undisputed timely submitted status reports.

#### **Fees, Terms & Payment**

The professional service fee for these services is \$140 per hour. Estimated forty (40) hours per week. The not-to-exceed for this extension of engagement is \$22,400, plus expenses accrued. Professional services fees and reasonable travel and out-of-pocket expenses in accordance with Schedule I, will be invoiced biweekly. Should this engagement extend beyond 12

consecutive months, HPG may adjust the rate based upon agreement by both parties, but no more than 5%. The Invoice will be sent to the attention of \_\_\_\_\_ at \_\_\_\_\_@\_\_\_\_\_. CUSTOMER agrees to provide HPG with a thirty (30) day notice for termination of services. Should CUSTOMER wish to add additional hours to this project, both parties will complete a project addendum or new Schedule.

Payment is expected by either (\_\_\_\_) electronic payment\* or by (\_\_\_\_) check and is due within 30 days of the Invoice Date. Any unpaid balances still due 30 days from the Invoice Date will accrue a late charge at a rate of 1.0% per month. HPG does not accept credit card payments.

**Non-Solicit Agreement:**

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

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

**ACCEPTED by:**

CUSTOMER:

SIGNATURE: \_\_\_\_\_ DATE: 07.17.2024

HPG:

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

\*ABA routing number: 10110045; \*Account number: 005048626030; Address: Healthcare Performance Group, Inc., P.O. Box 588, Spring Hill KS 66083

APPROVED AS TO FORM:  
Legal Services Department

By Shannon Hochstein  
Kern County Hospital Authority



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

July 17, 2024

**SUBJECT:** Proposed Memorandum of Understanding (MOU) with Committee of Interns and Residents/Service Employees International Union, Local 1957 (CIR/SEIU)

**Recommended Action:** Approve; Authorize Chairman to sign; Authorize Human Resources staff to implement changes

**Summary:**

Kern Medical requests that your Board approve the proposed successor MOU with CIR/SEIU, effective July 17, 2024. CIR/SEIU has been the exclusive bargaining representative for all Kern Medical employed resident physicians since January 12, 2010. The current MOU expired June 30, 2024. The terms and conditions of the now-expired MOU will remain in effect until the successor MOU is approved by your Board.

Negotiations for a successor MOU began on April 16, 2024 and concluded on June 26, 2024. Ratification by the residents was confirmed by the CIR/SEIU bargaining team on July 10, 2024. The terms of the successor MOU resulted in the following fiscal impact totaling \$4,429,196 over the three-year term of the MOU, which will expire on June 30, 2027 are as follows:

- A biweekly food allowance of \$200 per resident per year
- Effective July 27, 2024, the beginning of a new pay period, the annual salary, paid biweekly, for represented resident physicians by classification shall be as follows:

Classification	Annual Salary
Resident Physician (PGY 1)	\$70,300.00
Resident Physician (PGY 2)	\$72,950.00
Resident Physician (PGY 3)	\$76,200.00
Resident Physician (PGY 4)	\$79,200.00
Resident Physician (PGY 5)	\$84,200.00

- Effective July 1, 2025, the annual salary, paid biweekly, for represented resident physicians by classification shall be as follows:

<b>Classification</b>	<b>Annual Salary</b>
Resident Physician (PGY1)	\$72,760.50
Resident Physician (PGY2)	\$75,138.50
Resident Physician (PGY3)	\$78,486.00
Resident Physician (PGY4)	\$81,576.00
Resident Physician (PGY5)	\$86,726.00

- Effective July 1, 2026, the annual salary, paid biweekly, for represented resident physicians by classification shall be as follows:

<b>Classification</b>	<b>Annual Salary</b>
Resident Physician (PGY1)	\$75,307.12
Resident Physician (PGY2)	\$77,392.66
Resident Physician (PGY3)	\$80,840.58
Resident Physician (PGY4)	\$84,023.28
Resident Physician (PGY5)	\$89,327.78

Therefore, it is recommended that your Board approve the proposed successor MOU from July 17, 2024 through June 30, 2027, with a fiscal impact of \$4,429,196, authorize the Chairman to sign, and authorize Human Resources staff to implement these changes.

## PREAMBLE

This Memorandum of Understanding (“MOU”), entered into by Kern County Hospital Authority (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Committee of Interns and Residents/Service Employees International Union Local 1957 (“CIR/SEIU” or “Union”), has as its purpose the setting forth of the full and entire understanding of the parties regarding the matters set forth herein, reached as the result of good faith negotiations regarding the wages, hours, and other terms and conditions of employment of the resident physicians covered hereby. Pursuant to Government Code section 3505.1, this MOU is jointly submitted and recommended for approval, and implemented in accordance with its terms, to the Kern County Hospital Authority Board of Governors.

## ARTICLE I – RECOGNITION

### Section 1. Union Recognition

On January 12, 2010, CIR/SEIU was approved and certified by the Kern County Board of Supervisors as the exclusive bargaining representative of all interns, residents, and fellows (collectively, “resident physicians”) employed by the County of Kern on behalf of KMC. The Authority continues to recognize CIR/SEIU as the exclusive bargaining representative of all resident physicians employed by the Authority, pursuant to Health and Safety Code section 101853.1(d)(1).

### Section 2. Full Understanding; Modifications; Waiver

- a. This MOU sets forth the full and entire understanding of the parties regarding the specific matters set forth herein and any other prior or existing oral or written understandings or agreements by the parties, whether formal or informal, regarding any such matters are hereby superseded or terminated in their entirety.
- b. Except as specifically provided herein, it is agreed and understood that each party hereto voluntarily and unqualifiedly waives its right and agrees that the other shall not be required to negotiate with respect to any subject or matter covered herein, during the term of this MOU.
- c. No agreement, alteration, understanding, variation, waiver, or modification of any terms or provisions contained herein shall in any manner be binding upon the parties hereto unless made and executed in writing by the parties hereto, and approved by the Kern County Hospital Authority Board of Governors.
- d. Waiver of any violation of this MOU, or failure to enforce any of its terms shall not constitute a waiver of the right to future enforcement of any of its terms.

### Section 3. Authorized Agents

For the purposes of administering the terms and provisions of this MOU:

- a. The Authority’s principal authorized agent shall be the Chief Executive Officer or his/her duly authorized representative (Address: 1700 Mount Vernon Avenue, Bakersfield, California 93306; Telephone (661) 326-2102), except where a particular Authority representative is specifically designated in connection with the performance of a specified function or obligation set forth herein. CIR/SEIU agrees to copy the Vice President of Human Resources

and the Director of Human Resources, Employee and Labor Relations on correspondence sent to the authorized agent.

- b. CIR/SEIU's principal authorized agent shall be the President of CIR/SEIU Local 1957 or his/her duly authorized representative (Address: 1545 Wilshire Boulevard, Suite 608, Los Angeles, California 90017; Telephone (213) 263-2212). The Authority agrees to copy the designated Internal Organizer on correspondence sent to the authorized agent.
- c. The Authority and the Union agree to notify the other party in writing within 10 business days of changes to the authorized agents.

Section 4.     Status

Notwithstanding any other provision of this MOU, CIR/SEIU acknowledges and agrees that the resident physicians are appointed as physicians-in-training in graduate medical education training programs sponsored by KMC (individually and collectively, the "Program") and that this MOU does not confer upon any resident physician a benefit, promise, or other commitment that they will be appointed for a period beyond the date set forth in their individual Graduate Medical Education Agreement.

ARTICLE II – GENERAL PROVISIONS

Section 1.     Dues and Union Security

- a. No discrimination or reprisal shall be visited against any such resident physician by either party based upon membership or non-membership in CIR/SEIU.
- b. The Union will certify to the Authority the resident physicians who have elected to pay dues to CIR/SEIU. Upon receipt of certification from CIR/SEIU, the Authority agrees to deduct the amounts certified from each resident physician's paycheck at the rate set by CIR/SEIU.
- c. CIR/SEIU shall have the exclusive right to the check-off and transmittal of dues on behalf of each resident physician in the unit, said dues to be checked off monthly from the paycheck of each resident physician, pursuant to the directive of CIR/SEIU, in such amounts as CIR/SEIU shall establish. The Authority agrees to forward said dues by the fifteenth (15th) day of the month after they are collected.
- d. The Authority agrees to a union dues check-off system whereby dues, as certified by CIR/SEIU to be current, will be deducted and paid to CIR/SEIU, subject to the provision of the County of Kern Employer-Employee Relations Resolution ("EERR"), or any successor Employer-Employee Relations Resolution adopted by the Kern County Hospital Authority Board of Governors.
- e. Resident physicians who have authorized union dues deductions on or before the effective date of this MOU or at any time subsequent to the effective date of this MOU, shall continue to have such dues deduction made by the Authority during the term of this MOU. Resident physicians may terminate such union dues deduction each year during the period July 17 to August 15 by notifying CIR/SEIU of their termination of union dues deduction. Such notification shall be by U.S. mail and should be in the form of a letter containing the following information: employee name, employee number, job classification, and

department name. CIR/SEIU will provide the Authority with the appropriate documentation to process these dues cancellations within ten (10) business days after the close of the withdrawal period.

Section 2. Payroll Deduction.

- a. CIR/SEIU agrees to pay a service fee to the Authority for payroll deduction for union dues, or other assessments. The payroll deduction service fee shall be five cents (\$0.05) per deduction per biweekly payroll period.
- b. By May 31 of each year, KMC shall forward to CIR/SEIU a list of all confirmed resident physicians in the bargaining unit, compiled from KMC's records, which list shall include designation by post-graduate years, fellowship titles, personal email addresses, if any, and home or mailing addresses, assuming this information is available at that time. No later than June 30 of each year or when all pre-employment requirements have been successfully completed, whichever occurs first, CIR/SEIU shall receive a list of all incoming resident physicians, including their names, departments, employee identification numbers, work email addresses, and work telephone numbers.

Section 3. Political Action Check-Off

- a. Upon receipt of written authorization from a resident physician in a form submitted by CIR/SEIU, and warranted by it to comply with all applicable laws and regulations, the Authority shall, on a biweekly basis and pursuant to such authorization, deduct from the wages due the resident physician the sum specified in said authorization. The Authority will remit the authorized amount to a fund established, pursuant to applicable law, to receive contributions to be used for political purposes.
- b. It is specifically understood and agreed that the Authority assumes no obligation, financial or otherwise, arising out of the provisions of this Section, and CIR/SEIU agrees that it will indemnify and hold the Authority harmless for any claims, judgments, actions, or proceedings made or brought by any resident physician(s) arising from deductions made by the Authority pursuant to this Article or the expenditure of such funds by CIR/SEIU. After deductions are remitted to CIR/SEIU, the disposition thereof shall be the sole and exclusive obligation and responsibility of CIR/SEIU. It is further understood and agreed that the Authority's performance under this Article is not an endorsement of any expenditure on the part of CIR/SEIU.

Section 4. Safety and Security

The Authority shall provide a healthy and safe work environment for resident physicians and comply with local, state and federal health and safety laws. The Authority shall continue to provide security in accordance with our environment of care and safety programs.

- a. Personal Protection/Infection Control and Precautions - Resident physicians shall adhere to all KMC infectious disease policies and protocols which may be revised from time to time.
- b. Personal Safety - In conjunction with the annual call room walk-through as outlined in Article III, CIR/SEIU and the Authority shall conduct an annual safety and security walk-through to

identify and address any security issues or concerns of the resident physicians. After the walk-through is completed, CIR/SEIU and the Department of Medical Education or its designee shall generate a report of any issues or concerns regarding safety and security and present it to the KMC Director of Security. In addition to the walk-through, any security concerns shall be addressed in meetings of the Resident Advisory Council.

Section 5.      Direct Deposit

The Authority shall require that all resident physicians receive their pay and qualified expense reimbursement via direct deposit.

Section 6.      Issuance of Certificates

Each resident physician shall, upon satisfactory completion of the Program and satisfaction of the Program's requirements and the responsibilities contained herein, receive a Certificate of Completion within one month of completion of the Program.

Section 7.      Library

The Authority shall provide and maintain medical library services as outlined in the Resident Policy Manual and in accordance with the Accreditation Council for Graduate Medical Education ("ACGME") guidelines.

Section 8.      Return of Materials

At the time of termination from the Program or in the event of termination of the Program, resident physicians shall: (a) return all KMC property, including, without limitation, books, equipment, keys, pagers, paper, personal digital assistant (PDA) and uniforms; (b) complete all necessary records; and (c) settle all professional and financial obligations.

Section 9.      Fitness

Subsequent to the commencement date of the individual Graduate Medical Education Agreement, resident physicians shall submit to periodic (post-appointment) health examinations and tests, which may include tests for drug use or alcohol abuse, as are deemed necessary by the Program to ensure that the resident physician is physically, mentally, and emotionally capable of performing essential duties or are otherwise necessary to the operation of the Program. Resident physicians agree to meet applicable standards for immunizations in the same manner as all KMC personnel. The results of all examinations shall be provided to the KMC employee health department. Resident physicians agree to comply with the KMC requirements concerning resident physician health status during the term of this MOU, as these requirements may be changed by KMC from time to time.

Section 10.     Deductions and Contributions

The Authority shall withhold from the compensation paid to each resident physician applicable state and federal income taxes and other required deductions. The Authority shall pay the employer's portion of FICA 1 (Social Security) and FICA 2 (Medicare) contributions, and all other employer taxes and insurance, as applicable and as required by law.

## ARTICLE III – RIGHTS OF PARTIES

### Section 1. Bulletin Boards

- a. The Authority agrees that CIR/SEIU may provide a standard locked bulletin board (not to exceed 24" x 36") that meets HCAI (formally OSHPD) requirements for placement adjacent to existing Authority bulletin boards. Posting of notices is governed by provisions of the EERR. Resident physician representatives may post CIR/SEIU communications dealing with official CIR/SEIU business on Authority-approved bulletin boards. Keys for the locked bulletin boards shall be limited to the designated Internal Organizer, the elected delegates of CIR/SEIU and Human Resources. A copy of each communication shall be filed with the Human Resources Department. CIR/SEIU agrees not to post any notices that concern job actions or the political activities of CIR/SEIU.
- b. The Authority reserves the right to remove any bulletin board notice that does not conform to the above standards. CIR/SEIU shall be given immediate notice of any material that is subject to removal, and the Authority agrees, if requested by CIR/SEIU, to meet and discuss this removal as soon as it is mutually convenient. If CIR/SEIU does not respond, the Authority will remove the materials and inform CIR/SEIU of the action taken.
- c. The Authority and CIR/SEIU further agree that CIR/SEIU may continue to use the Authority mail, e-mail system, and pager system for official CIR/SEIU business and shall not post materials or send mass emails to employee's authority email accounts that are disparaging of any of the Authority's officers, executives, representatives, employees, the quality of service or the Authority. The Authority agrees that it will not post materials or emails that are disparaging of the union, its officers, or representatives. Use and access to systems shall be in accordance with Authority rules relating to the use of Authority mail and e-mail. The Authority's mail and e-mail systems shall not be used for any communications dealing with job actions or political activities of CIR/SEIU.
- d. Failure of CIR/SEIU to adhere to the use of the Authority's mail and e-mail systems in the above manner shall result in its revocation as a privilege extended to CIR/SEIU by the Authority.

### Section 2. Claims Review

Resident physicians covered by this MOU who lose or damage their personal property in the course of their employment may process a claim for reimbursement in accordance with the Authority's claim review procedure.

### Section 3. Nondiscrimination

Consistent with the provisions of applicable state and federal law or Authority policies, the Authority shall not discriminate against or harass any resident physician on the basis of race, color, religion, marital status, national origin, ancestry, sex (including gender, pregnancy and childbirth, including medical conditions related to pregnancy, childbirth, and/or breastfeeding), sexual orientation, gender identity or expression, physical or mental disability, medical condition (cancer-related or genetic characteristics or genetic information including family medical history), service in the uniformed services, status as a covered veteran, age, citizenship, political affiliation/opinion or union activity/affiliation.

Section 4.      Access to Files

Resident physician performance evaluations will be provided in accordance with Authority policy and ACGME requirements.

All resident physicians shall have the right to access and review all documents placed in their individual academic, departmental, and employment files during the term of their appointment, excluding pre-appointment references. Copies shall be provided at the Authority's expense within five business days where a reasonable need therefore is established. The Authority will provide records once per year at the Authority's expense. Resident physicians should make all requests for access and review of their individual files to the Department of Medical Education. Access shall be provided within two (2) business days of the request.

Section 5.      Resident Physician Representatives

- a.      CIR/SEIU representatives shall have access to KMC and its clinics for the purpose of monitoring the administration of this MOU and grievance investigations. The number of representatives is determined by CIR/SEIU constitution, which maybe be amended from time to time.
- b.      Prior to entering a work location to conduct a grievance investigation or to process a grievance, the resident physician representative shall inform the Director of Employee and Labor Relations, the resident physician's Program Director, and the off-specialty Program Director of his/her presence. The affected resident physician shall be released to meet with the resident physician representative unless leaving the job would cause an undue work interruption, in which case the resident physician shall be released as soon as practicable thereafter.

Section 6.      Resident Physician Lists and Orientation

It is recognized that CIR/SEIU has a need to communicate with its members in a timely and efficient manner and in order to alert new resident physicians of their right to belong to a union. Therefore, it is agreed:

- a.      Monthly, if not prohibited by urgency of Authority business, the Authority will provide CIR/SEIU with the change of addresses of its dues paying members and new resident physicians of the Authority.
- b.      The cost to the Authority of providing such addresses shall be borne by CIR/SEIU through monthly billing.
- c.      If CIR/SEIU receives the addresses of a non-dues paying member (other than new resident physicians), it agrees not to use the addresses for any purpose, including CIR/SEIU business.
- d.      Should any disputes arise regarding the application of this Section, they shall be discussed and resolved between CIR/SEIU and the Human Resources Department.

CIR/SEIU shall have access to resident physicians during new resident physician orientation including 45 minutes on the agenda to give a presentation to the incoming resident physicians.

Section 7.      Pagers

Each resident physician shall be provided with a pager in accordance with KMC policy.

Section 8. Call Rooms – Lounges

- a. The Authority shall provide on-call rooms as provided for in the Resident Policy Manual and in accordance with ACGME guidelines. On-call rooms shall be equipped with functioning computers with intranet and internet access and telephones. On-call rooms are for on-call resident physician use only, and are not to be used for spouses, children, and guests to spend the night.
- b. On-call rooms shall be kept clean and tidy for the next person on-call. Housekeeping service is available to empty the trash and replace the linens. During daytime hours, housekeeping personnel shall be allowed to perform their duties. Concerns with housekeeping services should be reported to the Associate Director of Medical Education and the Program Director immediately.
- c. Resident physician on-call rooms shall be equipped with a functional lock. KMC shall provide reasonable notice to CIR/SEIU of any change in location of the on-call rooms.
- d. An annual walk-through and survey of the on-call rooms shall be jointly conducted by CIR/SEIU and the Designated Institutional Official or his/her designee, if requested by CIR/SEIU, to assess the status of the on-call rooms and to ensure ACGME guidelines and compliance with this MOU. The walk-through shall take place during the month of October. CIR/SEIU and the Designated Institutional Official or designee shall generate a report of any repairs needed to be made to the call rooms and present it, through the Designated Institutional Official or designee, to KMC Administration for repair.
- e. In conjunction with the annual call room walk-through, CIR/SEIU, Designated Institutional Official or his/her designee, and the Chief Information Officer or his/her designee will conduct an annual IT walk-through to assess medical technology needs. The results of this walk-through shall be provided, in writing, by KMC at the labor management or the CIR/SEIU-KMC Patient Care Committee meeting. Resolution of issues identified in the IT walk-throughs will be addressed at the CIR/SEIU-KMC Patient Care Committee meetings. Any issues that arise out of the IT walk-through will be resolved within a reasonable timeline.

Section 9. Work Hours

- a. Each resident physician shall perform his/her duties during such hours as the Program Director may direct in accordance with the policies and requirements of the Program, subject to periodic modification and variation as determined by the Program Director depending upon the clinical area to which a resident physician is assigned and exigent circumstances. All work hours shall be in accordance with state, federal, ACGME and other applicable requirements. The call schedules and schedules of assignments shall be, when feasible, made for a minimum of a 4-week period and made available to resident physicians 14 days prior to the effective date. Changes to these schedules will only be made upon mutual consent of the affected resident physician except in urgent and emergent situations and shall be available in the office of each Program Director. Resident physicians shall comply with all assigned schedules in a timely fashion.
- b. Completion of a time-study survey recorded in E\*Value is required from each resident physician on a continuous basis. Program Directors will consistently monitor the work hours

in support of the physical and emotional well-being of the resident physicians, prevention of sleep deprivation, and assess resident physician fatigue based on these records.

- c. The Authority will adhere to the provisions of the Resident Policy Manual, ACGME, and other applicable requirements governing sleep deprivation and fatigue.

Section 10. Parking

Parking is provided in accordance with KMC policy or practice, which may be revised from time to time. The Authority agrees to meet and confer to discuss parking adjustments that will exceed 12-months in duration and permanent changes to resident parking lot availability. In no instance shall a project be delayed due to the meet and confer process. Certain parking areas require a parking sticker and gate card. Resident physician parking areas and restrictions are provided as outlined in the Resident Policy Manual. If requested, KMC shall provide escort services for resident physicians when going to and from parking lots and other buildings on the hospital campus. Additionally, the Authority will have security regularly monitor/patrol the resident parking lots to ensure safety of the residents and all employees.

Reimbursement of parking while on rotations outside of Kern County is outlined in ARTICLE VII.

Section 11. Strikes and Lockouts

During the term of this MOU, the Authority agrees that it will not lock out resident physicians, and CIR/SEIU agrees that it will not engage in, encourage, or approve any strike, slowdown, or other work stoppage growing out of any dispute relating to the terms of this MOU. CIR/SEIU shall take whatever possible lawful steps necessary to prevent any interruption of work in violation of this MOU. Furthermore, CIR/SEIU and the Authority recognize that the grievance and arbitration procedures contained in this MOU shall be used to resolve any and all controversies in any way arising out of, or concerning, any language in the MOU.

Section 12. Out of Title Work

The Authority shall adhere to the Educational Curriculum/Scholarly Activity requirements as outlined in the Resident Policy Manual and the ACGME guidelines. No resident physician shall be regularly or repeatedly assigned to duties and responsibilities that do not align with the ACGME guidelines.

Section 13. Representation on Committees

The Authority shall adhere to the hospital and Medical Staff committee requirements as outlined in the Resident Policy Manual and the ACGME guidelines.

Section 14. Resident Physician Education

- a. The Authority shall make safety training available and/or provide web-based online safety training for resident physicians. All resident physicians shall receive training on how to de-escalate violent patients.
- b. Upon reasonable notice, the KMC Director of Security or designee shall attend regularly scheduled meetings of the Resident Advisory Council to discuss resident physician safety and

security concerns, safety and security initiatives, and changes within the hospital, recommendations for improvement, and other items and matters related to resident physician safety and security.

