



## **AGENDA**

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

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

Regular Meeting  
Wednesday, June 16, 2021

11:30 A.M.

#### **BOARD TO RECONVENE**

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

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

**STAFF RECOMMENDATION SHOWN IN CAPS**



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on May 19, 2021 –  
APPROVE

CA

- 4) Proposed Kern County Hospital Authority Purchase Order Terms and Conditions with Olympus America Inc., an independent contractor, containing non-standard terms and conditions, for the purchase of endoscopic supplies for the Olympus endoscopic reprocessor, from June 16, 2021 through June 15, 2024, in an amount not to exceed \$48,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 5) Proposed retroactive Master Services Agreement with HealthStream, Inc., an independent contractor, containing non-standard terms and conditions, for participation in an electronic platform for the onboarding of nursing students from May 20, 2021 through May 19, 2022 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 6) Proposed Agreement with Sepideh Babaei, M.D., a contract employee, for professional medical services in the Department of Radiology from July 7, 2021 through July 6, 2024, in an amount not to exceed \$1,950,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Proposed Amendment No. 3 to Agreement 2016-041 with the County of Kern, as represented by the County Administrative Office, Kern County Sheriff's Office, and Kern County Probation Department, for the provision of correctional medicine services to in-custody inmates and juvenile wards, for the period July 1, 2016 through June 30, 2021, extending the term for one year from July 1, 2021 through June 30, 2022 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 8) Proposed Amendment No. 2 to Agreement 038-2018 with the County of Kern, as represented by the County Administrative Office and Kern County Sheriff's Office, for correctional medicine services at the Kern Justice Facility, for the period May 12, 2018 through June 30, 2021, extending the term for one year from July 1, 2021 through June 30, 2022 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed Amendment No. 1 to Agreement 022-2021 with Acute Care Surgery Medical Group, Inc., an independent contractor, for professional medical and administrative services in the General Surgery Program, for the period July 1, 2021 through June 30, 2025, adding vascular surgery to the service line, and increasing the maximum payable by \$2,968,757, from \$18,394,210 to \$21,362,967, to cover the cost of additional services – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Agreement with Acute Care Surgery Medical Group, Inc., an independent contractor, for professional medical services in the Department of Surgery from July 1, 2021 through June 30, 2024, in an amount not to exceed \$750,000 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed Amendment No. 1 to Agreement 069-2019 with Aslan Ghandforoush, D.O., a contract employee, for professional medical and administrative services in the Department of Medicine, Division of Cardiology, for the period November 26, 2019 through November 25, 2024, to permit outside practice – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Proposed Master Agreement with SSG Sub, LLC, an independent contractor, containing non-standard terms and conditions, for oncology data management and abstracting services from July 1, 2021 through June 30, 2022, in an amount not to exceed \$160,000 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 13) Proposed Equipment Services Agreement with Agiliti Surgical, Inc., an independent contractor, containing non-standard terms and conditions, for use, maintenance and supplies of surgical laser equipment from June 16, 2021 through June 15, 2026, in an amount not to exceed \$660,000 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 14) Proposed Engagement Letter from Moss-Adams, LLP, an independent contractor, regarding the audit of Kern Medical Center financial statements for fiscal year ended June 30, 2021 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 15) Request to employ retired Kern County Hospital Authority employee Tina Anderson, as Extra Help Senior Paralegal, for the period ending June 30, 2022, or 960 hours, whichever occurs first, effective July 1, 2021 – APPROVE

CA

- 16) Request to employ retired Kern County Hospital Authority employee Manuel Acosta, as Extra Help PACS Administrator, for the period ending June 30, 2022, or 960 hours, whichever occurs first, effective July 1, 2021 –  
APPROVE

CA

- 17) Proposed renewal and binding of insurance coverages for hospital professional liability, general liability and umbrella/excess liability, workers' compensation and employers liability, automobile liability, heliport liability, directors and officers liability, employment practices liability, crime, privacy and security (cyber) liability, premises pollution liability, underground storage tank liability, employed lawyers liability, and fiduciary liability from July 1, 2021 through June 30, 2022, with option to finance selected premiums through PRISM and IPFS Corporation of California in an amount not to exceed \$1,305,900 –  
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN PREMIUM FINANCE AGREEMENT AND CERTIFICATE OF INCUMBENCY

CA

- 18) Proposed Statement of Commitment to Graduate Medical Education in support of residency and fellowship training programs sponsored by Kern Medical Center, as required by Accreditation Council for Graduate Medical Education, effective July 1, 2021 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN –

- 19) Kern County Hospital Authority financial report –  
RECEIVE AND FILE

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

CA

- 21) Claims and Lawsuits Filed as of May 31, 2021 –  
RECEIVE AND FILE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 22) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –
- 23) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Russell V. Judd, and designated staff - Employee organizations: Service Employees International Union, Local 521; Committee of Interns and Residents/Service Employees International Union, Local 1957 (Government Code Section 54957.6) –

- 24) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION  
(Government Code Section 54956.9(d)(2), (e)(2).) Number of cases: Two (2) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs –
- 25) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, JULY 14, 2021 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.