Section 15. Program Security

- a. The Authority shall notify each resident physician affected and CIR/SEIU:
  - With a minimum of ninety (90) days written notice to the Union, and upon written request of the Union, the Authority agrees to meet and confer over the effects of a decision to discontinue any Program for any reason.
  - Upon receipt from ACGME, or any other relevant accrediting body of any notification regarding non-accreditation or probation or similar change in the accreditation status of any Program, the Authority shall provide a minimum of 30 days written notice and, upon written request of the Union, agrees to meet and confer over the effects.
  - The Authority shall provide a minimum of 30 days written notice and, upon written request of the Union, agrees to meet and confer over the effects of a decision to merge, close, or change the number of beds that has a substantial impact on any Program.
- b. For resident physicians continuing in a Program for which accreditation is lost, KMC shall maintain levels of training, continue to provide rotations required for certification, and add ancillary and professional staff to cover losses in resident physician coverage. KMC shall take reasonable steps to try to gain full accreditation for the affected Program, to encourage resident physicians to remain in the Program, and to balance the service needs of KMC with the professional goals of the resident physicians involved.

Section 16. Resident Physician Impairment

- a. It is imperative that resident physicians not have their performance impaired by drugs, alcohol, or other circumstances. For resident physicians who feel they may have such a problem, the Employee Assistance Program (EAP) and any other program offered by the Authority are available. Every reasonable encouragement and support shall be given for this purpose.
- b. The EAP is available to all eligible resident physicians and their eligible dependents. The purpose of the EAP is to provide evaluation and if appropriate, short term counseling for issues which may affect work performance or personal life. Through a confidential self-referral process, any resident physician has an opportunity to discuss personal situations in strict confidence with a professional.
- c. A Department Chairman or Program Director may also make a formal referral if he/she feels that a resident physician's job performance may benefit from this service. No resident physician shall be disciplined or terminated for being referred to the EAP; however, disciplinary action may be taken for any underlying behavior or clinical performance issue, independent of supervisory referral.

Section 17. Management Rights

The Authority shall retain all customary rights, powers, functions, and authority consistent with state law, local ordinances, or other rules, which shall include, but not be limited to the right to:

- a. Determine the mission of the Authority, KMC, and departments;
- b. Set standards of services;
- c. Plan for and direct the workforce toward the organization's goals and strategic priorities;
- d. Effect a reduction of authorized positions because of lack of work, or for other legitimate reasons; and
- e. Determine work methods, numbers and classifications of personnel, and types of equipment required to accomplish an objective.

Section 18. Graduate Medical Education Agreement

Each resident physician, prior to his/her employment with the Authority, shall receive a written Graduate Medical Education Agreement consistent with then-applicable ACGME requirements. The form of individual agreement shall be furnished to CIR/SEIU, and if changed, a copy of any such changes shall be furnished to CIR/SEIU prior to its use. Each resident physician agrees to execute a Graduate Medical Education Agreement prior to his/her initial appointment as a physician-in-training in the Program and each academic year thereafter if reappointed to the next level of training.

Section 19. Labor-Management Agreement

In order to reinforce the parties commitment to standards, high-quality medical education and patient care and adherence to regulatory guidelines and address issue resolutions, the Authority and CIR/SEIU agree, to hold quarterly meetings at a mutually acceptable time, date, and place to discuss issues related to working conditions, including Program concerns, call room walk-throughs, meals, and facilities with the goal of resolving matters in the most expeditious manner and at the lowest level possible.. Agenda items will be submitted one week prior to each meeting. Should the need arise, the parties agree to schedule ad-hoc meetings to address more urgent matters sooner.

Issues related to Program concerns should first be reported to their supervisor or Program Director; if unresolved they may be escalated to the Designated Institutional Official and brought forward to the Labor Management meeting. Confidential matters may be addressed directly with the Vice President of Human Resources or the Director of Human Resources, Employee and Labor Relations.

If the issue is not resolved, resident physicians may file a formal complaint with ACGME. The Authority will not retaliate against any resident physician for reporting concerns or participating in the resolution process and continues to offer supportive resources through the various medical benefit programs.

Section 20. Resident Patient Care Committee

The Authority and CIR/SEIU agree that quality patient care and appropriate working environments require sufficient medical equipment, technological support, access to medical educational resources for providers, and addressing patient discharge needs. The parties agree to continue a task force to consult on the development of a Resident Patient Care Committee. The task force will work collaboratively to develop the role of the Resident Patient Care Committee as it relates to issues including but not limited to best practices regarding quality patient care and documentation, medical equipment and technological support needs, patient discharge needs, and access to medical educational materials for providers and patients. The task force shall consist of a maximum of five members representing CIR/SEIU and a maximum of five members representing KMC including the Chief Medical Officer.

## ARTICLE IV – PAID AND UNPAID LEAVES

Both the Authority and CIR/SEIU recognize that the use of any leave as described in this Article may require makeup time for purposes of completing Program requirements and Board certification eligibility, which is determined by the specific policy of each Board specialty and should be discussed with each individual Program Director. Resident physicians remain responsible for meeting the applicable time and other requirements of their Program.

### Section 1. Vacation

- a. During the first four years of consecutive service, each full-time resident physician shall be credited with 160 hours (20 days) of vacation leave for each one-year term of service. Beginning with the fifth year of consecutive service, each full-time resident physician will be credited with 176 hours (22 days) of vacation leave. Vacation leave shall accrue on the commencement date of the resident physicians' individual Graduate Medical Education Agreement, and shall be pro-rated from the commencement date of each academic year. The academic year begins on July 1. Vacation leave may be taken at any time thereafter.
- b. Part-time resident physicians shall earn vacation leave at a rate proportionate to full time resident physicians, based on the number of regular hours worked by the part time resident physician per pay period in relation to eighty (80) hours.
- c. Vacation is to be taken at the mutual convenience of the resident physician and the Program Director. The standard vacation increment is a two-week block. (For the purpose of calculating vacation leave, a one-week block is defined as five days and includes Monday through Friday and contiguous weekend days preceding and following the five-day block.) This may vary from Program to Program. Increments less than one week shall be approved only under exceptional circumstances which shall not be unreasonably denied.
- d. In general, vacation during the month of June shall not be granted. Vacation during the month of June shall be approved only under exceptional circumstances.
- e. Vacation leave not taken at the expiration of each one-year term of service shall be credited to the next consecutive one-year term of service up to a maximum of 480 hours (60 days). If the maximum accrual amount is reached, the resident physician shall not earn (accrue) vacation leave until the vacation leave balance is reduced below the maximum.
- f. Each December, the Authority will provide resident physicians with an opportunity to request a payout of accrued vacation, which will occur the following December. Resident physicians must complete their payout request by the deadline established by the Authority. These payout requests are irrevocable. Payout requests shall not result in any resident falling below 40 hours of accrued vacation.
- g. Resident physicians shall be paid for accrued and unused vacation leave upon termination of employment.
- h. All vacation leave must be approved in advance by the Program Director which shall not be unreasonably denied.

Section 2. Sick Leave

- a. Each full-time resident physician shall accrue sick leave credit at the rate of 2.46 hours per biweekly pay period, for a maximum accrual of 64 hours (eight days) per year. Total unused sick leave accumulated shall not exceed a maximum of 321 hours (40 days). If the maximum accrual amount is reached, the resident physician shall not earn (accrue) sick leave until the sick leave balance is reduced below the maximum.
- b. Part-time resident physicians shall earn sick leave at a rate proportionate to full-time resident physicians, based on the number of regular hours worked by the part-time resident physician per pay period in relation to 80 hours.
- c. Resident physicians may be granted sick leave with pay up to the maximum number of hours of sick leave accrued as outlined in this MOU and under the terms and conditions set forth in the KMC Sick Leave Policy.
- d. Accrued sick leave hours remaining at the expiration of each one-year term of service shall be credited to the next consecutive one-year term of service up to a maximum of 321 hours.
- e. Resident physicians shall not be paid for accrued and unused sick leave upon termination of employment.

Section 3. Holidays

Resident physicians shall be entitled to all paid holidays authorized as official holidays for Authority employees. If a resident physician is scheduled for and works on an official holiday, the resident physician shall be granted an alternate day off. Resident physicians shall not be paid for accrued and unused holidays upon termination of employment. The Authority authorizes the following holidays:

New Year's Day  
Martin Luther King's birthday (third Monday in January)  
Memorial Day (last Monday in May)  
Independence Day (July 4)  
Thanksgiving Day  
Day after Thanksgiving  
Christmas Eve  
Christmas Day

Section 4. Wellness Days:

- a. The Authority will provide three (3) wellness days in addition to the current listing of eight (8) Authority authorized holidays. Resident physicians shall not be paid for accrued and unused wellness days upon termination of employment.
- b. Wellness days are defined as prescheduled days off designed to contribute to the wellbeing of resident physicians. Time off will be scheduled with the Program Director for each program so as to not cause department and/or academic hardship. Same day usage shall be considered unscheduled and paid through any sick bank accruals.

Section 5. Fellowship/Post-Residency Employment Interviews

During the final year of the Program, a resident physician may take up to five (5) days of paid leave for interviews related to fellowship training or post-residency employment.

Section 6.        Leaves of Absence

- a.        Family Sick Leave: Resident physicians are entitled to use accrued sick leave to take time off for the illness of an immediate family member up to a maximum of ten (10) days per year. Immediate family member is defined in the KMC Family Care Leave Policy.
- b.        Family Care Leave: Family and medical leaves of absence (including leave for the birth and care of a newborn, placement of a child with an employee for adoption or foster care, care of a spouse, child, or parent who has a serious health condition or serious health condition of the employee) will comply with state and federal law and Authority policies. Eligible employees are entitled to up to twelve (12) work weeks of non-job-related medical leave in a twelve (12) month period under the Family and Medical Leave Act and/or the California Family Rights Act. This leave entitlement shall not be used intermittently in lieu of a reduced work schedule. The twelve (12) month period used to measure the twelve (12) week entitlement will be the rolling twelve (12) month period measured backward from the date the leave is used. Under the rolling twelve (12) month period, each time an employee takes leave; the remaining leave balance consists of the portion of the twelve (12) weeks that was not used during the immediately preceding twelve (12) months. Please refer to the Authority Policy titled Family Care Leave for further information. Employees must provide the Human Resources department with completed leave of absence paperwork and a certification from a medical provider of the necessity for the leave. The printed notice of the procedure for requesting Family Care Leave shall be available to employees via Kern Medical's intranet.
- c.        Parental Bonding Leave: Each eligible resident physician is entitled to family and medical leave, as referenced above and in the Authority's policy titled "Family Care Leave", to bond with their child after the child's birth or placement with the resident physician for adoption or foster care, and to attend to matters related to the birth, adoption, or placement of the child. Bonding leave does not have to be taken in one continuous period of time. Any such leave taken shall be concluded within one year of the birth or placement of the child. The basic minimum duration of the leave shall be two weeks; however, the Hospital Authority shall grant a request for such leaves for less than two weeks' duration on two occasions.
- d.        Discretionary Leave: Resident physicians may be granted, upon proper written request and approval of KMC, the Program Director, and the Designated Institutional Official, a discretionary leave of absence without pay for personal reasons. Approval of such leave without pay under this section shall be conditioned on finding that:
  - (i)        the situation or condition necessitating leave is not remedial by other means;
  - (ii)       refusal to authorize leave will result in personal hardship or suffering for the resident physician or his/her immediate family; and
  - (iii)      the absence of the resident physician will not substantially interfere with the service of the affected clinical department and/or Program. All vacation leave and holiday hours must be exhausted prior to granting a discretionary leave. Whenever a resident physician who has taken a discretionary leave desires to return before expiration of such leave, the resident physician shall notify KMC in writing as least five (5) calendar days in advance of the return. The resident physician shall promptly notify the

Program Director and Director of Medical Education of his/her return. Discretionary leaves must comply with the KMC Discretionary Leave Policy.

- (iv) Extended leaves for any reason may impact the successful or timely completion of the resident physician's progress toward completion of the Program. Resident physicians expressly acknowledge that training after a leave of absence may be required to satisfy the criteria for completion of the Program or eligibility for certification by the relevant certifying Board.
- e. Bereavement Leave: A resident physician may be granted the use of up to three (3) paid days of bereavement leave and seven (7) days from any eligible bank of accrued sick leave, vacation or wellness days for the death and/or funeral of a member of his/her immediate family. This includes leave requested for reproductive loss in accordance with California law, when applicable. Immediate family member is defined as spouse, registered domestic partner, child, stepchild, foster child, grandchild, sibling, parent, step-parent, grandparent, and in-laws (parent, grandparent or sibling only).
- f. Military Leave: Military leave is granted in compliance with state and federal law.

## ARTICLE V – COMPENSATION

### Section 1. Biweekly Salary

The appointment of a resident physician shall be based on the resident physician's appropriate post-graduate year (PGY) level, as set forth below, which shall be determined as follows:

- a. A resident physician who has not completed at least one year of service in an ACGME accredited Program or an equivalent Program shall be placed at the PGY-1 level.
- b. Resident physicians shall be placed at PGY levels commensurate with their training in the Program in which they are appointed.
- c. A year of service in a Program shall mean a year of service in a Program that has been certified as having been completed by the appropriate authority.
- d. A resident physician who successfully completes his/her service for a year and is reappointed to serve for an additional year shall be advanced to the next higher PGY level.
- e. Resident physicians who have satisfied the eligibility requirements set forth in Exhibit "A" of the Graduate Medical Education Agreement and who are eligible for employment in the United States shall begin being paid as of the commencement date of the resident physicians' individual Graduate Medical Education Agreement.

Effective July 27, 2024, the annual salary, paid biweekly, for represented resident physicians by classification shall be as follows:

<b>Classification</b>	<b>Annual Salary</b>
Resident Physician (PGY 1)	\$70,300.00
Resident Physician (PGY 2)	\$72,950.00
Resident Physician (PGY 3)	\$76,200.00
Resident Physician (PGY 4)	\$79,200.00
Resident Physician (PGY 5)	\$84,200.00

Effective July 1, 2025, the annual salary, paid biweekly, for represented resident physicians by classification shall be as follows:

<b>Classification</b>	<b>Annual Salary</b>
Resident Physician (PGY1)	\$72,760.50
Resident Physician (PGY2)	\$75,138.50
Resident Physician (PGY3)	\$78,486.00
Resident Physician (PGY4)	\$81,576.00
Resident Physician (PGY5)	\$86,726.00

Effective July 1, 2026, the annual salary, paid biweekly, for represented resident physicians by classification shall be as follows:

<b>Classification</b>	<b>Annual Salary</b>
Resident Physician (PGY1)	\$75,307.12
Resident Physician (PGY2)	\$77,392.66
Resident Physician (PGY3)	\$80,840.58
Resident Physician (PGY4)	\$84,023.28
Resident Physician (PGY5)	\$89,327.78

Section 2. Medical Language Certification

- a. The Authority agrees to compensate resident physicians for medical language certification under the terms and conditions outlined in the KMC policy titled Staff Healthcare Interpreter: Resident Physicians.
- b. The Authority reserves the right to limit the number of languages qualifying for compensation, the number of employees qualifying for medical language certification, the number of certifications a resident physician may obtain, and the process for which certification is obtained.

Section 3. Educational Fund

- a. Each resident physician shall be reimbursed an amount not to exceed \$1,100 per academic year for the purchase of one or more of the following items:
  - i. Audio and video tapes, DVD's CD, MP3s – eligible only if program specific and relevant
  - ii. Board examination preparation programs and board fees (defined as the remaining 50% of the fees to cover the cost of the USMLE Step 3 or COMLEX-USA licensing examination, if the resident physician has accrued funds available)
  - iii. Medical software

- iv. Medical books and e-books
  - v. Registration fees for educational conferences or on-line courses
  - vi. Dues and journals– eligible only if program specific and relevant
  - vii. License application and examination fees (each program may vary)
  - viii. Registration fees for educational conferences
  - ix. Medical Equipment (pre-approval from the Program Director must be obtained prior to purchasing equipment)
  - x. Professional association membership fees
  - xi. Fellowship application fees
  - xii. Computer equipment (defined as a one-time reimbursement over course of residency program for a laptop, up to \$500.00)
  - xiii. 100% of the J-1 Visa application fee only, for program years 2 through 4.
- b. Non-conference related travel expenses are not eligible for reimbursement through this fund.
- c. This amount may be accumulated or accrued and will continue to the following academic year. Upon termination of employment, the credit balance, if any, will be forfeited. Resident physicians must be in good standing in the Program as determined by the Program Director, Department Chairman, and Chief Academic Officer, and remain actively employed and in compliance with KMC policies and directives concerning job performance in order to receive reimbursement through this fund.

### Section 3. License Fees

- a. A United States, Canadian, and international graduate from a Board-approved medical school who has not already completed thirty-six (36) months of accredited training, does not hold a physician's and surgeon's license, has passed all required licensing examinations, and is accepted into an ACGME accredited postgraduate training program in California must obtain a Postgraduate Training License (PTL) within one hundred eighty (180) days of enrollment. The PTL may be issued for up to thirty-nine (39) months if the resident physician is enrolled in an ACGME-accredited residency program in California. This allows the resident physician to complete the thirty-six (36) months of required training for licensure and grants the resident physician ninety (90) days to obtain the physician's and surgeon's license while they continue their training. If the physician's and surgeon's license is not issued by the end of the ninety (90) day grace period, all clinical services in California must cease.
- b. United States Medical Licensing Examination® ("USMLE Step 3"; allopathic degree) / Level 3 of the Comprehensive Osteopathic Medical Licensing Examination of the United States ("COMLEX-USA"; osteopathic degree) – The Authority will reimburse 50% of licensing fees for the USMLE Step 3 or COMLEX-USA, as applicable, from the License Fund section of this MOU. The remaining 50% of the fees to cover the cost of the USMLE Step 3 or COMLEX-USA licensing examination may be reimbursed from a resident physician's remaining balance under the Educational Fund section of this MOU. Must be a current resident physician in good standing at time of licensure eligibility.
- c. The Authority shall pay 100% of each resident physician's license to practice medicine in the state of California at the beginning of the academic year (July 1) or the first day of employment, whichever occurs first. Reimbursement shall coincide with the resident physician's academic year and shall follow established reimbursement of licensure policy as outlined below:

- i. Upon successful completion of the relevant licensing examination, an itemized official receipt shall be submitted to the Program Director for approval.
  - ii. The Program Director shall verify the eligibility for approval and shall submit the approved receipt to the Accounting Department for processing no greater than fifteen (15) days from original submission.
  - iii. The Accounting Department has final approval of the request and shall remit reimbursement no later than thirty (30) days from final approval or as soon as fiscally practicable.
  - iv. The reimbursable funds shall be made immediately available by the mechanism of choice by the Accounting Department (i.e., Direct Deposit and/or physical check).
- d. For purposes of this Agreement, an academic year begins on July 1 and ends on June 30.

Section 5. Drug Enforcement Administration (DEA) Certificate

Resident physicians who prescribe, order, administer or handle controlled substances are required to obtain an individual Controlled Substance Registration Certificate issued by the United States Department of Justice Drug Enforcement Administration (“DEA”). Registrations may be obtained on a fee-exempt basis while in training in a Program. However, such registrations are restricted to activities within the scope of the Program (including activities at KMC sites and other affiliated training sites). Exemption from payment of the individual registration application fee is limited to federal, state or local government duties (21 C.F.R. § 1301.21). Resident physicians who engage in outside professional activities (e.g., moonlighting) at any site outside of the Program must obtain an individual DEA registration and may not use their fee-exempt registration for this purpose.

ARTICLE VI – BENEFITS

Section 1. Eligibility

Resident physicians enrolled full time in a Program are entitled to full benefits. Resident physicians employed at 0.5 FTE or greater but less than full time are eligible for prorated benefits. Resident physicians employed less than 0.5 FTE are not eligible for benefits. All requests for less than full time status must be approved by and are at the sole discretion of the Department of Medical Education upon recommendation of the Program Director. The Authority shall continue to provide an annual open enrollment for resident physicians to change plans and/or enroll eligible dependents.

Section 2. Health Care Coverage

Resident physicians shall receive the same health benefits (medical, dental, prescription and vision coverage) as all eligible Authority employees. The employee share of cost is 20% of the current biweekly premium. Resident physicians are eligible for coverage the first day of the biweekly payroll period coincident with or next following the day they complete one month of continuous service. The resident physician’s initial hire date is the initial opportunity to enroll in the health plan. Resident physicians must work at least 40 hours per biweekly pay period to be eligible for coverage.

Section 3. Flexible Spending Accounts

Resident physicians are 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 the resident physician if he/she elects to participate in the plan.

Section 4.      Workers' Compensation

The Authority provides workers' compensation coverage as required by law to protect employees who are injured on the job. This coverage provides payment for medical expenses and temporary disability (in lieu of lost earnings) for workers who are injured in the course of their employment. Temporary disability payments begin on the first day of hospitalization or after the third day following a lost time injury if employee resident physician is not hospitalized.

Section 5.      Disability Insurance Plan

The Authority shall make a monthly contribution to the CIR/SEIU House Staff Benefits Fund (HSBF) in the amount of \$12.00 for each resident physician who is actively employed on the first day of each month, for the purpose of providing short-term and long-term disability benefits.

Section 6.      State Disability Insurance

The Authority has an integrated disability plan with the state. The resident physician's wages are integrated with the disability payments from the state, which enables the resident physician to extend his/her sick leave or vacation leave. The resident physician's wages (sick leave and vacation leave used) are offset by disability payments and the corresponding sick leave and vacation time is restored to the resident physician's sick leave and vacation balances.

State disability applications are available from the KMC Human Resources Department or online at [www.edd.ca.gov/disability](http://www.edd.ca.gov/disability). Resident physicians who file for state disability insurance are required to submit the Notice of Computation to the KMC Human Resources Department for purposes of integrating sick or other eligible leave time with state disability benefits.

Section 7.      Retirement

Resident physicians are eligible to participate in the Kern County Deferred Compensation Plan (457 Plan) on a pre-tax basis. Resident physicians shall be required to make all contributions if electing to participate in the 457 Plan.

Section 8      Meals

- a. Each resident physician, while on duty at KMC, shall be permitted to take meals in the KMC cafeteria during regular business hours. Resident physicians shall be given a meal allowance of \$200.00 per biweekly pay period that will be direct deposited and appear as a separate line item on their biweekly pay statement. Resident physicians shall receive the customary cafeteria employee discount for KMC staff in effect from time to time. The meal allowance will be prorated based upon the number of days in the last pay period a resident physician is employed by the Authority.
- b. KMC shall arrange that the food left over from the food prepared daily for resident physicians be packed, date stamped with preparation dates, and stored at the end of the day so that the food is available for the night meal. KMC shall prepare sufficient food daily to ensure that

healthy night meals are available or provide frozen meals for all resident physicians who are assigned to nighttime duty or in-hospital on-call duty.

- c. KMC shall make every reasonable effort to provide meals in the cafeteria with sensitivity and consideration to a greater variety of dietary needs, including full vegetarian, kosher, and ethnic-specific diets on a daily basis.
- d. The Authority agrees to provide periodic education to the Nutrition Services Department on the dietary needs outlined in this MOU.
- e. The Authority agrees to periodically survey resident physicians regarding meals.

Section 9. Uniforms

- a. Lab coats are provided upon entry into the Program. KMC shall furnish three (3) lab coats for categorical resident physicians and one lab coat for preliminary resident physicians. Resident physicians are responsible for maintenance of the lab coats. Scrubs will be issued to resident physicians in General Surgery, Emergency Medicine, and OB/GYN, and all resident physicians on rotations in these departments. Scrubs will be issued via a scrubs vending machine. Resident physicians will be given a card that allows access to two sets of scrubs at a time. One set of scrubs shall be issued to Internal Medicine and Psychiatry resident physicians.
- b. In addition to the above scrubs allocation, each resident physician shall receive a uniform reimbursement allowance of \$150 per year. This reimbursement allowance can be used at the discretion of the resident physician and will have no rollover value and/or value upon separation from employment, and may not be transferred to or shared with other resident physicians. The reimbursement allowance expires at the end of each academic year.

Section 10. Professional Training

- a. Every resident physician must be certified in basic life support (BLS), advanced cardiac life support (ACLS) and fundamental critical care support (FCCS). To assure that all resident physicians get certified on the first day of duty, KMC shall pay the American Hospital Association the fees for certification, which subsequently provides the books and materials for the classes as part of that fee. The Medical Library has one copy of BLS and ACLS books for reference and use only in the library. The Medical Library will not check out books used for certification or recertification purposes. It is recommended that resident physicians keep the initial books issued for the recertification process. In addition, each emergency medicine resident physician shall be certified in advanced trauma life support (ATLS) and neonatal resuscitation program (NRP); each OB/GYN resident physician shall be certified in NRP; and each surgery resident physician shall be certified in ATLS and fundamental laparoscopic surgery (FLS).
- b. KMC shall be responsible for the cost and coordination of all the required recertification classes listed above. KMC through its Department of Graduate Medical Education shall work with each Program to schedule the recertification classes during times when the majority of resident physicians are able to attend. Resident physicians shall be notified at least two weeks in advance of the scheduled class(es), in order to ensure their attendance. KMC shall email

each resident physician every six months with the expiration dates of their required certifications.

- c. KMC may reimburse for required training and/or recertification training costs from non-KMC providers if a resident physician can submit proof with the claim for reimbursement demonstrating that they (1) notified the Associate Director of Medical Education at least sixty (60) days in advance of the requirement/expiration of difficulty with scheduling mandatory training or recertification due to vacation leave and/or work schedule, and (2) provide documentation of such conflict at least sixty (60) days in advance of the requirement/expiration of mandatory training or recertification. All reimbursable expenses are subject to KMC policies regarding employment related expenses.

#### Section 11. Resident Wellbeing

- a. The Authority maintains its commitment to the wellbeing of resident physicians. The Authority will continue to support its commitment to the wellbeing of its resident physicians through the established Resident Wellbeing Committee, for which all resident physicians have access. Resident physicians are highly encouraged to participate in both departmental and organizationally sponsored events through the Kern Medical Center Foundation and/or other means as deemed authorized by the Authority. "Resident Wellbeing" shall be a standing item on the agenda of each Labor Management meeting.
- b. The Authority agrees to issue an annual statement of commitment to graduate medical education and support through an investment of people, facilities and appropriate systems. Additionally, the Authority shall recognize its commitment to diversity, equity and inclusion in a learning environment, along with the Authority's ongoing mission to eliminate health disparities and transform healthcare to improve the lives of those served by KMC.

### ARTICLE VII – TRAVEL POLICY

Resident physicians will be provided a travel allowance if they are in good standing in the Program as determined by the Program Director, Department Chairman, and Chief Academic Officer. All reimbursable expenses are subject to KMC's reimbursement procedures.

Three types of resident physician travel arrangements are eligible for reimbursement:

- Travel to attend a national meeting within the United States to present a first-author potential publication, abstract, or poster exhibit.
- Travel to attend a pre-approved education conference relevant to and the resident physician's Program within the United States. Upon return, under the direction of the Program Director, an educational report to the respective clinical department is expected.
- Attendance at mandatory rotations based on ACGME-approved curriculum, unless the host hospital or department provides food, mileage, and lodging.

#### Section 1. Education Benefit Travel

- a. Over the course of the Program, one (1) trip will be reimbursed for a national subspecialty education conference. Up to three (3) trips may be paid if the resident physician is the first author who is presenting an abstract or poster exhibit at a national meeting. However, in the interest of pursuing national recognition, one (1) additional trip may be permitted, if the resident

is the first author or is presenting an abstract or poster exhibit at a national meeting. Meetings outside the United States are not reimbursed.

- b. Resident physicians must request approval of prospective travel allowance by completing the KMC Travel Authorization Form six weeks prior to departure. Course syllabus or meeting brochures must be submitted and reviewed by the Program Director. The anticipated absence must be cleared by the Program Director for non-interference with coverage schedules.
- c. Standard meeting coverage includes airfare, up to two nights lodging for presentation trips, and three nights for educational meetings, related per diem meals, and incidental expenses as set forth in the KMC employee travel reimbursement policy. If more than one resident physician attends the same meeting, the hotel room should be shared if gender is the same. Travel reimbursement for a national subspecialty education conference is capped at \$1,500.
- d. If travel is by private automobile, current Authority established procedures must be followed and odometer readings before and after travel must be noted. Approved mileage rates, parking, and other driving expenses will be reimbursed pursuant to the KMC employee travel reimbursement policy. Proof of automobile insurance and a valid driver license must be provided.
- e. The resident physician must provide all original receipts for expenses to be reimbursed and must follow the KMC employee travel reimbursement policy to be eligible for reimbursement. Receipts should be submitted to the Program Coordinator no later than five business days after travel.
- f. If travel to the requested meeting is not approved, a separate request for personal time without reimbursement may be made to the Program Director. Educational leave is not subject to the ACGME duty hours rule.

### Section 3. Travel for Outside Rotations

Resident physicians on mandatory rotations to attend Graduate Medical Education Committee approved rotations at UCLA campuses including Harbor, Olive View, and Ronald Reagan Medical Center, Cedars-Sinai Medical Center, and the VA Greater Los Angeles Hospital, may share the two-room KMC/UCLA apartments at no cost to the resident physician. The apartments are furnished and utilities are paid by KMC. Resident physicians on mandatory rotations at Valley Children's Hospital will be provided housing at a hotel selected by KMC at no cost to the resident physician. Resident physicians will be provided per diem and mileage reimbursement pursuant to the KMC employee travel reimbursement policy if not otherwise provided by the host hospital.

Elective rotations are not reimbursable.

## ARTICLE VIII – GRIEVANCE AND ARBITRATION PROCEDURE

### OBJECTIVES

- 1. Informally settle disagreements at the resident physician-supervisor level.
- 2. Provide an orderly procedure to handle the grievance through each level of supervision.
- 3. Correct, if possible, the cause of the grievance to prevent future complaints.

4. Promote harmonious relations among resident physicians, their supervisors, and departmental administrators.
5. Assure fair and equitable treatment of all resident physicians.
6. Resolve grievances at the departmental level before appeal to higher levels.

## DEFINITIONS

The following terms, as used in the Article, shall have the following meaning:

Appointing Authority: Program Director.

CIR/SEIU Representative: A person who appears on behalf of the resident physician.

Day: Calendar day, exclusive of Saturday, Sunday, and designated Authority holidays.

Grievance: A grievance shall be defined as a dispute regarding the interpretation or application of the terms of this MOU; Issues regarding documentation required for certification of eligibility shall be handled as set forth in Exhibit "A" of the Graduate Medical Education Agreement. Disputes regarding disciplinary and fair hearing procedures shall be handled as set forth in Exhibit "B" of the Graduate Medical Education Agreement. Grievances may be brought by an individual resident physician and CIR/SEIU, or by CIR/SEIU alone.

Immediate Supervisor: The person who assigns, reviews, or directs the work of a resident physician.

Resident Physician: An intern, resident, or fellow employed by the Authority.

Program: Any or all graduate residency or fellowship programs operated by the Authority.

Superior: The person to whom an immediate supervisor reports.

## EXCLUSIONS

1. Work assignments.
2. Matters related to promotions to the next PGY level appointments and salaries related thereto.
3. Professional-and academic matters. Such matters are subject to the Resident Policy Manual and ACGME guidelines, which may be revised from time to time.
4. Reappointment or promotion to the next level of training in the Program.
5. Closure or reduction in size of the Program to which the resident physician is appointed.
6. Matters subject to the Disciplinary and Fair Hearing Procedures set forth in Exhibit "B" of the Graduate Medical Education Agreement, including without limitation, probationary and disciplinary matters.
7. Authority policy and ordinance questions, including subjects involving newly established or amendments to existing Authority resolutions, ordinances, or minute orders, unless the allegation is that they are not uniformly administered.
8. Resident physician evaluations of performance, and progress in training or remediation.
9. Impasses in meeting and conferring upon terms of a proposed MOU.
10. Grievances filed after twenty (20) days from the date of occurrence, or after twenty (20) days from the date the resident physician had knowledge of an occurrence.
11. Grievances filed after a resident physician's appointment in the Program has terminated or expired.
12. Appointment/Reappointment to a Program.
13. Matters subject to Employment Security.

14. Matters subject to reappointment based on Institutional Factors.
15. Documentation required for Certification of Eligibility as set forth in Exhibit "A" of the Graduate Medical Education Agreement.

### TIME LIMITS

Time limits are established to settle grievances quickly. Time limits may be extended by agreement of the parties. If the grievant is not satisfied with the decision rendered, it shall be the grievant's responsibility to initiate the action which submits the grievance to the next level of review within the time limits specified. Failure of the resident physician to submit the grievance within the time limits imposed shall terminate the grievance process, and the matter shall be considered resolved. Failure of the Authority to respond within the time limits specified will allow the grievant to submit the grievance to the next higher step of the grievance procedure.

### THE PARTIES' RIGHTS AND RESTRICTIONS

1. A party to the grievance shall have the right to record a formal grievance meeting at the expense of the requesting party.
2. The grievance procedure shall not limit the right of any resident physician to present a grievance individually.
3. A resident physician may have a representative present at all steps of the grievance procedure.
4. Reasonable time in processing a grievance shall be allowed during regular working hours with advanced supervisor approval. Supervisory approval shall not be unreasonably withheld.
5. Only a person selected by the resident physician from within a recognized resident physician organization and made known to management prior to a scheduled grievance meeting shall have the right to represent or advocate as a resident physician's representative.
6. Nothing within this grievance procedure shall be construed as limiting the right of management to manage the affairs of the Authority.
7. Grievances of an identical nature concerning the same subject matter may be consolidated.

### INFORMAL GRIEVANCE DISPOSITION

Within twenty (20) days from the occurrence of the issue that gave rise to the complaint, or within twenty (20) days from the resident physician's knowledge of the occurrence (but no later than the expiration or termination of the resident physician's then-current appointment) a resident physician shall promptly and informally meet to discuss the complaint with his/her immediate supervisor. In those circumstances where the nature of the complaint involves the immediate supervisor, the resident physician may informally discuss the complaint with the next higher level of supervision, provided prior notification is given the immediate supervisor by the resident physician. Such initial discussion shall precede the use of the formal grievance procedure. If the supervisor fails to reply to the resident physician within five days of the meeting, or if the resident physician is not satisfied with the decision, the resident physician may utilize the formal grievance procedure.

Grievance forms are available at KMC for this purpose.

### FORMAL GRIEVANCE PROCEDURE

- Step 1. The grievance form and any supporting documents shall be delivered to the Program Director/Supervisor with whom the informal meeting was held no later than five (5) days from receipt of the Program Director/Supervisor's informal response or within ten (10) days from the close of the informal meeting if no decision is rendered. The formal grievance procedure

shall be initiated by the resident physician, stating the nature of the grievance, the alleged violation by section or number, if any, and the desired solution, in writing on the grievance form, together with any supporting documents attached to the grievance form.

The Program Director/Supervisor shall hold a formal meeting with the resident physician within five (5) days of the receipt of the formal grievance to review the facts, gather all supporting documents, discuss the complaint and desired solution, and discuss the proper appeal procedure.

The Program Director/Supervisor shall issue a written decision on the original grievance form within five (5) days of the close of the formal meeting.

Step 2. If the resident physician feels the Program Director/Supervisor has not resolved the grievance, the resident physician may appeal to the next higher level of supervision (the Department Chair) and Chief Medical Officer (CMO) jointly. At this time, all supporting documents and evidence relative to the grievance shall be included with the appeal and made known to both parties. The Department Chair, together with the CMO, shall hold a formal meeting with the resident physician and his/her representative, if requested, within ten (10) days from the date of the appeal receipt, and attempt to settle the grievance.

A written decision shall be provided, which will include a copy of the original grievance form, to the resident physician by the CMO within ten (10) days from the close of the formal meeting.

Step 3. If the resident physician is not satisfied with the decision of the CMO, the resident physician may appeal the decision to the Chief Executive Officer (CEO) within five (5) days from receipt of the CMO's decision. In his/her appeal to the CEO, all supporting documents must be attached to the grievance form, together with the grievant's reason for appeal and stated remedy requested.

The CEO or his/her designee shall review the original grievance, all supporting documents, the CMO's response, and the remedy requested, and issue a written decision within ten (10) days of receipt of the grievance.

If the resident physician is not satisfied with the decision of the CEO or his/her designee, the resident physician may, within thirty (30) days of receipt of the decision, submit the grievance to advisory arbitration by written request to the CEO.

If the grievance is submitted to advisory arbitration, the grievant, his/her representative, if any, and the CEO, or his/her designee, shall, within five (5) days of receipt of the grievant's request, set a date for a meeting to:

1. Attempt to settle the grievance;
2. Agree to any stipulations;
3. Agree upon the issue statement (the issue statement will reflect the issue as presented in the original grievance as written on grievance form); and
4. Select an impartial arbitrator.

#### SELECTION OF THE ADVISORY ARBITRATOR

- a. If the parties fail to agree on an arbitrator, a list of five neutrals will be jointly requested from the Federal Mediation Service, the State Mediation and Conciliation Service, or the American Arbitration Association. The agency will be mutually selected.
- b. The parties shall select a neutral by alternately striking a name from the list, with the remaining name being the selected neutral. Should both parties agree that the first list submitted is unsatisfactory, the parties may request a second list.
- c. The arbitration procedure shall be informal and private. The arbitration procedure shall not be bound by any of the rules of evidence governing trial procedure in state courts.
- d. The arbitrator shall not have the power to add to, subtract from, or otherwise modify the provisions of any MOU, Rules, Regulations, local ordinances, or the policies and procedures of the Authority.
- e. The arbitrator shall confine himself/herself to the issue submitted.
- f. The arbitrator's decision is binding upon approval by the Kern County Hospital Authority Board of Governors.
- g. The cost of the arbitrator shall be borne equally between the Authority and the grievant. Each party shall bear its own costs relating to the arbitration including, but not limited to, witness fees, transcriptions and attorneys' fees.
- h. The arbitrator shall be requested to submit his/her decision within thirty (30) days from the close of the hearing.

#### ARTICLE IX – SEVERABILITY

In the event that any provision of this MOU is found to be in contradiction of any federal, state, or local law or regulation, or found by any court of competent jurisdiction to be invalid, such invalidity shall not impair the validity and enforceability of the remaining provisions of this MOU.

#### ARTICLE X – STABILITY OF THE MOU

- a. No agreement, understanding, alteration, or variation of the terms and conditions of this MOU shall bind the parties hereto unless made in writing and executed by the parties.
- b. The failure of the Authority or CIR/SEIU to insist, in any one or more incidents, upon performance of any of the terms or conditions of this MOU shall not be considered as a waiver or relinquishment of the right of the Authority or CIR/SEIU to future performance of any such term or condition, and obligations of the Authority and CIR/SEIU to such future performance shall continue in full force and effect.
- c. The parties acknowledge that during the negotiations which resulted in this MOU, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law or the EERR from the scope of bargaining, and that the agreements arrived at by the parties after the exercise of that right and opportunity are set forth herein. The parties, for the life of this MOU, voluntarily and without qualification waive the

right, and agree that the other shall not be obligated to bargain collectively, with respect to any subject or matter referred to or covered by this MOU.

#### ARTICLE XI – DURATION OF THE MOU

- a. Upon ratification by the CIR/SEIU membership and approval by the Kern County Hospital Authority Board of Governors, this MOU shall become effective and binding upon the parties, pursuant to Government Code section 3505.1.
- b. This MOU 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. Facsimile, email or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals.
- c. The term of this MOU is July 17, 2024, through June 30, 2027.
- d. This Memorandum of Understanding is entered into and signed this 17th day of July, 2024.

[Signatures follow on next page]

For CIR/SEIU, Local 1957

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A. Taylor Walker, MD  
President

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Susan Naranjo  
Executive Director

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Munyal Zira Away, MD  
Resident

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Angela Tseng, DO  
Resident

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Nihad Al-Yousfi, MD  
Resident

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Matthew Palmbach, DO  
Resident

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Tanya Eftekhari, MD  
Resident

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Rohini Bilagi, MD  
Resident

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Jose Garcia Corella, MD  
Resident

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Syed Saad Uddin, MD  
Resident

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Megan Haugland, MD  
Resident

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Brittney Banfer, DO  
Resident

For Kern County Hospital Authority

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Chairman  
Board of Governors

---

Lisa Hockersmith  
Vice President, Human Resources

---

Renita Nunn, Director  
Human Resources, Employee and Labor Relations

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Approved as to Form:  
Karen S. Barnes  
Vice President & General Counsel

[Signatures continue on next page]

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Spencer Hart, MD  
Resident

---

Colleen Reyes, MD  
Resident

Reviewed for Content and Accuracy:

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Timothy Rodgers  
Chief Negotiator

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Miles Kelley  
Worksite Organizer



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

July 17, 2024

**Subject:** Proposed Side Letter of Agreement to Memorandum of Understanding 089-2022 with Service Employees International Union, Local 521

**Recommended Action:** Approve; Authorize Chairman to sign subject to approval as to form by Counsel; Authorize Human Resources staff to implement changes

**Summary:**

Kern Medical requests your Board approve the attached Side Letter of Agreement between Kern County Hospital Authority and SEIU Local 521. This Side Letter will confirm the agreement between the Authority and SEIU regarding premium pay for nurses working in the labor and delivery unit of the hospital who have special training and experience in providing care for high-risk deliveries.

As background, for several years, nurses have been receiving “charge pay” when they are assigned as the nurse who will handle high-risk deliveries during a given shift. Charge pay is paid to a nurse who is designated as the unit nurse in “charge” during a shift. Charge pay is paid as an additional \$3.00 per hour for the entire shift in which a nurse is assigned charge duties. Similarly, nurses designated to be responsible for high-risk deliveries have received \$3.00 per hour for that shift. The parties agreed to create a new pay code that was descriptive of the designation of high-risk delivery nurse as opposed to utilizing the charge pay code, which does not differentiate between the charge nurse and the high-risk delivery nurse.

The Authority and SEIU met and conferred regarding this pay and have agreed to provide retroactive pay for those nurses designated for high-risk deliveries from January 1, 2024 through July 26, 2024. The parties also agreed that, effective July 27, 2024, the beginning of a new pay period, premium pay for nurses designated to handle high-risk deliveries during a shift would be paid at the rate of an additional \$2.00 per hour.

This Side Letter does not modify, alter, or nullify any other provisions contained in the current MOU.

Therefore, it is recommended that your Board approve the Side Letter of Agreement to Memorandum of Understanding 089-2022 with Service Employees International Union Local 521, amending Article VI, Section 6, adding premium pay for registered nurses who are assigned the role of high-risk delivery nurse, effective July 17, 2024, and authorize the Chairman to sign subject to approval as to form by Counsel.

**SIDE LETTER OF AGREEMENT  
BETWEEN  
KERN COUNTY HOSPITAL AUTHORITY  
AND  
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521**

This Side Letter of Agreement ("Agreement") between Kern County Hospital Authority ("Authority"), a local unit of government, which owns and operates Kern Medical Center, and Service Employees International Union, Local 521 ("SEIU"), is entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, with respect to the following:

WHEREAS, the parties have previously entered into a Memorandum of Understanding ("MOU") regarding the wages, hours, and other terms and conditions of employment of the classifications within bargaining units 1 through 6, as more particularly set forth in Section 2 of the MOU, for the period August 1, 2022 through July 31, 2025; and

WHEREAS, registered nurses who are officially assigned the role of "Charge" on any given shift or any position receive premium pay in addition to their regular rate for every hour worked during that shift of \$3.00 per hour; and

WHEREAS, prior to January 1, 2024, registered nurses who are assigned the role of high-risk delivery nurse received premium pay in addition to their regular rate for every hour worked during that shift of \$3.00 per hour using the charge pay code; and

WHEREAS, on January 1, 2024, premium pay for registered nurses who are assigned the role of high-risk delivery nurse was discontinued; and

WHEREAS, on June 10, 2024, and July 1, 2024, after negotiating in good faith, the parties agreed to (i) create a new pay code for high-risk delivery nurse, (ii) provide retroactive premium pay of \$3.00 per hour for registered nurses who are assigned the role of high-risk delivery nurse for the period January 1, 2024 through July 26, 2024, and (iii) provide premium pay of \$2.00 per hour for registered nurses who are assigned the role of high-risk delivery nurse, effective July 27, 2024, and continuing through the term of the MOU; and

WHEREAS the parties acknowledge and agree that, based on past practice, (i) Clinical Nurses Leaders have not been and will not be eligible to receive premium pay if they are assigned the role of high-risk delivery nurse, and (ii) registered nurses who are assigned the dual role of charge nurse and high-risk delivery nurse during a shift will receive premium pay in an amount not to exceed \$3.00 per hour; and

WHEREAS, the parties agree this Agreement is effective July 17, 2024;

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

1. Article V, Section 6, paragraph E, shall be made part of the MOU as follows:

“E. Registered Nurses who are officially assigned the role of “high-risk delivery nurse” shall receive a premium pay in addition to their regular rate of every hour worked during that shift as follows:

- retroactive premium pay of \$3.00 per hour for the period January 1, 2024 through July 26, 2024
- premium pay of \$2.00 per hour, effective July 27, 2024, and continuing through the term of this MOU
- premium pay of \$3.00 per hour for Registered Nurses assigned the dual role of charge nurse and high-risk delivery nurse

Clinical Nurses Leaders are not eligible to receive premium pay if they are assigned the role of high-risk delivery nurse.”

2. Following execution of this Agreement, the Authority will create a new pay code for high-risk delivery nurse premium pay.

3. All capitalized terms used in this Side Letter and not otherwise defined, shall have the meaning ascribed thereto in the MOU.

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

5. This Side Letter may be amended only by mutual, written consent of duly authorized representatives of the parties.

6. In the event of any inconsistency between the provisions of this Side Letter and any provision of the MOU, the terms of this Side Letter shall govern and control.

7. Following the execution of this Agreement, the Authority will append this Agreement to the published MOU.

[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.

Service Employees International Union, Local 521

By \_\_\_\_\_  
Yvonne Davila  
Director, Region 5

Kern County Hospital Authority

By \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO CONTENT:

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

APPROVED AS TO FORM:

By \_\_\_\_\_  
Vice President & General Counsel  
Kern County Hospital Authority



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

July 17, 2024

**Subject:** Proposed Master Service Agreement with PatientNow, Inc. for the purchase of electronic medical record software for Kern Medical's Refine Medical Spa clinic.

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

**Summary:**

Kern Medical requests that your Board approve the proposed Master Service Agreement with PatientNow, Inc. for the purchase of electronic medical record (EMR) software for use in Kern Medical's Refine Medical Spa clinic.

Kern Medical utilizes the EMR software to support and retain protected health information at the Refine Medical Spa clinic. The EMR software is specifically made to support medical aesthetic and other niche medical practices and provides functions and capabilities that other EMR's, including Cerner, do not support. The advantage of these functions significantly outweighs the low service fee in order to properly serve the patients of this clinic.

Counsel is unable to approve as to form due to non-standard terms, which include late interest on overdue payment(s), requirements of confidentiality, limited indemnification, limitation of liability to cost of agreement, law and venue in Colorado, and attorney fees for prevailing party. Efforts were made to negotiate with the vendor but to no avail.

Kern Medical recommends that your Board approve the proposed Master Service Agreement with PatientNow, Inc. for the purchase of electronic medical record software for Kern Medical's Refine Medical Spa clinic, for a term of one (1) year effective August 1, 2024 through July 31, 2025, with a maximum payable of \$4,656 plus taxes and fees, and authorize the Chairman to sign.

## MASTER SERVICE AGREEMENT

THIS AGREEMENT is by and between PatientNow, Inc., a Colorado corporation, with offices at 6160 S. Syracuse Way, STE B-100, Greenwood Village, CO 80111 (“PNI”), and the individual/company identified in the Bill To portion of the Order Form (“Customer”) (collectively, the “Parties”) of even date herewith (the “Effective Date”).

### 1. DEFINITIONS

“**EULA**” means the End User License Agreement accompanying the Software. The EULA is incorporated into this Agreement by reference.

“**Order Form**” means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between Customer and PNI from time to time. Order Forms shall be deemed incorporated herein by reference.

“**Purchased Services**” means the Services and any hardware that Customer or Customer Affiliates lease, license or purchase under an Order Form.

“**Services**” means the installation, training, support and software updates provided by PNI or via third parties for the Software as ordered by Customer in accordance with an Order Form.

“**Software**” means the PatientNOW software.

“**Software Licenses**” means all Physician Licenses and User Licenses.

“**SPA**” means the Software Provider Agreement between PNI and Customer under which the Software is provided to Customer as a service. The SPA, if any, is incorporated into this Agreement by reference.

“**Third-Party Applications**” means software products that are provided by third parties, interoperate with the Software, and are identified as third-party applications in the Order Form.

“**Users**” means individuals who are authorized to access and use the Software, for whom licenses to the Software have been purchased (“Physician Licenses”) or are granted incident to the purchase of a Physician License (“User Licenses”), and who have been supplied user identifications and passwords by Customer (or by PNI at Customer’s request). User Licenses include licenses granted under a EULA or SPA to Customer’s employees, consultants, contractors and agents; or third parties with which Customer transacts business. Customer must have a Physician License for each physician in its practice directly or indirectly using the Software and/or the Services. User Licenses are included with the Physician License as specified in the Order Form.

“**Customer**” means the company or other legal entity which is accepting this Agreement, and all employees or Affiliates of that company or entity. “**Customer Data**” means all electronic data or information uploaded or stored by Customer for use with the Software.

### 2. PURCHASED SERVICES

**2.1. Provision of the Software and Purchased Services.** PNI shall make the Software, and the Purchased Services available to Customer pursuant to this Agreement, associated Order Forms, and relevant EULA's or SPA's during a subscription term. Customer agrees that Customer's purchases hereunder are neither contingent on the delivery of any future Software or Service functionality or features nor dependent on any oral or written public comments made by PNI regarding future functionality or features of the Software or Purchased Services. The Software will be installed per the Order Form on Customer's server, or shall be provided via a hosted web interface as specified in the Order Form. Customer is responsible for HIPAA compliance as it relates to Customer's IT infrastructure and employees.

**2.2. Physician Licenses.** Unless otherwise specified in the applicable Order Form, EULA or SPA:

- (i) Software License Fees are charged per Physician License and may be accessed used by no more than the specified number of Physician License seats set forth in the Order Form,
- (ii) additional Physician Licenses may be added during the subscription term at the same pricing as that for the pre-existing Physician Licenses, prorated for the remainder of the subscription term in effect at the time the additional Physician Licenses are added, and
- (iii) the added Physician Licenses shall terminate on the same date as the pre-existing Physician Licenses. Physician Licenses are for designated physicians and cannot be shared or used by more than one Physician but may be reassigned to new Physicians replacing former Physicians who no longer require ongoing use of the Software.

**2.3. Ownership of Hardware.** If the Order Form specifies that PNI shall provide Customer with a server as part of the Purchased Services and PNI shall retain ownership of the server the following provisions shall apply:

- (i) the parties hereby acknowledge that the server and all associated hardware and software directly related to the server remain the property of PNI.
- (ii) Customer shall use all reasonable care to protect and preserve the server from loss or damage and shall be liable for any such loss or damage which may occur while the server is in Customer's possession.
- (iii) Customer agrees not to remove, destroy or obliterate any tag or stamp on the server or any other markings on the server that conspicuously identify the server as being the property of PNI.

(iv) Customer agrees to use or operate the server for no other purpose than that which is authorized under this Agreement.

(v) Customer shall not in any way alter the server or perform any repairs thereto. Customer shall not release custody of the server to any third party without the prior written consent of PNI. Customer agrees to return the server to PNI forthwith upon: (i) PNI's demand; or (ii) the termination of this Agreement. Customer further acknowledges that Customer has no title in the server and will not encumber it in any manner whatsoever and hereby waives any lien claims including mechanics liens it may have in the server, statutory or otherwise.

(vi) Customer agrees that PNI or its agent shall have the right to enter the premises of the Customer and remove the server at any time.

(vii) The server is being or will be kept and maintained at the location(s) identified in this Agreement and shall not be removed there from without PNI's prior written approval. The server is and shall continue to be safely stored at such location and is and will be subject to inspection by PNI at any time during normal business hours.

### 3. USE OF THE SOFTWARE AND SERVICES

**3.1 Support.** PNI shall provide to Customer basic support for the Software at no additional charge. PNI will use commercially reasonable efforts to make the support available 8:00 AM EST – 5:00 PM PST, 5 days a week, except for Holidays, planned downtime (of which PNI shall give at least 8 hours' notice and which PNI shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Pacific time Friday to 3:00 a.m. Pacific time Monday), any unavailability caused by circumstances beyond PNI's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving PNI employees), or Internet service provider failures or delays, and

**3.2. Customer's Use of the Software.** Customer shall be solely responsible for:

- (i) Users' compliance with this Agreement;
- (ii) the accuracy, quality, integrity and legality of Customer Data,
- (iii) the means by which Customer acquired Customer Data,
- (iv) following ALL HIPAA and other governmental regulations,
- (v) using commercially reasonable efforts to prevent unauthorized access to or use of the Software;
- (vi) promptly notifying PNI of any such unauthorized Software access or use;
- (vii) following all applicable laws and government regulations with regard to the Software and the collection and use of Customer Data.

Customer shall not make the Software available to anyone other than authorized Users, sell, resell, rent or lease the Services.

#### 4. THIRD-PARTY PROVIDERS

**4.1. Acquisition of Third-Party Products and Services.** PNI may offer Third-Party Applications for license under Order Forms. Any other acquisition by Customer of third-party products or services, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between Customer and any third-party provider, is solely between Customer and the applicable third-party provider. PNI does not warrant or support third-party products or services, whether or not they are designated by PNI as “certified” or otherwise, except as specified in an Order Form. No purchase of third-party products or services is required to use the Services.

**4.2. Third-Party Applications and Customer Data.** If Customer installs or enables Third-Party Applications for use with Services, Customer acknowledges that PNI may allow providers of those Third-Party Applications to access Customer Data as required for the interoperation of such Third-Party Applications with the Services. PNI shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third-Party Application providers. The Services shall allow Customer to restrict such access by restricting Users from installing or enabling such Third-Party Applications for use with the Services.

#### 5. FEES AND PAYMENT FOR PURCHASED SERVICES

**5.1. License Fees.** Customer shall pay all License Fees and any other fees associated with the Purchased Services as specified in all Order Forms issued in accordance with this Agreement. Except as otherwise specified herein, or in an Order Form:

- (i) fees are quoted and payable in United States dollars;
- (ii) fees are based on the enumerated Software Licenses and Purchased Services identified in any Order Form issued under this Agreement. PNI reserves the right to audit and retroactively assess Licensing Fees for Customer’s usage in excess of the number of Physician Licenses purchased by Customer. Customer agrees to pay any additional fees associated with Customer’s excess usage within 30 days of the receipt of PNI’s invoice. Notwithstanding the foregoing, Customer shall not be entitled to a refund or reduction in fees due to Customer’s underutilization of the Software or Purchased Services.
- (iii) payment obligations are non-cancelable and fees paid are non-refundable;
- (iv) the number of User licenses purchased cannot be decreased during the relevant subscription term stated on the Order Form.

License Fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof. Fees for Physician Licenses added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

**5.2. Invoicing and Payment.** Customer will provide PNI with valid and updated credit card information. Customer authorizes PNI to charge such credit card for all Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth on the Order Form (Term of Purchased User Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, PNI will invoice Customer in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 10 days from the invoice date. Customer are responsible for maintaining complete and accurate billing and contact information with PNI.

**5.3. Overdue Charges.** If any charges are not received from Customer by the due date, then at PNI's discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) PNI may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment).

**5.4. Suspension of Service and Acceleration.** If any amount owing by Customer under this or any other agreement for PNI's services is 30 or more days overdue (or 10 or more days overdue in the case of amounts Customer have authorized PNI to charge to Customer's credit card), PNI may, without limiting PNI's other rights and remedies, accelerate Customer's entire unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend PNI's services to Customer until such amounts are paid in full.

**5.5. Taxes.** Unless otherwise stated, PNI's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder. If PNI has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides PNI with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 6. CONFIDENTIALITY

**6.1. Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Specifically, Customer's Confidential Information shall include Customer Data and PNI's Confidential Information shall include the Software, Services, and Purchased Services. The Confidential Information of each party

shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Customer Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**6.2. Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

**6.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## 7. WARRANTIES AND DISCLAIMERS

**7.1. Warranties.** PNI warrants that the Software shall perform materially without error and the functionality of the Software will not be materially decreased for 90 days from the beginning of a subscription term. For any breach of either such warranty, Customer's exclusive remedy shall be as provided in Section 10.3 (Termination for Cause) and Section 10.4 (Refund or Payment upon Termination) below.

**7.2. Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) that the execution of this agreement and the use of the Software and Purchased Services will not violate the terms of any agreement with a third party.

**7.3. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS

ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 8. MUTUAL INDEMNIFICATION

**8.1. Indemnification by PNI.** PNI shall defend Customer against any claim, demand, suit, or proceeding (" **Claim**") made or brought against Customer by a third party alleging that the use of the Software as permitted hereunder infringes or misappropriates the copyrights of a third party, and shall indemnify Customer for any damages finally awarded against, and for reasonable attorney's fees incurred by, Customer in connection with any such Claim; provided, that Customer (a) promptly gives PNI written notice of the Claim; (b) gives PNI sole control of the defense and settlement of the Claim (provided that PNI may not settle any Claim unless the settlement unconditionally releases Customer of all liability); and (c) provides to PNI all reasonable assistance, at PNI's expense.

**8.2. Indemnification by Customer.** Customer shall defend PNI against any Claim made or brought against PNI by a third party alleging that Customer Data, or Customer use of the Software or Purchased Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify PNI for any damages finally awarded against, and for reasonable attorney's fees incurred by, PNI in connection with any such Claim; provided, that PNI (a) promptly gives Customer written notice of the Claim; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless the settlement unconditionally releases PNI of all liability); and (c) provide to Customer all reasonable assistance, at PNI's expense.

**8.3. Exclusive Remedy.** This Section 8 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section.

## 9. LIMITATION OF LIABILITY

**9.1. Limitation of Liability.** IN NO EVENT SHALL PNI'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE LESSER OF \$10,000 OR THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT.

**9.2. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE

POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 10. TERM AND TERMINATION

**10.1. Term of Agreement.** This Agreement commences on the date Customer accept it and continues until all User subscriptions granted in accordance with this Agreement have expired or have been terminated.

**10.2. Term of Software Licenses.** All Software Licenses commence on the start date specified in the applicable Order Form and continue for the license term specified therein. **Except as otherwise specified in the applicable Order Form, all Software Licenses shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The Physician License pricing during any such renewal term shall be the same as that during the prior term unless PNI has given Customer written notice of a pricing increase at least 30 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed 10% over the pricing for the relevant Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.**

**10.3. Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) 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.

**10.4. Return of Customer Data.** Upon request by Customer made within 30 days after the effective date of termination of a Purchased Services subscription, PNI will make available to Customer for download a file of Customer Data in MySQL Backup format along with attachments in their native format and storage directory.

**10.5. Surviving Provisions.** Section 5 (Fees and Payment for Purchased Services), 6 (Proprietary Rights), 7 (Confidentiality), 8.3 (Disclaimer), 9 (Mutual Indemnification), 10 (Limitation of Liability), 11.4 (Refund or Payment upon Termination), 11.5 (Return of Customer Data), 12 (Who Customer Are Contracting With, Notices, Governing Law and Jurisdiction) and 13 (General Provisions) shall survive any termination or expiration of this Agreement.

## 11. NOTICES, GOVERNING LAW AND JURISDICTION

**11.1. Governing Law; Choice of Forum.** This Agreement shall be interpreted according to the laws of the State of Colorado without regard for or application of choice or conflict of law rules or principles. With respect to all disputes arising in connection with or relating to this Agreement or the Services, Customer and PNI irrevocably consent to the exclusive personal jurisdiction and venue of the state courts located in

Douglas County, Colorado or the federal courts located in the State of Colorado, and the prevailing party shall be entitled to reasonable attorneys' fees and costs.

Any notice to be given to PNI pursuant to this Agreement shall be addressed to:

PATIENTNOW

6160 So Syracuse Way, STE B-100

Greenwood Village, CO 80111

Jerry Jacobson

(800) 436-3150 x 186

**11.2. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to Customer shall be addressed to the system administrator designated by Customer for Customer's relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by Customer.

**11.3. Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

## 12. GENERAL PROVISIONS

**12.1. Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.

**12.2. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**12.3. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**12.4. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other

than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**12.5. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**12.6. Attorney Fees.** Customer shall pay on demand all of PNI's reasonable attorney fees and other costs incurred by PNI to collect any fees or charges due to PNI under this Agreement following Customer's breach of Section 5.2 (Invoicing and Payment)

**12.7. Assignment.** Customer may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of PNI. PNI may assign this Agreement in its entirety (including all Order Forms), without consent of Customer, to an affiliate company or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**12.8. Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, any End User License Agreement ("EULA") relating to the Software, or any Software Provider Agreement, constitute the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, any EULA, or any SPA, the terms of such exhibit, addendum Order Form, EULA, or SPA shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Customer's purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.



Practice with purpose [www.patientnow.com](http://www.patientnow.com)

6833 South Dayton Street #1016  
Englewood, CO 80112  
800-436-3150

SALES ORDER

Sales Order #: 00034988  
Quote Expiration Date: July 11, 2024

Kern County Hospital Authority  
1902 B Street, Suite A  
Bakersfield, CA 93301  
+16613311121

SALESPERSON	START DATE	CONTRACT TERM
Kirsten Kell	Upon Execution	12 Months

CUSTOMER CONTACT INFORMATION			
Trade Name: Kern County Hospital Authority		Legal Name:	
Contact Name: Scott Thygeron			
Company Physical Location: 1902 B Street, Suite A			
City: Bakersfield	State: CA	Zip: 93301	Phone: +16613311121
Email: scott.thygeron@kernmedical.com		Tax ID #:	
Licensed Physician (If different):			

MAIN OFFICE CONTACT FOR MARKETING PURPOSES (IF DIFFERENT FROM CONTACT INFORMATION LISTED ABOVE)	
Name:	
Email:	
Phone:	



Practice with purpose [www.patientnow.com](http://www.patientnow.com)

SALES ORDER

Sales Order #: 00034988  
Quote Expiration Date: July 11, 2024

MONTHLY PAYMENTS						
QTY	PRODUCT NAME	START DATE	END DATE	LIST PRICE	DISCOUNT AMT	TOTAL PRICE
1	Surgery or Dermatology Practice	Upon Execution	12 Months After Execution	\$979.00	\$591.00	\$388.00
Surgery - Subscription Monthly						
*Text Messages over the quantity included in the package and/or add-on products will be charged at \$0.10 per text message						

In Process



Practice with purpose [www.patientnow.com](http://www.patientnow.com)

## SALES ORDER

Sales Order #: 00034988

Quote Expiration Date: July 11, 2024

This Sales Order shall be binding as of the date you sign below. PatientNow may reject this Sales Order if: (1) changes have been made to this Sales Order (other than completion of the Customer Contact Information and signature block), (2) the returned Sales Order is incomplete or does not match PatientNow's records, or (3) it has been received after the expiration date indicated above.

**THIS SALES ORDER IS GOVERNED BY THE MASTER TERMS OF SERVICE ACCESSIBLE AT <https://www.patientnow.com/legal/msa/> AND ALL ADDITIONAL TERMS INCORPORATED THEREIN BY REFERENCE (COLLECTIVELY, THE "TERMS OF SERVICE"), INCLUDING WITHOUT LIMITATION THE BUSINESS ASSOCIATE AGREEMENT ACCESSIBLE AT <https://www.patientnow.com/legal/baa/> (THE "BAA"). BY EXECUTING THIS SALES ORDER, YOU HEREBY EXPRESSLY AGREE TO BE BOUND BY AND COMPLY WITH THE TERMS OF SERVICE, INCLUDING WITHOUT LIMITATION THE BAA, WHICH TERMS OF SERVICE SHALL GOVERN YOUR PURCHASE OF ACCESS TO AND USE OF THE COMPANY PRODUCTS AND SERVICES (EACH AS DEFINED IN THE TERMS OF SERVICE).**

IF YOU ARE ENTERING INTO THIS SALES ORDER ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS SALES ORDER AND THE TERMS OF SERVICE AND THAT THIS SALES ORDER IS A VALID, BINDING AND ENFORCEABLE OBLIGATION OF SUCH COMPANY OR LEGAL ENTITY, AND IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THIS SALES ORDER AND THE TERMS OF SERVICE, YOU MUST NOT ENTER INTO THIS SALES ORDER AND MAY NOT USE THE COMPANY PRODUCTS OR SERVICES.

CUSTOMER HEREBY CONSENTS TO AND AUTHORIZES PATIENTNOW AND ANY ASSIGNEE, LENDER OR FUNDING SERVICE THAT MAY BE UTILIZED TO OBTAIN AND USE A CREDIT REPORT ON CUSTOMER AND/OR CONDUCT ANY OTHER CREDIT CHECKS OR SIMILAR SEARCHES OF CUSTOMER AS FURTHER DESCRIBED IN SECTION 5.8 OF THE TERMS OF SERVICE, NOW AND FROM TIME TO TIME, AS MAY BE NEEDED IN THE CREDIT EVALUATION AND REVIEW PROCESS AND CUSTOMER HEREBY WAIVES ANY RIGHT OR CLAIM THEY WOULD OTHERWISE HAVE UNDER APPLICABLE LAWS IN ABSENCE OF THIS CONTINUING CONSENT.

<hr/> Customer Signature	<hr/> Chairman, Board of Governors
<hr/> Phil McLaughlin	<hr/> Customer Title
<hr/> Customer Name	<hr/> July 17, 2024
	<hr/> Date

- Monthly Subscription Payments in the amount prescribed in the Monthly Payments table above to begin Upon Execution of this Agreement.

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By Shannon Hochstein  
Kern County Hospital Authority



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

July 17, 2024

**Subject:** Proposed acceptance of donation of travel and related expenses from Decision Resources, Inc., doing business as Clarivate, for the 2024 Member Retreat titled “Resilience: Navigating from Recovery to High-Functioning Innovation”

**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.

The Authority contracts with Decision Resources, Inc. to provide e-learning educational opportunities for revenue cycle staff. Decision Resources, Inc. has offered to donate to the Authority travel and related expenses (conference fees only) for two Authority employees to attend the 2024 Member Retreat titled “Resilience: Navigating from Recovery to High-Functioning Innovation” from August 14-15, 2024, in Austin, Texas. This training session is necessary in connection with official Authority business.

Therefore, it is recommended that your Board adopt the attached proposed resolution to accept the travel donation from Decision Resources, Inc. for travel and related expenses (conference fees only) and authorize the Chief Executive Officer to designate two employees to attend this important conference.

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

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In the matter of:

Resolution No. 2024-\_\_\_\_

**ACCEPTANCE OF DONATION OF TRAVEL  
AND RELATED EXPENSES FROM DECISION  
RESOURCES, INC., DOING BUSINESS AS  
CLARVIATE, FOR THE 2024 MEMBER RETREAT**

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I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 17th day of July, 2024, 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

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**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) The Authority contracts with Decision Resources, Inc., doing business as Clarivate, to provide e-learning educational opportunities for revenue cycle staff; and

(c) Decision Resources, Inc. has offered to donate to the Authority travel and related expenses (conference fees only) for two Authority employees to attend the 2024 Member Retreat titled “Resilience: Navigating from Recovery to High-Functioning Innovation” from August 14-15, 2024, in Austin, Texas; and

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

(e) The Authority desires to obtain the donation of travel and related expenses from Decision Resources, Inc. to the Authority and will retain full control over the use of the donation; and

(f) There are no 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 Decision Resources, Inc. the donation of travel and related expenses (conference fees only) for two Authority employees to travel to Austin, Texas, to attend the 2024 Member Retreat titled “Resilience: Navigating from Recovery to High-Functioning Innovation” from August 14-15, 2024.

3. This Board authorizes the Chief Executive Officer to designate two Authority employees to attend the 2024 Member Retreat titled “Resilience: Navigating from Recovery to High-Functioning Innovation” in Austin, Texas, from August 14-15, 2024.

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

Chief Financial Officer  
Legal Services Department  
Human Resources Department



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

July 17, 2024

**Subject:** Kern County Hospital Authority Chief Financial Officer Report – May 2024

**Recommended Action:** Receive and File

**Summary:**

Kern Medical Operations:

Kern Medical key performance indicators:

- Operating gain of \$195,293 for May is \$181,754 more than the May budget of \$13,539 and \$45,802 more than the \$149,491 average over the last three months
- EBIDA of \$1,861,018 for May is \$744,110 more than the May budget of \$1,116,908 and \$4,342 less than the \$1,865,360 average over the last three months
- Average Daily Census of 165 for May is 4 more than the May budget of 161 and 2 less than the 167 average over the last three months
- Admissions of 839 for May are 12 more than the May budget of 827 and 50 more than the 789 average over the last three months
- Total Surgeries of 537 for May are 2 more than the May budget of 535 and 37 more than the 500 average over the last three months
- Clinic Visits of 20,123 for May are 3,725 more than the May budget of 16,398 and 856 more than the 19,267 average over the last three months. The total includes 8 COVID-19 vaccination visits

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

**Patient Revenue:**

Gross patient revenue has an 15% favorable budget variance for the month and an 9% favorable variance on a year-to-date basis. The large variance is mainly due to a 3.2% charge master price increase that became effective on July 1, 2023. Kern Medical expects strong patient census levels and consistently high gross patient revenue for FY 2024.

**Indigent Funding Revenue:**

Indigent funding has a favorable budget variance for the month and on a year-to-date basis. Adjustments have been posted to true-up FY 2024 Rate Range Intergovernmental Transfer (IGT) funding based on favorable changes in estimates for this program. In addition, additional revenue has been recognized based on a favorable change in estimate for the FY 2015 Medi-Cal waiver settlement and the FY 2023 Global Payment Program (GPP). The year-to-date favorable variance is also due to adjustments posted to true-up FY 2023 Correctional Medicine revenue and to adjust FY 2024 Correctional Medicine revenue based on a reconciliation of costs for these services.

**Other Operating Revenue:**

Other operating revenue is under budget on a month-to-date and on a year-to-date basis. Items such as medical education funding, grants, and Proposition 56 funding are received quarterly or otherwise periodically. Therefore, actual month-to-date and year-to-date revenue compared to the budget will fluctuate throughout the year.

**Other Non-Operating Revenue:**

Other non-operating revenue is under budget for the month due to lower-than-average revenue received for physician services provided out-of-network. On a year-to-date basis, there is a favorable budget variance due to the receipt of \$64 thousand of COVID-19 employee retention funds in July 2023. The COVID-19 retention bonuses were paid out to employees in July and were included in salaries expense.

**Salaries Expense:**

Salaries expense is \$23.5 million over budget on a year-to-date basis, or 12%, because of several factors including:

- A decrease in nurse registry expense corresponds with an increase in salary expense for nursing.
- Management and administrative positions previously filled by Meridian Healthcare Partners and by Cantu Management were hired by Kern Medical and became full-time employees of the hospital. These staff members fill the same administrative and management positions as before, but now as salaried employees of Kern Medical. A corresponding decrease in other professional fees contracted services offsets this shift in personnel.

**Nurse Registry Expense:**

Nurse registry expense is 11% under budget for the month and 10% under budget year-to-date. 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. Staffing agencies were charging higher-than-average costs per hour due to high demand for nursing staff 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 25% over budget for the month and 14% over budget on a year-to-date basis because of higher-than-average monthly fees paid to Regional Anesthesia Associates, Acute Care Surgery Medical Group, the Valley Neurosurgery and Neurorestoration Center, and to Locum Tenens.

**Other Professional Fees:**

Other professional fees have a favorable budget variance for the month and on a year-to-date basis. Prior to September 2023, Kern Medical administrative and management positions were filled by Meridian Healthcare Partners and by Cantu Management Group. These Meridian and Cantu positions were hired by Kern Medical and became full-time employees of the hospital. These staff members fill the same administrative and management positions as before, but now as salaried employees of Kern Medical. Therefore, throughout FY 2024 other professional fees will be under budget. However, this favorable budget variance will be offset by a corresponding increase in salaries and benefits expenses.

**Supplies Expense:**

Supplies expense is over budget for the month due to higher-than-average prostheses costs. On a year-to-date basis supplies expense is under budget due to lower-than-average costs for pharmaceuticals and for general medical supplies.

**Purchased Services:**

Purchased services are over budget for the month and on a year-to-date basis because of higher-than-average resident education expenses and higher than average security expenses. On a year-to-date basis, high ambulance fees also contribute to the unfavorable budget variance.

**Other Expenses:**

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

**Interest Expense:**

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

**Depreciation and Amortization Expense:**

Depreciation and amortization expenses are over budget for the month and on a year-to-date basis because of the implementation of GASB 87. Please see the interest expense 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 2023 financial statements audit was completed in January 2024 and the FY 2023 reporting period was closed. The resulting adjustments for long-term liabilities made after fiscal year-ended June 30, 2023 are now reflected in the monthly balance sheet reporting for FY 2024. Among the entries is a \$61.2 million unfavorable 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 accounting adjustment does not alter financial profitability or cash position.

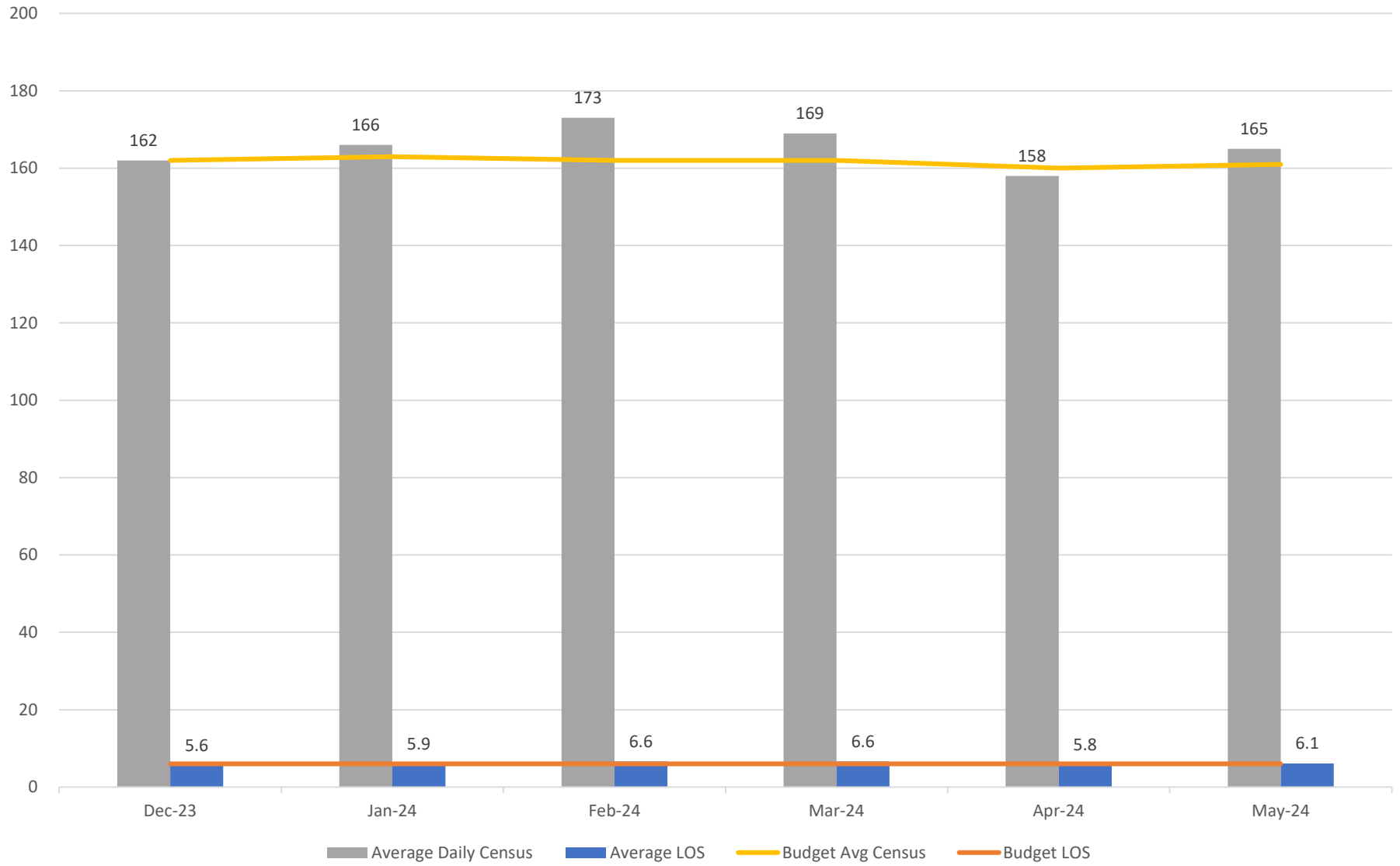
In addition to the unfavorable change for the unfunded pension liability, other-long term liabilities reported for February 2024 total \$81,830,738, up from the prior year amount of \$76,191,211. The unfavorable change is due in part to an \$4.9 million unfavorable change in right-of-use liabilities to comply with the new GASB 87 rules for lease accounting referenced under the interest expense section of this memo.

Another notable balance sheet item is the favorable change in the FY 2015 Medi-Cal Waiver accrual. This account has carried a \$23.8 million liability balance for many years. The state is now in the process of settling the FY 2015 waiver. The net effect for Kern Medical will be about \$11.7 million more favorable than anticipated. There are several components of the waiver settled at various Federal Medicaid Assistance Percentage (FMAP) rates, etc. Through May 2024 Kern Medical has settled the components that resulted in payments due to the state. The result is a \$9.5 million receivable balance for this account at May 31, 2024. In early June 2024 Kern Medical received the \$9.5 million from the state needed to clear this account.

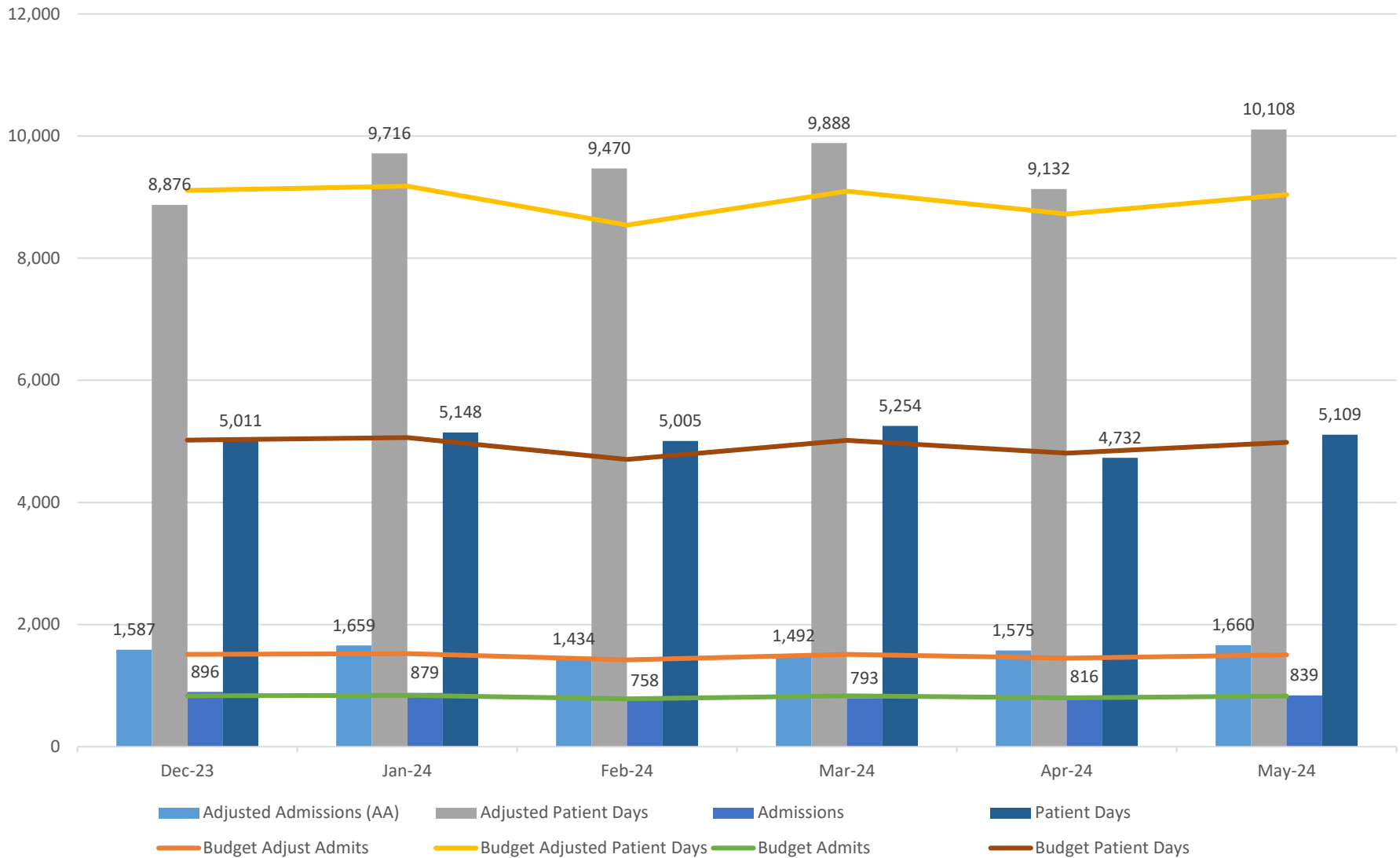


**BOARD OF GOVERNORS' REPORT  
KERN MEDICAL – MAY 2024**

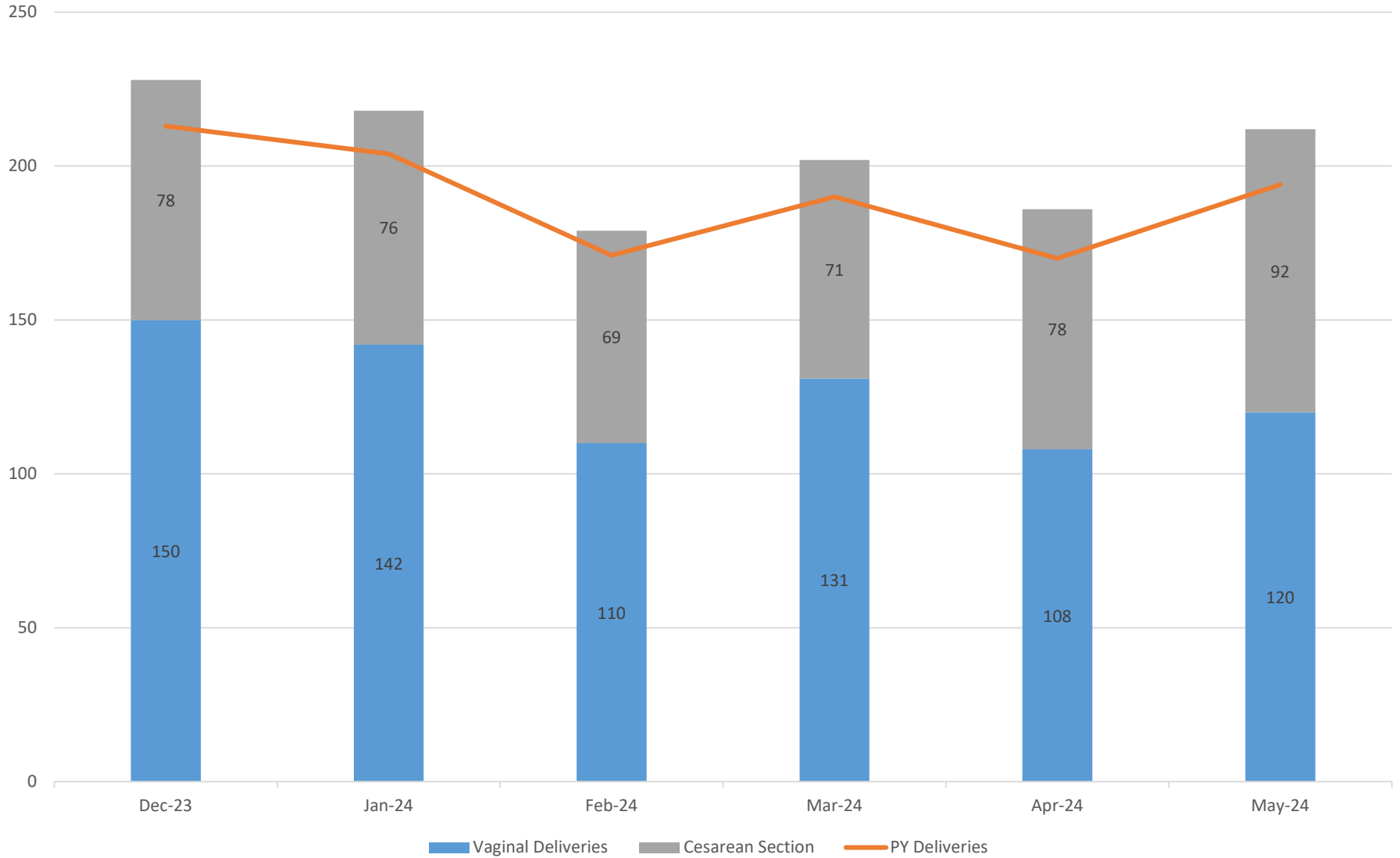
## Census & ALOS



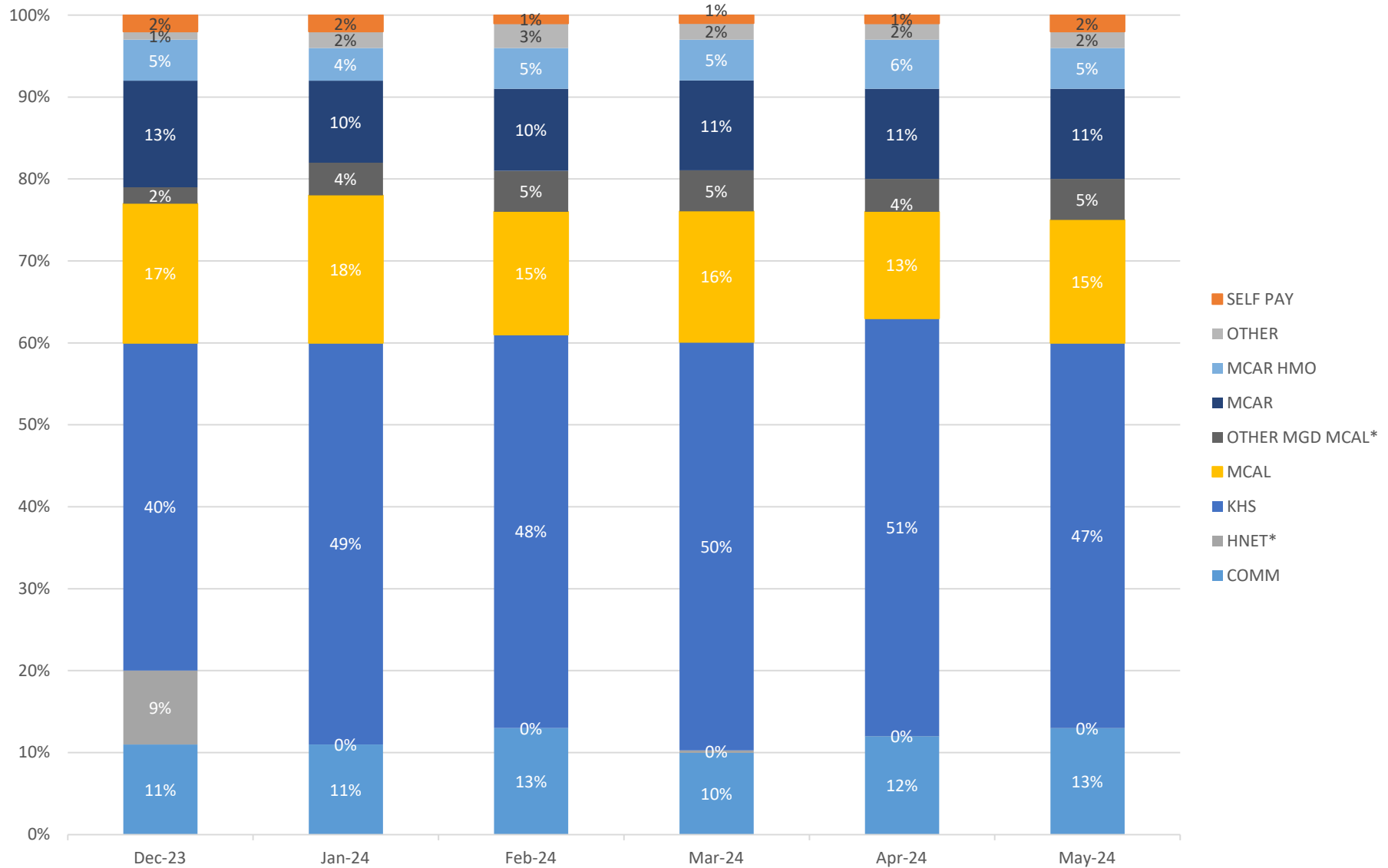
## Hospital Volumes



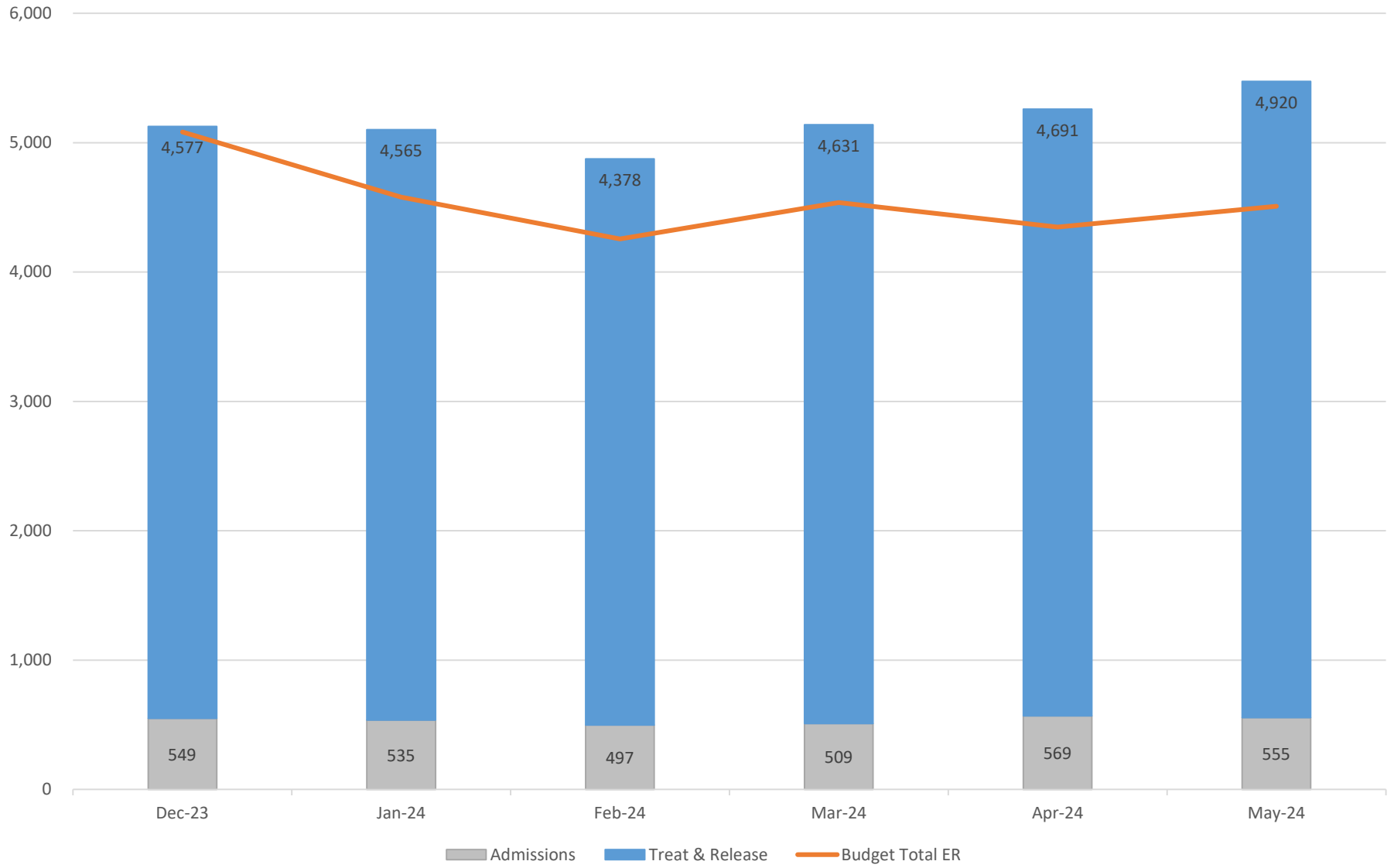
## Deliveries



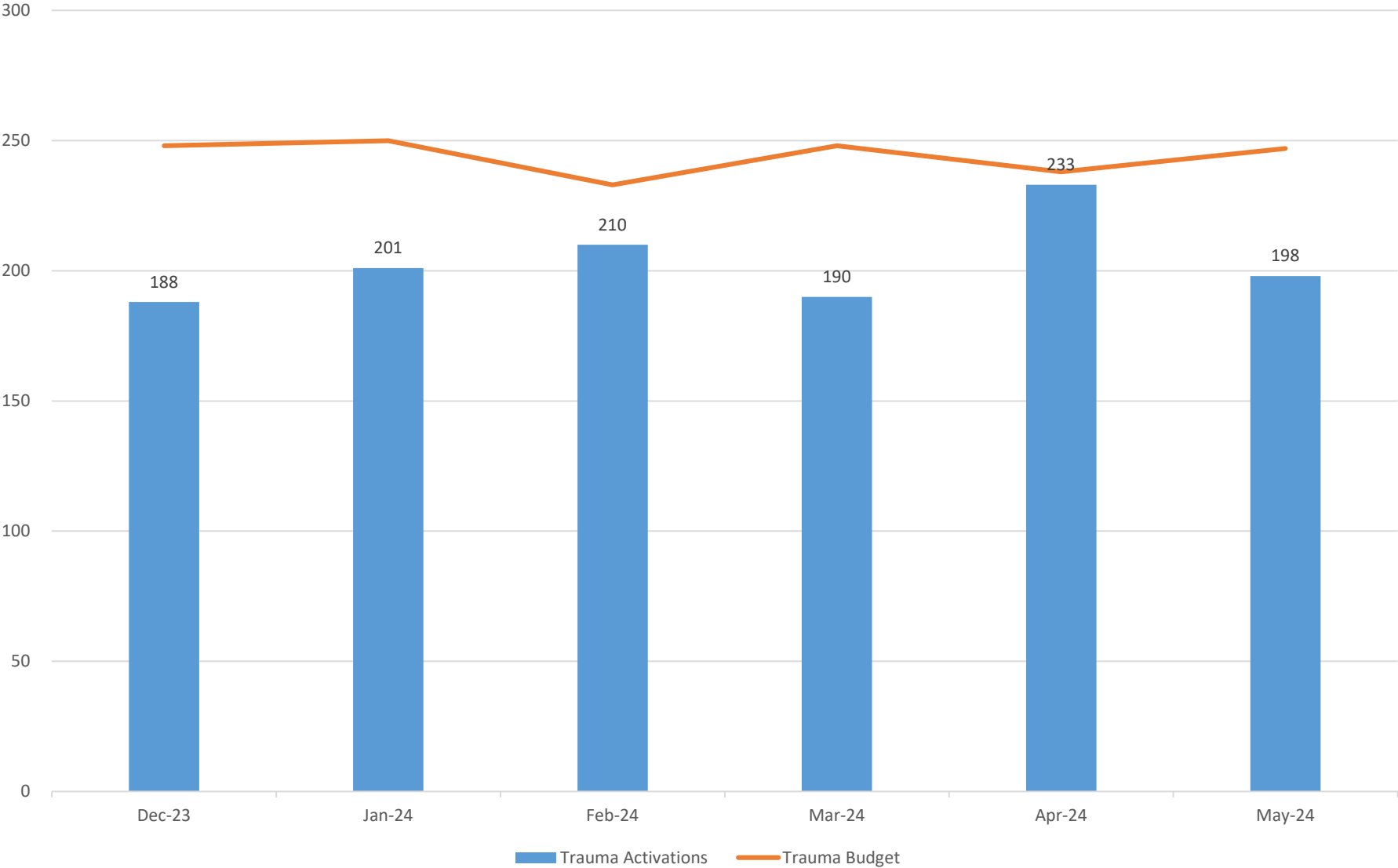
## PAYER MIX



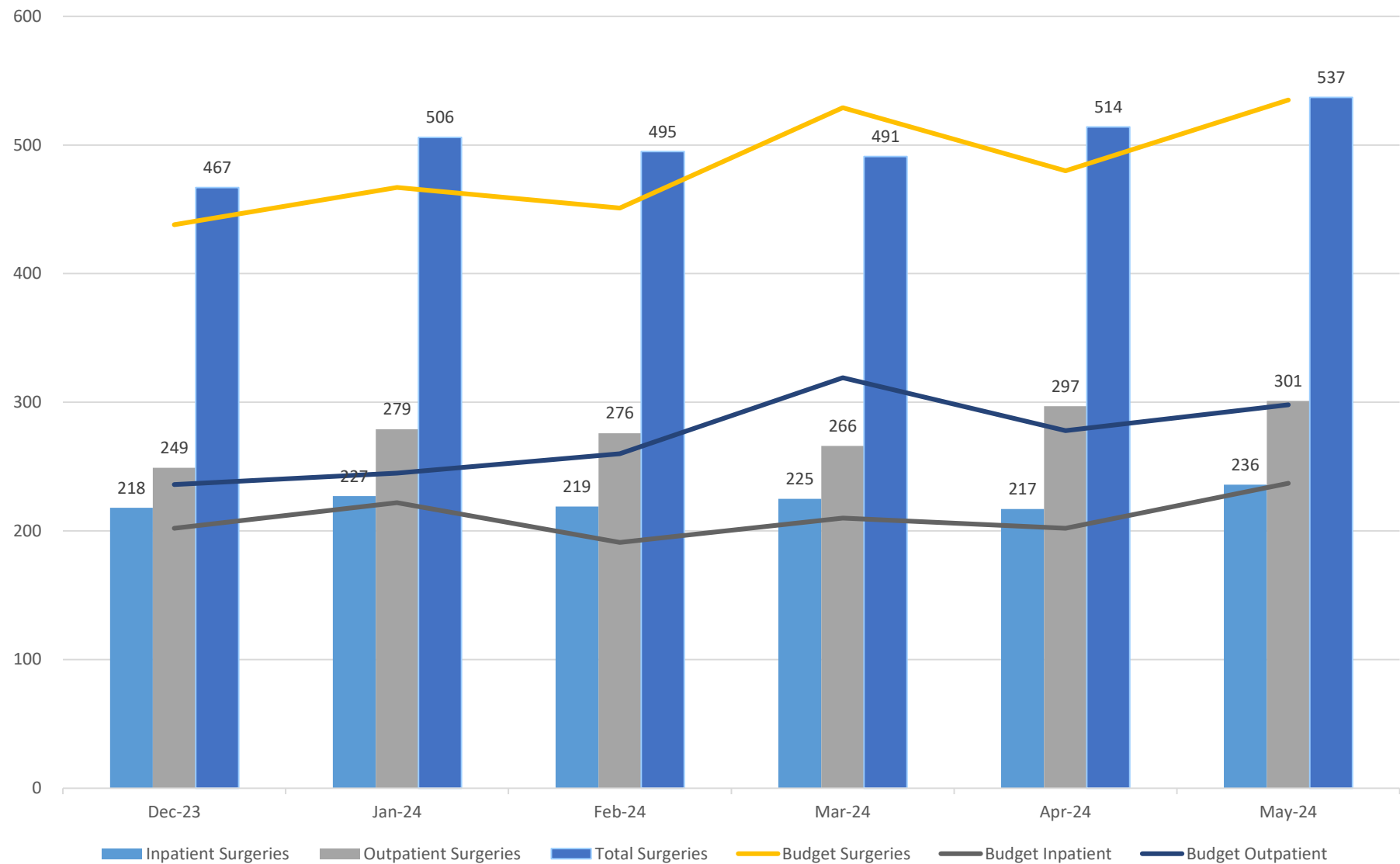
## Emergency Room Volume



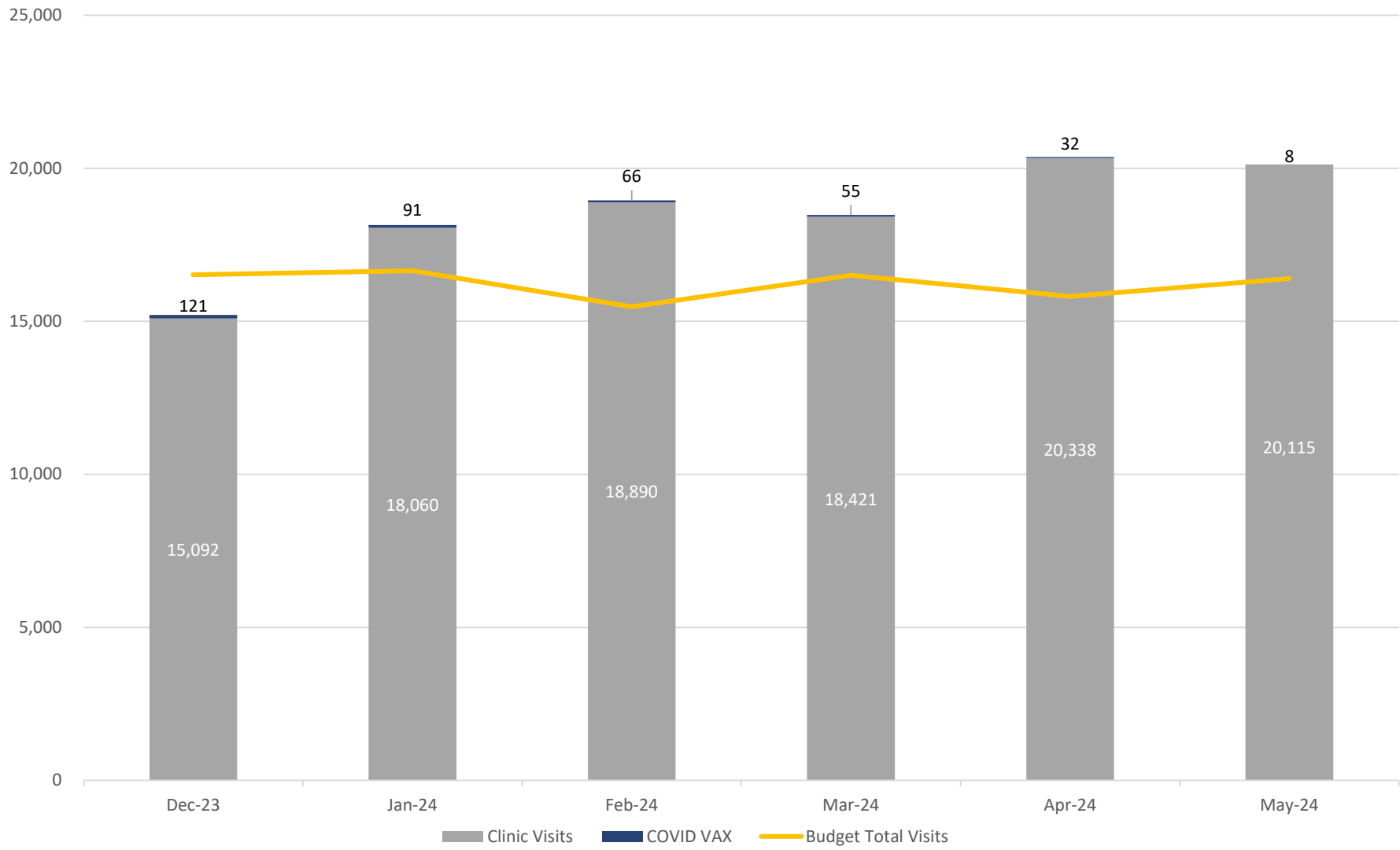
Trauma Activations



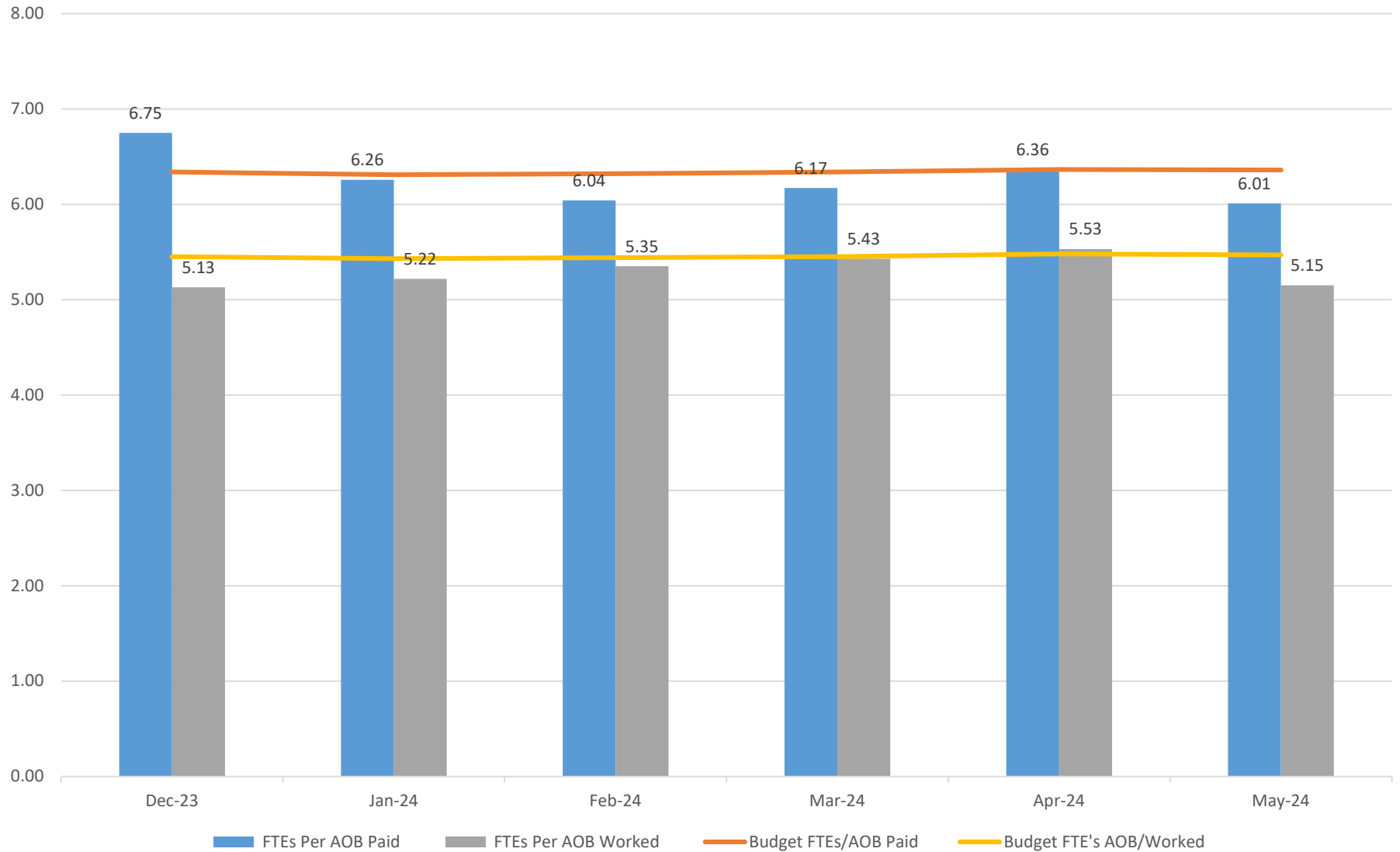
Surgical Volume



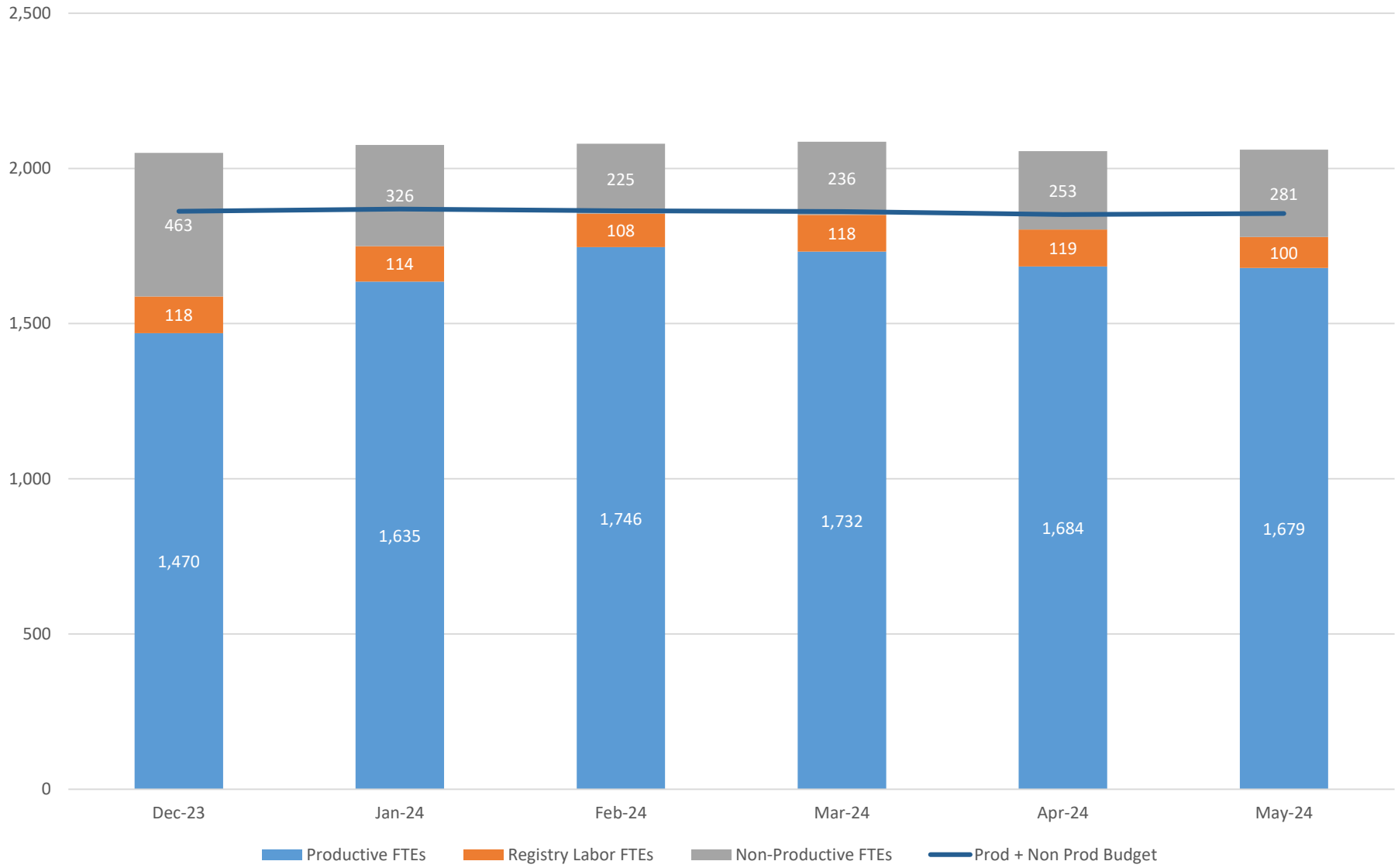
## Clinic Visits

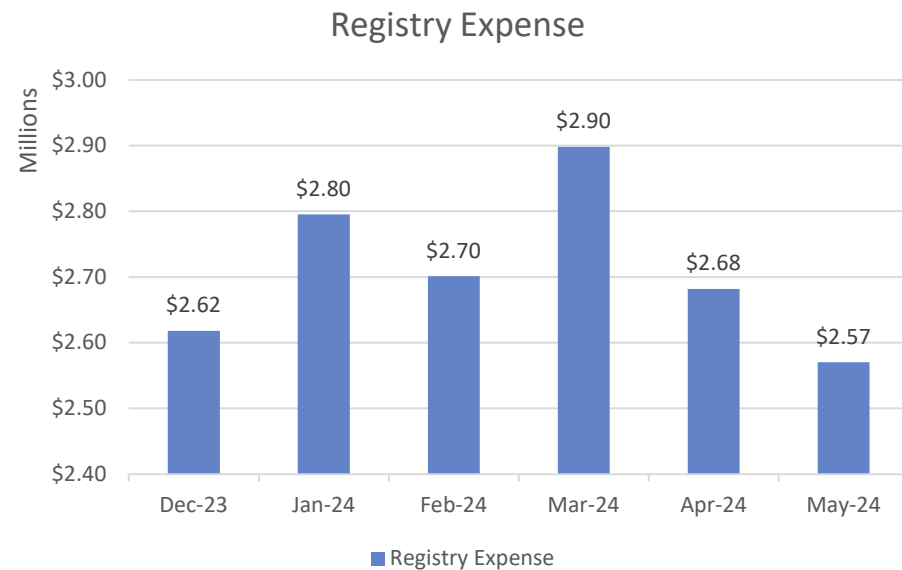
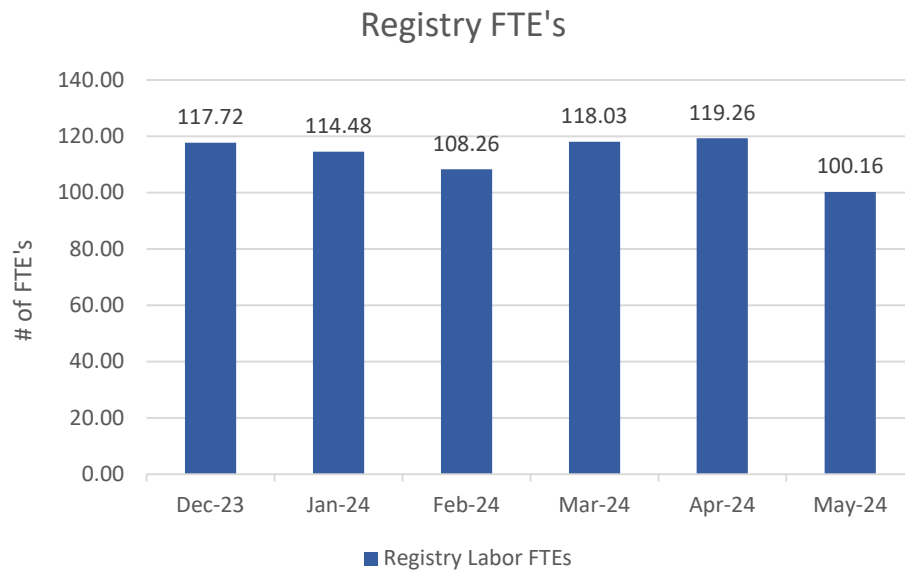


## Labor Metrics

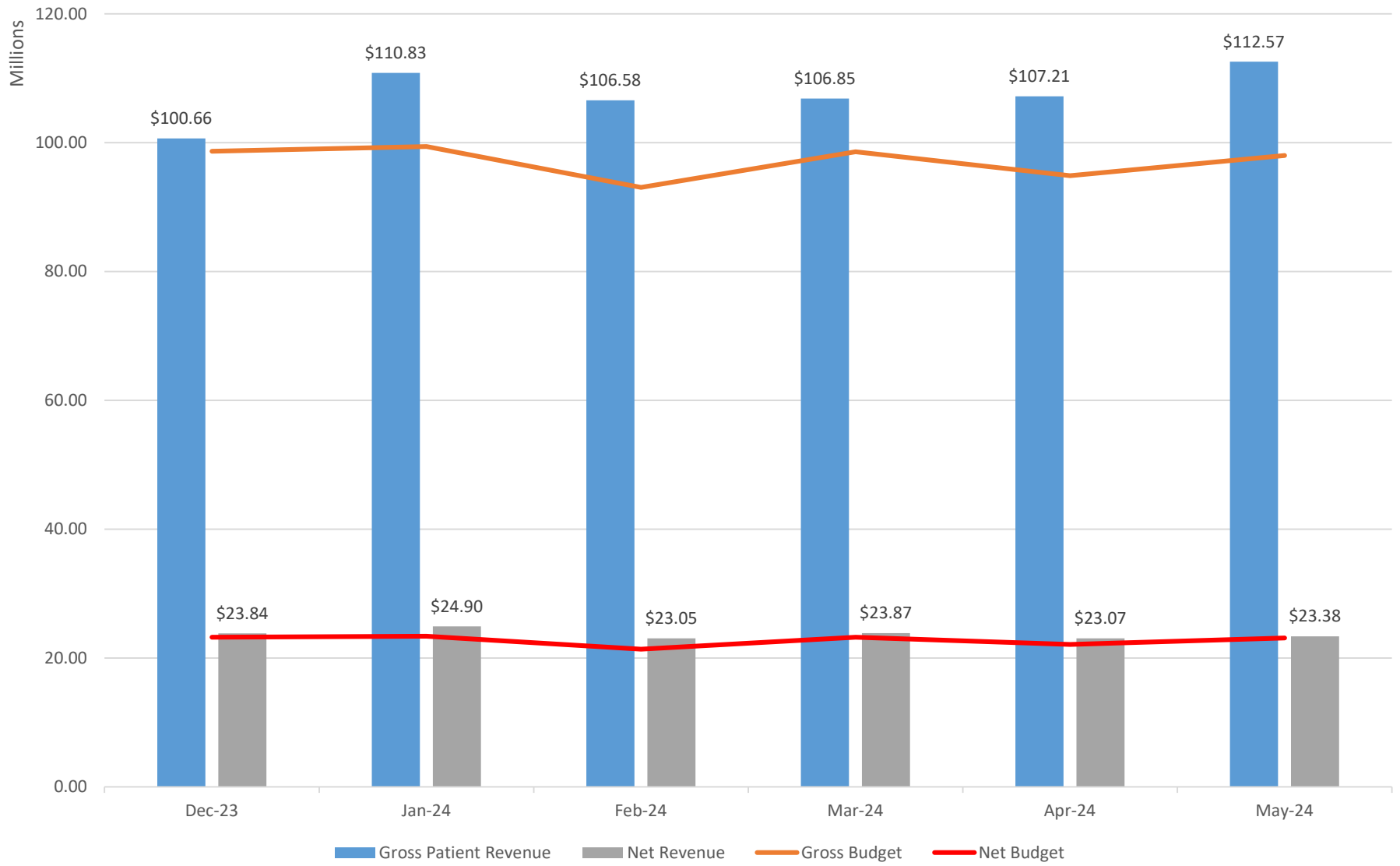


## Productivity

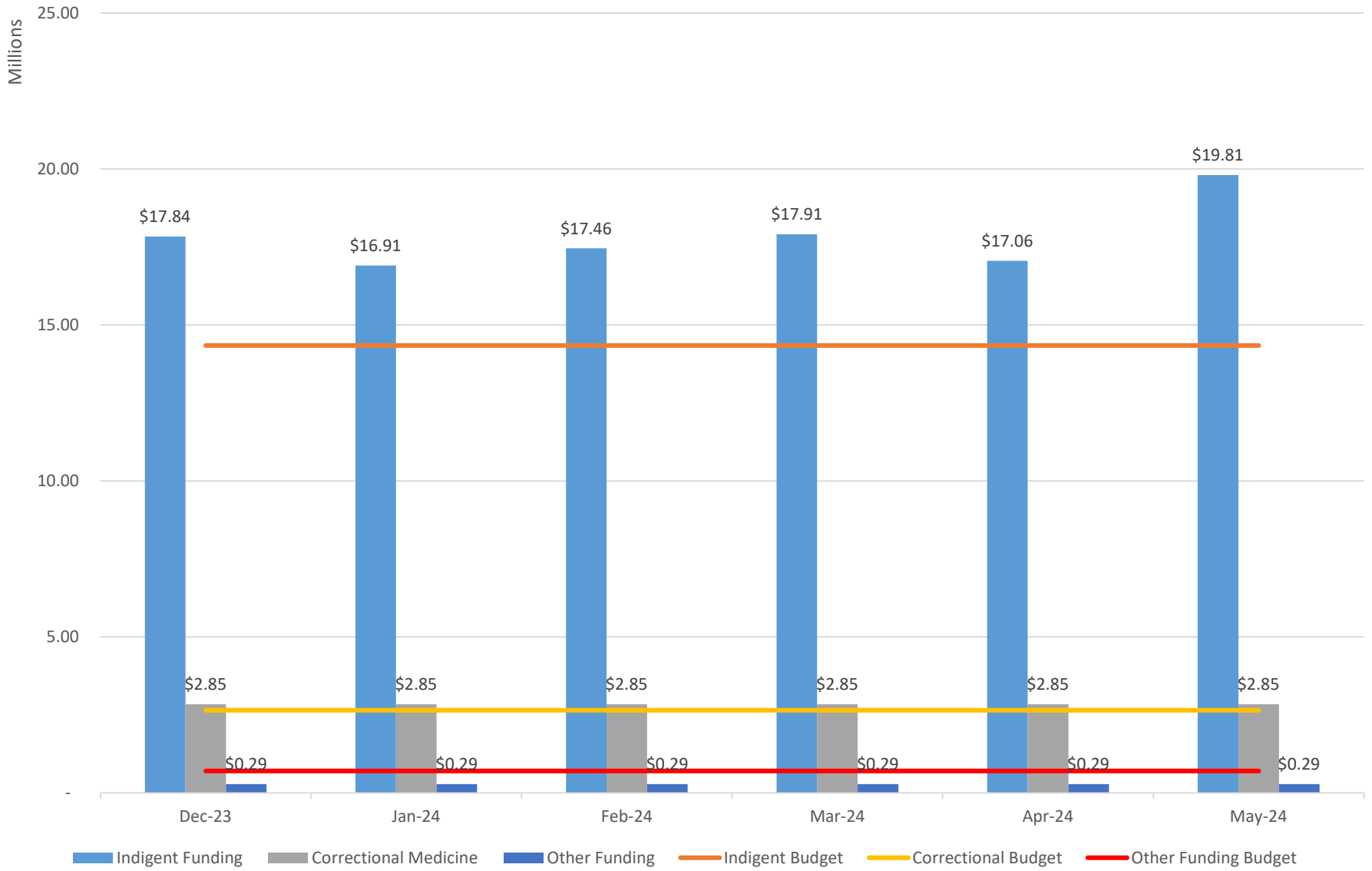




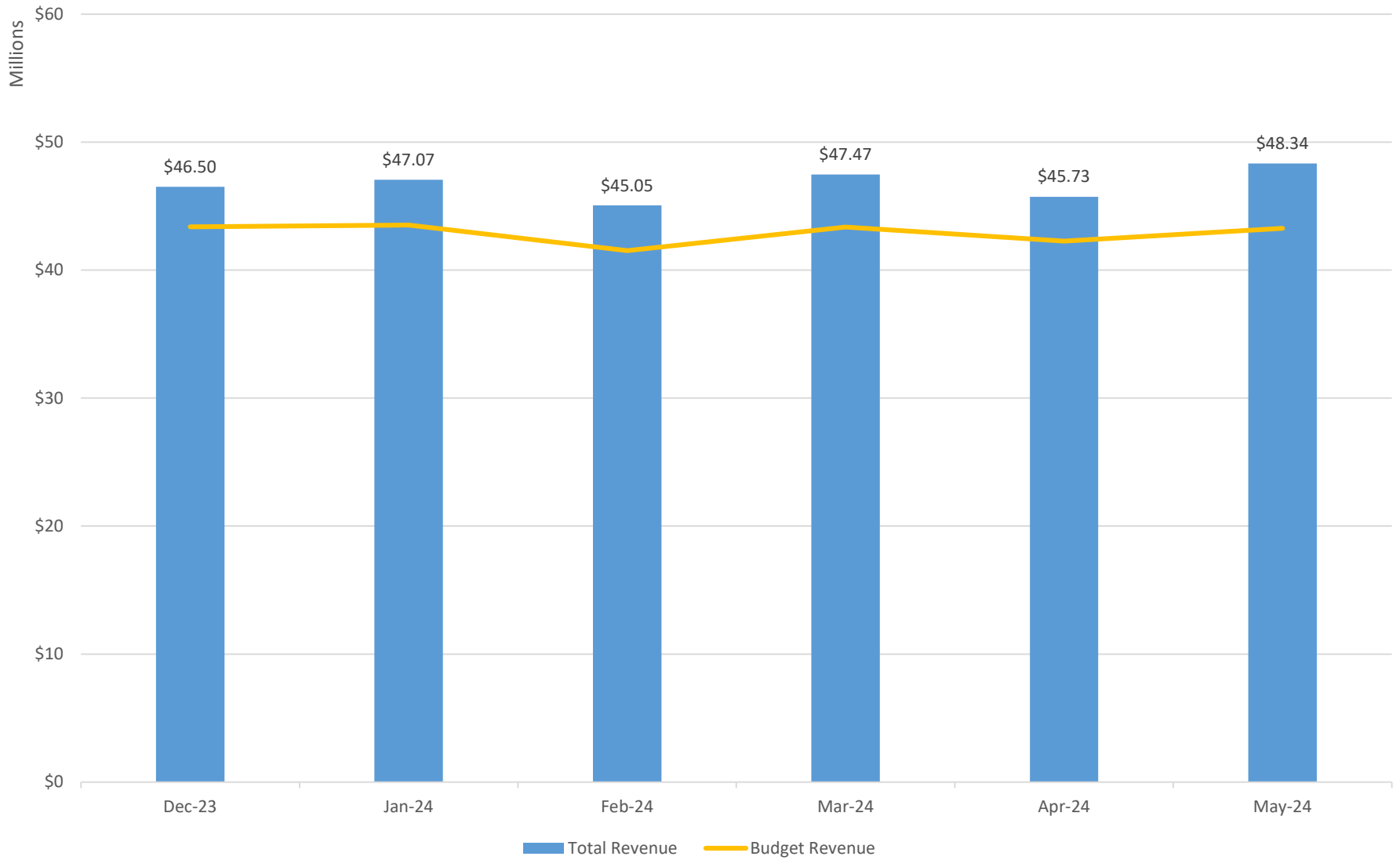
## Patient Revenue



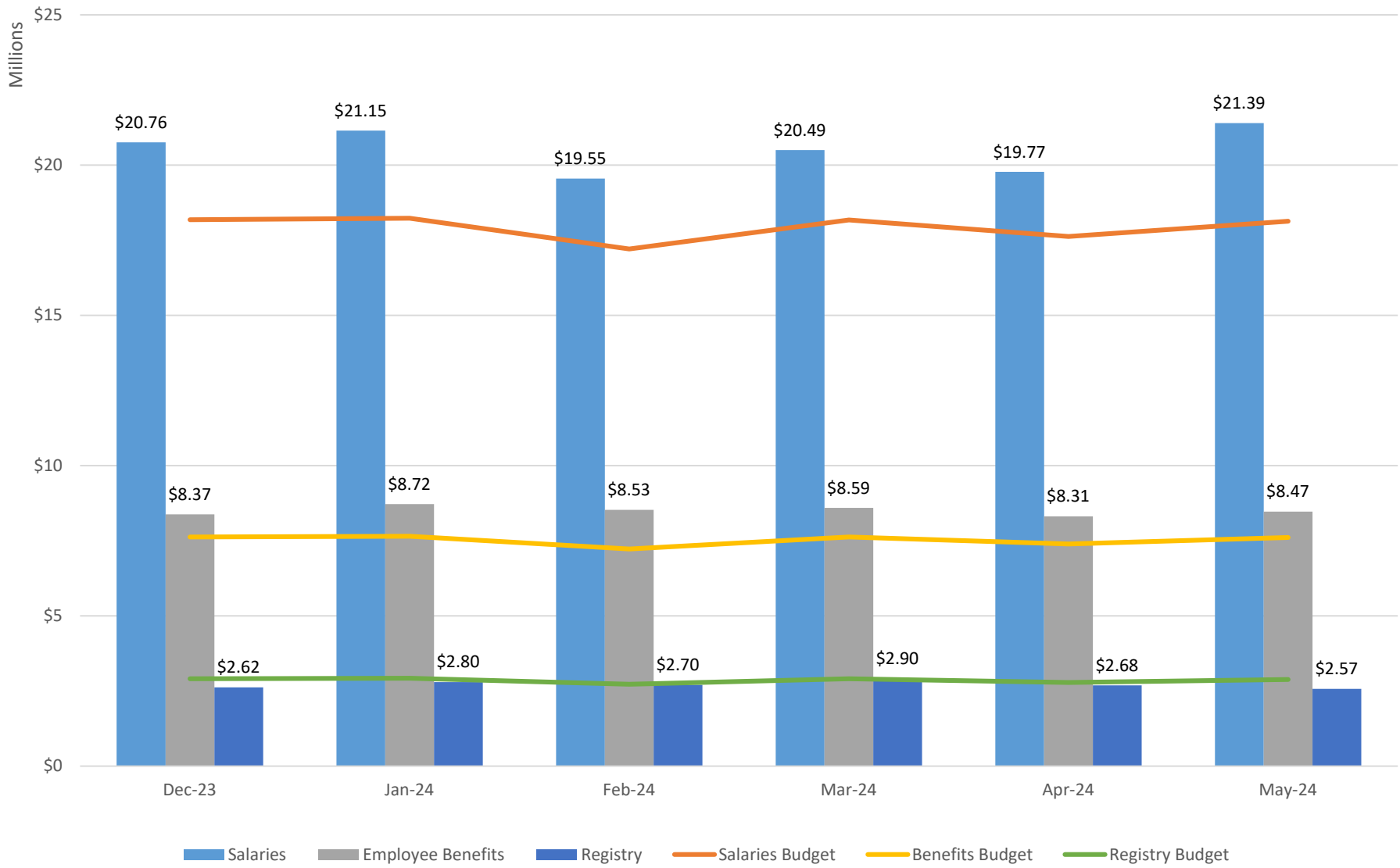
## Indigent & Correctional Revenue



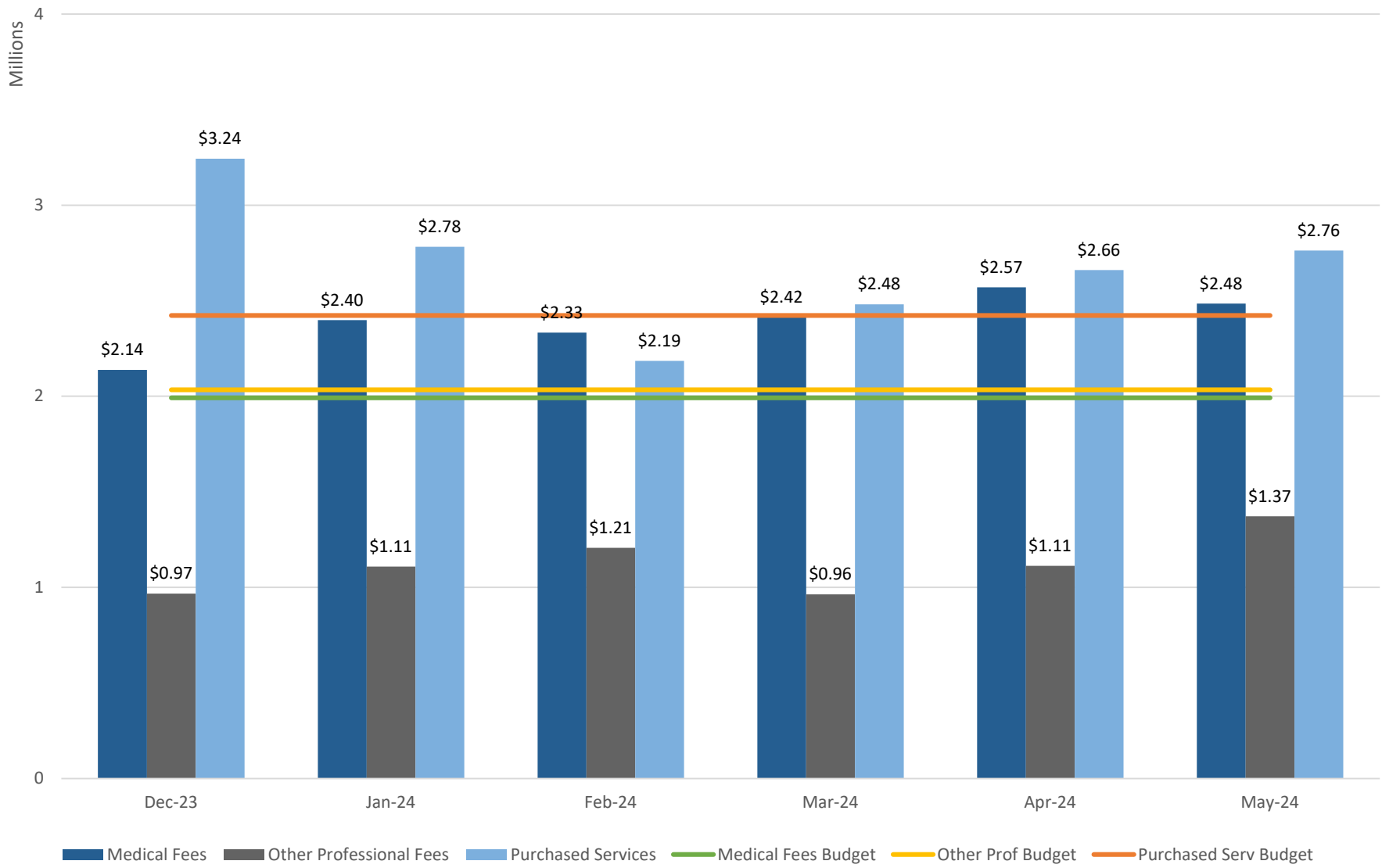
## Total Revenue



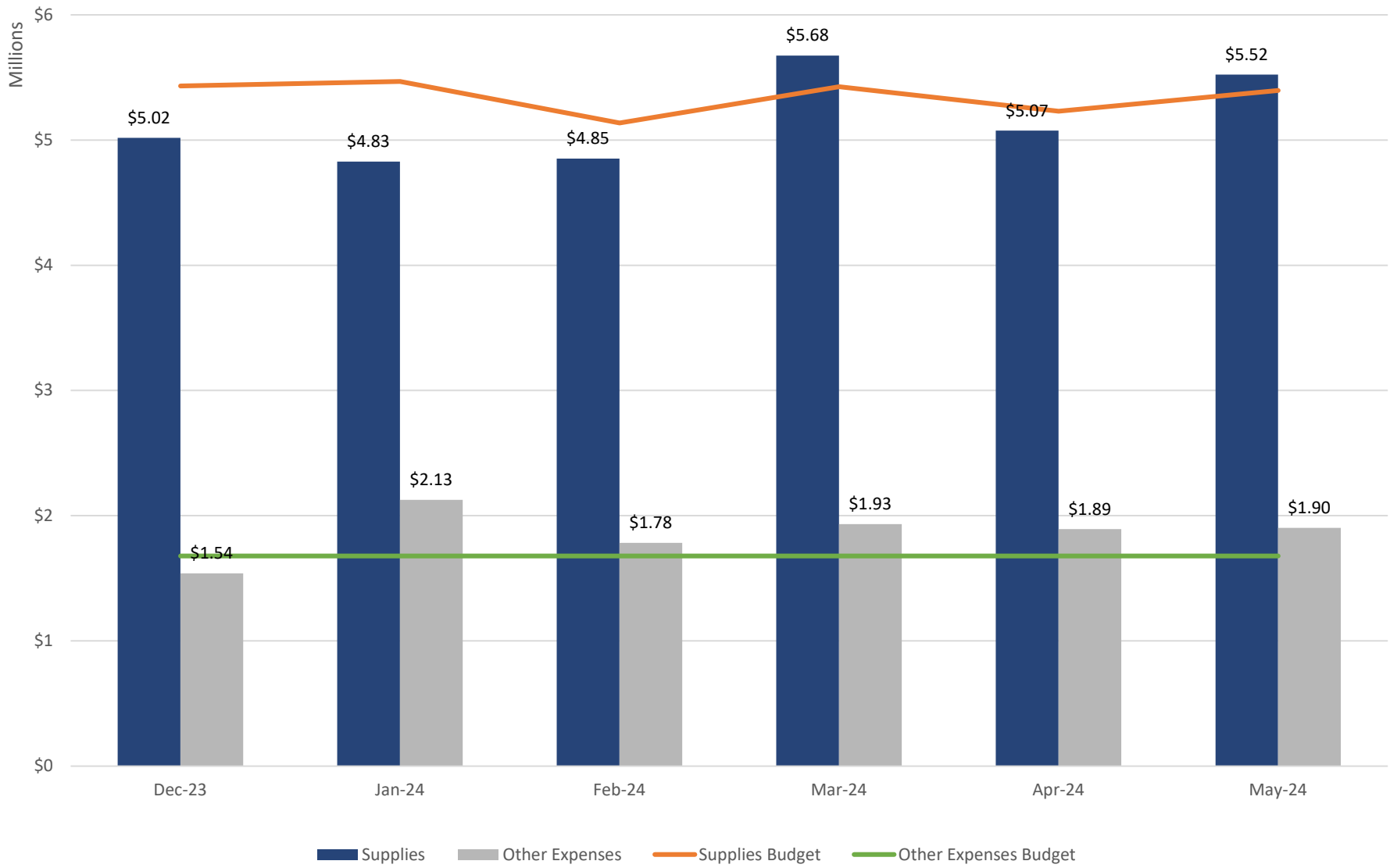
## Expenses



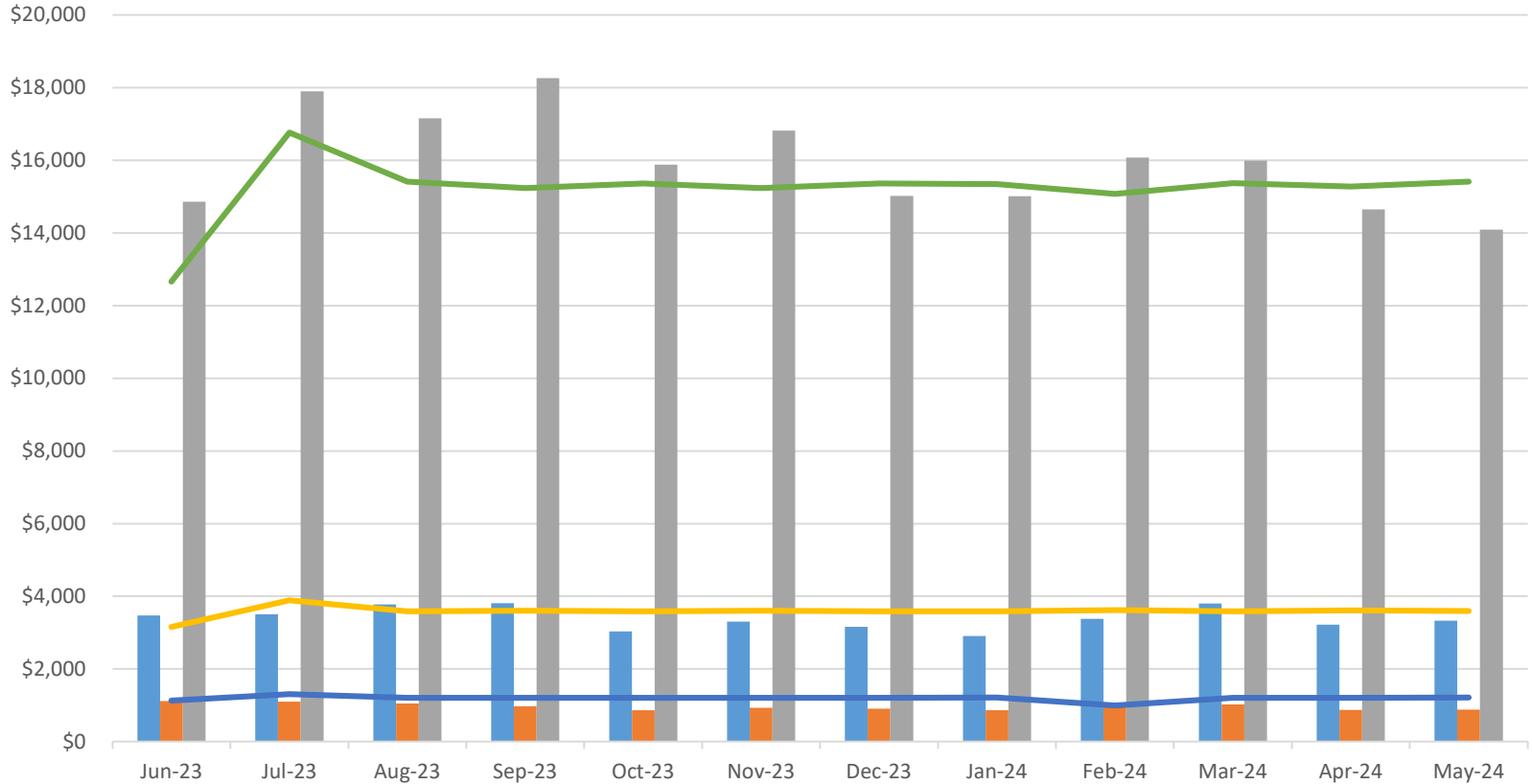
## Expenses



## Expenses

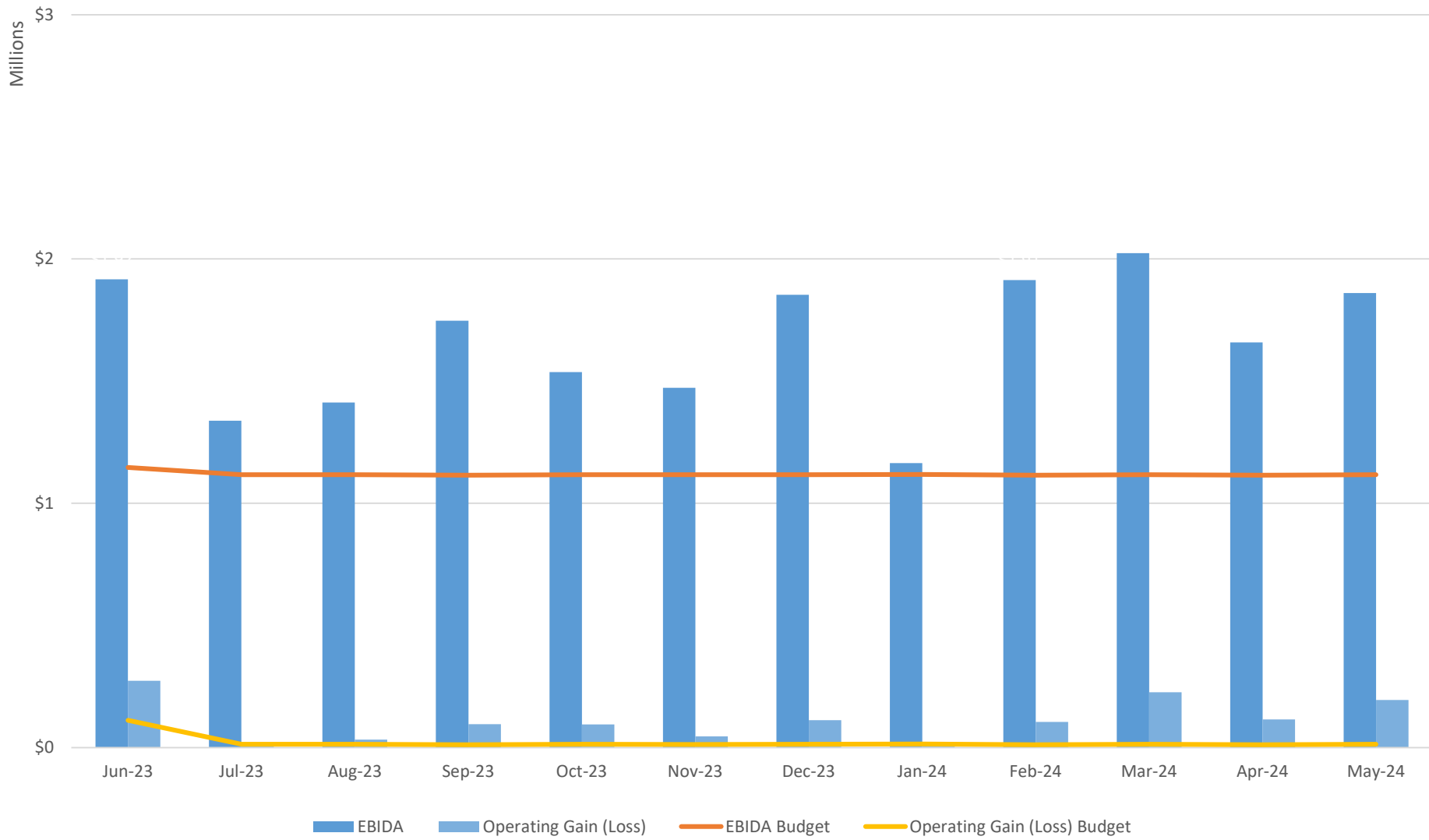


## Operating Metrics

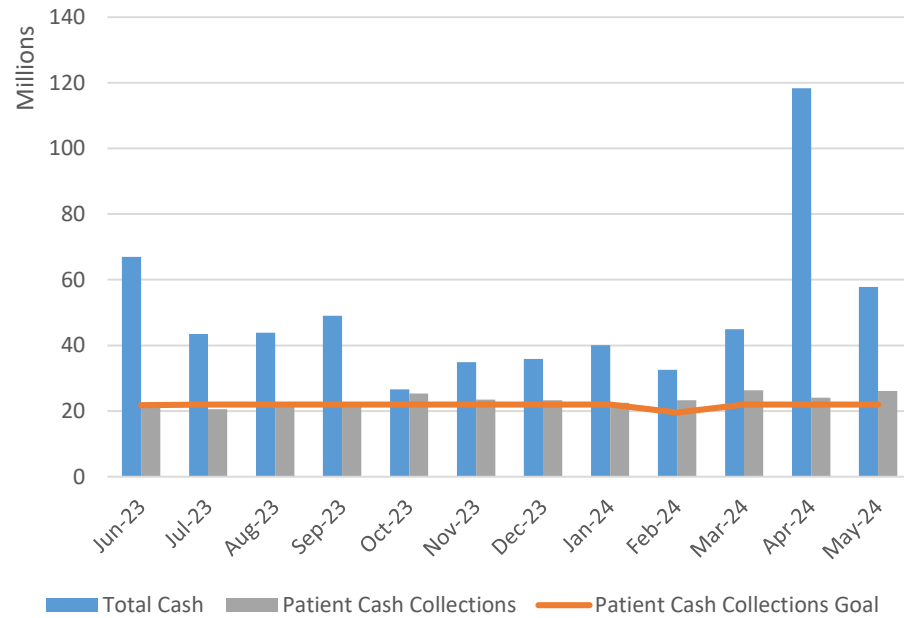


	Jun-23	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24
Supply Expense per AA	\$3,473	\$3,502	\$3,775	\$3,809	\$3,038	\$3,303	\$3,161	\$2,910	\$3,383	\$3,803	\$3,223	\$3,327
Pharm Cost per AA	\$1,115	\$1,104	\$1,047	\$978	\$866	\$932	\$904	\$865	\$1,011	\$1,023	\$877	\$885
Net Revenue Per AA	\$14,857	\$17,893	\$17,150	\$18,258	\$15,875	\$16,817	\$15,020	\$15,012	\$16,073	\$15,992	\$14,649	\$14,086
Budget Supp/AA	\$3,153	\$3,891	\$3,590	\$3,606	\$3,589	\$3,606	\$3,589	\$3,589	\$3,621	\$3,590	\$3,610	\$3,596
Budget Pharm/AA	\$1,127	\$1,310	\$1,210	\$1,210	\$1,210	\$1,210	\$1,210	\$1,211	\$999	\$1,210	\$1,210	\$1,211
Budget Net Rev/AA	\$12,661	\$16,765	\$15,413	\$15,234	\$15,361	\$15,235	\$15,361	\$15,341	\$15,077	\$15,368	\$15,272	\$15,407

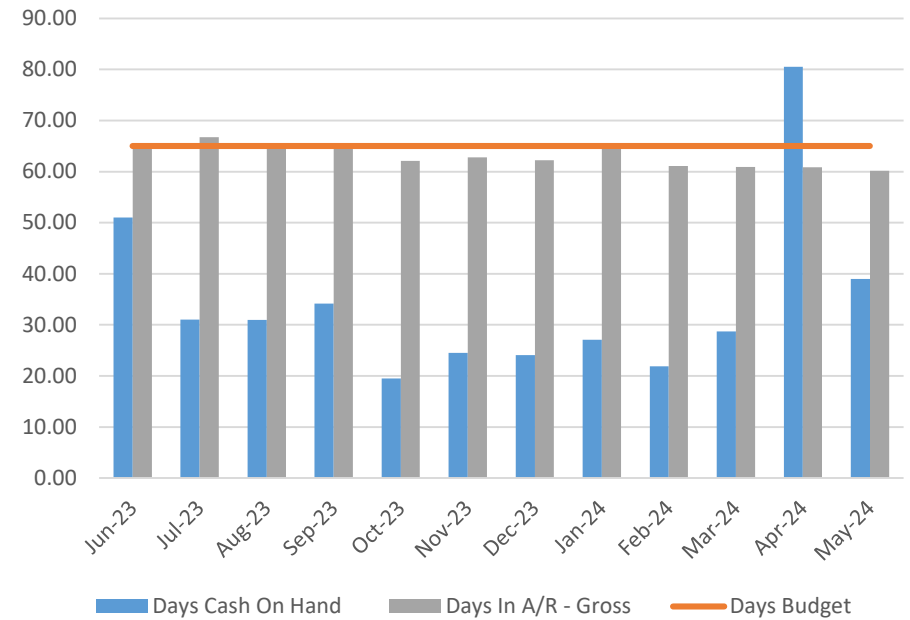
## EBIDA Rolling Year



### Cash Rolling Year



### AR Days Rolling Year



**KERN MEDICAL**  
**3-Month Trend Analysis: Revenue & Expenses**  
May 31, 2024

				BUDGET	VARIANCE	PY
	MARCH	APRIL	MAY	MAY	POS (NEG)	MAY
<b>Gross Patient Revenue</b>	\$ 106,848,155	\$ 107,205,718	\$ 112,567,880	\$ 98,022,645	15%	\$ 99,228,998
Contractual Deductions	(82,982,438)	(84,138,267)	(89,185,577)	(74,904,035)	19%	(79,159,296)
<b>Net Revenue</b>	23,865,717	23,067,451	23,382,303	23,118,610	1%	20,069,702
Indigent Funding	17,905,758	17,055,758	19,805,758	14,338,567	38%	14,166,415
Correctional Medicine	2,847,714	2,847,714	2,847,714	2,651,620	7%	2,608,481
County Contribution	285,211	285,677	285,211	282,447	1%	285,211
Incentive Funding	0	0	0	425,000	(100%)	0
<b>Net Patient Revenue</b>	44,904,400	43,256,599	46,320,986	40,816,244	13%	37,129,809
Other Operating Revenue	2,559,086	2,458,814	2,007,284	2,428,863	(17%)	4,122,123
Other Non-Operating Revenue	9,568	11,076	9,318	13,060	(29%)	1,711,470
<b>Total Revenue</b>	47,473,054	45,726,489	48,337,589	43,258,167	12%	42,963,402
<b>Expenses</b>						
Salaries	20,494,366	19,770,883	21,394,562	18,130,565	18%	19,193,756
Employee Benefits	8,588,794	8,305,515	8,470,106	7,605,702	11%	6,231,733
Registry	2,897,840	2,681,965	2,570,121	2,883,178	(11%)	2,679,781
Medical Fees	2,415,587	2,570,621	2,484,908	1,991,696	25%	2,205,580
Other Professional Fees	963,743	1,112,762	1,371,290	2,033,569	(33%)	2,383,920
Supplies	5,675,359	5,074,477	5,522,114	5,396,015	2%	4,655,869
Purchased Services	2,481,536	2,660,121	2,761,923	2,422,027	14%	2,221,170
Other Expenses	1,931,575	1,891,663	1,901,547	1,678,508	13%	2,011,774
Operating Expenses	45,448,801	44,068,006	46,476,570	42,141,259	5%	41,583,584
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 2,024,253	\$ 1,658,483	\$ 1,861,018	\$ 1,116,908	67%	\$ 1,379,818
EBIDA Margin	4%	4%	4%	3%	49%	3%
Interest	360,189	200,050	241,366	117,423	106%	348,860
Depreciation	738,996	644,627	667,754	699,368	(5%)	825,022
Amortization	697,970	697,970	756,606	286,579	164%	1,226,641
Total Expenses	47,245,955	45,610,653	48,142,296	43,244,629	11%	43,984,107
<b>Operating Gain (Loss)</b>	\$ 227,099	\$ 115,837	\$ 195,293	\$ 13,539	1,342%	\$ (1,020,706)
<b>Operating Margin</b>	0.48%	0.25%	0.40%	0.03%	1,190.9%	(2.4%)

**KERN MEDICAL**  
**Year to Date Analysis: Revenue & Expenses**  
May 31, 2024

	ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
	FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
<b>Gross Patient Revenue</b>	\$ 1,168,658,586	\$ 1,069,107,328	9%	\$ 1,046,470,239	12%
Contractual Deductions	(904,251,010)	(818,324,996)	11%	(799,902,677)	13%
<b>Net Revenue</b>	264,407,576	250,782,332	5%	246,567,562	
Indigent Funding	183,003,589	157,724,238	16.0%	157,064,086	17%
Correctional Medicine	31,324,850	29,167,817	7%	28,407,613	10%
County Contribution	3,137,786	3,106,920	1%	3,137,320	0.01%
Incentive Funding	0	4,675,000	(100%)	1,404,200	0.0%
<b>Net Patient Revenue</b>	481,873,801	445,456,307	8%	436,580,781	10%
Other Operating Revenue	21,251,180	26,717,498	(20%)	27,871,024	(24%)
Other Non-Operating Revenue	187,386	143,660	30%	1,844,195	(90%)
<b>Total Revenue</b>	503,312,367	472,317,465	7%	466,296,000	8%
<b>Expenses</b>					
Salaries	220,873,149	197,368,903	11.9%	191,512,584	15%
Employee Benefits	91,922,223	82,796,277	11.0%	78,045,987	18%
Registry	28,344,188	31,406,043	(10%)	32,123,875	(12%)
Medical Fees	25,042,210	21,908,654	14%	23,318,128	7%
Other Professional Fees	15,494,190	22,369,257	(31%)	23,141,111	(33%)
Supplies	55,731,657	58,878,054	(5%)	55,851,861	(0.2%)
Purchased Services	28,567,629	26,841,856	6%	27,613,603	3%
Other Expenses	19,354,869	18,463,584	5%	18,159,972	7%
Operating Expenses	485,330,115	460,032,629	5%	449,767,122	8%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 17,982,251	\$ 12,284,836	46%	\$ 16,528,878	9%
EBIDA Margin	4%	3%	37%	4%	1%
Interest	2,734,258	1,291,654	112%	1,807,989	51%
Depreciation	7,698,932	7,693,045	0%	7,785,076	(1%)
Amortization	6,482,872	3,152,368	106%	5,575,388	16%
Total Expenses	502,246,179	472,169,695	6%	464,935,575	8%
<b>Operating Gain (Loss)</b>	\$ 1,066,188	\$ 147,770	622%	\$ 1,360,425	(22%)
<b>Operating Margin</b>	0.2%	0.0%	577.1%	0.3%	(27%)

# KERN MEDICAL BALANCE SHEET

	MAY 2024	MAY 2023
<b>ASSETS:</b>		
<b><i>Total Cash</i></b>	<b>\$ 57,850,154</b>	<b>\$ 84,184,316</b>
Patient Receivables Subtotal	224,624,392	230,038,951
Contractual Subtotal	(176,603,069)	(174,177,306)
<b><i>Net Patient Receivable</i></b>	<b>48,021,323</b>	<b>55,861,644</b>
Total Indigent Receivable	210,306,534	187,558,623
Total Other Receivable	15,813,584	13,532,596
Total Prepaid Expenses	6,612,675	6,210,645
Total Inventory	5,593,445	5,061,390
<b><i>Total Current Assets</i></b>	<b>344,197,715</b>	<b>352,409,215</b>
Deferred Outflows of Resources	112,536,013	105,241,458
Total Land, Equipment, Buildings and Intangibles	268,366,710	243,417,818
Total Construction in Progress	9,959,160	11,622,286
<b><i>Total Property, Plant &amp; Equipment</i></b>	<b>278,325,870</b>	<b>255,040,105</b>
Total Accumulated Depr & Amortization	(168,641,916)	(153,919,239)
<b><i>Net Property, Plant, and Equipment</i></b>	<b>109,683,954</b>	<b>101,120,865</b>
<b><i>Total Long Term Assets</i></b>	<b>112,536,013</b>	<b>105,241,458</b>
<b><i>Total Assets</i></b>	<b>\$ 566,417,682</b>	<b>\$ 558,771,538</b>

## KERN MEDICAL BALANCE SHEET

	MAY 2024	MAY 2023
<b>LIABILITIES &amp; EQUITY:</b>		
Total Accounts Payable	\$ 7,199,028	\$ 11,669,070
Total Accrued Compensation	29,645,067	24,611,723
Total Due Government Agencies	3,788,905	14,790,584
Total Other Accrued Liabilities	31,968,827	25,666,510
<b><i>Total Current Liabilities</i></b>	<b>72,601,827</b>	<b>76,737,887</b>
Unfunded Pension Liability	345,399,109	284,243,193
Other Long-Term Liabilities	80,686,651	130,256,249
<b><i>Total Long-Term Liabilities</i></b>	<b>426,085,760</b>	<b>414,499,442</b>
<b><i>Total Liabilities</i></b>	<b>498,687,586</b>	<b>491,237,329</b>
Fund Balance	36,714,022	36,714,022
Retained Earnings	31,016,074	30,820,187
<b><i>Total Fund Balance</i></b>	<b>67,730,096</b>	<b>67,534,209</b>
<b><i>Total Liabilities and Fund Balance</i></b>	<b>\$ 566,417,682</b>	<b>\$ 558,771,538</b>

**KERN MEDICAL  
STATEMENT OF CASH FLOWS**

	Fiscal Year-to-Date May 2024	Fiscal Year-End June 2023
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Cash received for patient/current services	\$ 269,801,896	\$ 264,388,064
Cash received for other operations	215,144,043	236,708,950
Cash paid for salaries and benefits	(303,842,205)	(202,912,375)
Cash paid for services and supplies	(174,328,896)	(292,069,170)
Net cash (used in) provided by operating activities	<u>6,774,838</u>	<u>6,115,469</u>
<b>CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES</b>		
Cash (provided to) received from various County funds	-	2,070,094
Interest paid - pension obligation bond	-	(365,334)
Principal paid - pension obligation bond	-	(2,938,587)
Interest paid - line of credit	-	(262,368)
Line of credit payment	-	-
Net cash provided by (used in) noncapital financing activities	<u>-</u>	<u>(1,496,195)</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>		
Acquisition or construction of capital assets	(19,363,869)	(12,141,601)
Payments on right-of-usage lease liability	4,110,582	(3,034,901)
Interest paid - right-of-usage lease liability	31,977	
Payments on SBITA liability	(626,792)	(782,410)
Interest paid - SBITA	2,115	-
Net cash used by capital and related financing activities	<u>(15,845,988)</u>	<u>(15,958,912)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Interest on bank deposits and investments	-	181,109
<b>NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS</b>	<u>(9,071,150)</u>	<u>(11,158,529)</u>
<b>CASH AND CASH EQUIVALENTS, beginning of year</b>	<u>66,921,303</u>	<u>78,079,832</u>
<b>CASH AND CASH EQUIVALENTS, year-to-date</b>	<u><u>\$ 57,850,154</u></u>	<u><u>\$ 66,921,303</u></u>



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

July 17, 2024

**Subject:** Kern County Hospital Authority Chief Executive Officer Report

**Recommended Action:** Receive and File

**Summary:**

The Chief Executive Officer of the Kern County Hospital Authority will provide your Board with a hospital-wide update.



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

July 17, 2024

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

**Recommended Action:** Receive and File

**Summary:**

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

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



*What's Happening?*



# Graduate Recognition Dinner



# New Resident/Fellow Orientation



# NCQA Certificate of Recognition



## Certificate of Recognition

National Committee for Quality Assurance commends

***Kern Medical REACH & GROW Clinics***

***Recognized with Distinction in Behavioral Health Integration***

on Achievement of Recognition for  
Delivering High-Quality, Patient-Centered Care

Recognition Date: June 7, 2024

Anniversary Date: June 18, 2025



A handwritten signature in black ink, appearing to read "Margaret E. O'Kane".

Margaret E. O'Kane  
President

# Addiction Medicine Clinic - Ribbon Cutting



# Beautiful Bakersfield Awards



Kern Medical received the award in the Health category.

# National Recognitions - June

- Alzheimer's and Brain Awareness Month
- Men's Health Month
- PTSD Awareness Month
- Migraine Awareness Month
- Cancer Survivors Month
- World Blood Donor Day (June 14)
- World Sickle Cell Day (June 19)
- National HIV Testing Day (June 27)

# National Recognitions - July

- Healthy Vision Month
- Cleft & Craniofacial Awareness & Prevention Month
- National Hemochromatosis Awareness Month
- Sarcoma Awareness Month
- UV Safety Month
- World Brain Day (July 22)
- World Hepatitis Day (July 28)

# Did You Know - QIP

- QIP stands for: Quality Incentive Pool
- QIP is a State Department of Health Care Services program that grants incentive dollars to designated public hospitals if certain criteria in Managed Care populations is met.
- Kern Medical is responsible for 60,000 assigned lives, whether they visit Kern Medical or not. Our team's focus is on bringing patients in for preventative care.
- QIP performance measures include process and outcome measures, drawn from NCQA, The National Quality Forum, and Joint commission
- The program generates \$60 million, potentially more, based on the number of assigned lives that visit Kern Medical, and whether or not we are able to achieve at least 40 out of 60 measures.
- In 2020, Kern Medical screened 8,000 individuals for Clinical Depression. In 2023, Kern Medical screened 22,000 people.
- Kern Medical's QIP team includes analysts, medical assistants, and an acute care transitions team.
- Acute Care Transitions made 9,500 calls last year to patients discharged from in-patient care, in order to make sure that patients knew how to take care of themselves after being cared for at Kern Medical.
- In 2020, Kern Medical offered 15 Pediatric Developmental Screenings. In 2023, Kern Medical did 6,500 Pediatric Developmental Screenings.
- "QIP is all about making sure that care is equitable and that the most vulnerable [patients] are taken care of." -Kevin Jenson, Director of Population Health

**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 July 17, 2024, 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 July 17, 2024, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

- X   CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION  
(Government Code Section 54956.9(e)(3)) Number of cases: Three (3) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection –

**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 July 17, 2024, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

  X   Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) –