21) CLAIMS AND LAWSUITS FILED AS OF MAY 31, 2021 –  
RECEIVE AND FILE

- A) Claim in the matter of Adriana Zavala Tinoco
- B) Summons and Complaint in the matter of Paula Torres, Martin Alejandrez Cruz v. Kern County Hospital Authority, et al., Kern County Superior Court Case No. BCV-21-101001 DRL



## SUMMARY OF PROCEEDINGS

### KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting  
Wednesday, May 19, 2021

11:30 A.M.

#### BOARD RECONVENED

Board Members: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz  
Roll Call: 5 Present; 1 Absent - Brar

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

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

#### BOARD ACTION SHOWN IN CAPS

#### PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

**DIRECTOR BERJIS EXPRESSED HIS APPRECIATION TO THE BOARD OF GOVERNORS FOR THEIR COMMITMENT, SUPPORT AND DEDICATION DURING THE PANDEMIC**

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for the Kern County Hospital Authority Board of Governors regular meeting on May 19, 2021 –  
APPROVED  
**Pelz-McLaughlin: 5 Ayes; 1 Absent - Brar**

CA

- 4) Proposed retroactive Resolution recognizing specified categories of Advanced Practice Providers (APP) who are not eligible for Medical Staff membership –  
APPROVED; ADOPTED RESOLUTION 2021-005  
**Pelz-McLaughlin: 5 Ayes; 1 Absent - Brar**

CA

- 5) Proposed retroactive Amendment No. 2 to Agreement 30718 with JDM Solutions, Inc., an independent contractor, for professional consulting services related to the Cerner Millennium project, adding a new statement of work effective May 1, 2021, extending the term through April 30, 2023, and increasing the maximum payable by \$1,361,200, from \$1,539,100 to \$2,900,300, to cover the extended term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 026-2021  
**Pelz-McLaughlin: 5 Ayes; 1 Absent - Brar**

- 6) Kern County Hospital Authority financial report –  
RECEIVED AND FILED  
**McLaughlin-Pelz: 5 Ayes; 1 Absent - Brar**

- 7) Proposed Kern County Hospital Authority operating and capital budget for Fiscal Year 2021-2022 –  
APPROVED; REFERED TO KERN COUNTY BOARD OF SUPERVISORS FOR APPROVAL  
**Pelz-Alsop: 5 Ayes; 1 Absent - Brar**

- 8) Kern County Hospital Authority Chief Executive Officer report –  
RECEIVED AND FILED  
**Pelz-Alsop: 5 Ayes; 1 Absent - Brar**

CA

- 9) Claims and Lawsuits Filed as of April 30, 2021 –  
RECEIVED AND FILED  
**Pelz-McLaughlin: 5 Ayes; 1 Absent - Brar**

ADJOURNED TO CLOSED SESSION

**McLaughlin-Berjis**

CLOSED SESSION

- 10) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 11) Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 12) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Isaac Salas, a minor, by and through his Guardian ad Litem Ariana Santiago v. Kern County Hospital Authority dba Kern Medical, et al., Kern County Superior Court Case No. BCV-20-100675 TSC – SEE RESULTS BELOW
- 13) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Farzin Tayefeh, M.D., et al. v. County of Kern, et al., Kern County Superior Court, Case No. BCV-15-100647 – SEE RESULTS BELOW
- 14) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Guadalupe Maldonado v. Kern County Hospital Authority, et al., Kern County Superior Court Case No. BCV-19-101783 DRL – SEE RESULTS BELOW
- 15) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Esperanza Maldonado v. Kern Medical, form unknown, et al., Kern County Superior Court Case No. BCV-20-100169 TSC – SEE RESULTS BELOW
- 16) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Russell V. Judd, and designated staff - Employee organizations: Service Employees International Union, Local 521; Committee of Interns and Residents/Service Employees International Union, Local 1957 (Government Code Section 54957.6) – SEE RESULTS BELOW
- 17) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: President, Hospital and Clinic Operations (Government Code Section 54957) – SEE RESULTS BELOW
- 18) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION

**Berjis-Pelz**

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 10 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR ALSOP, SECOND BY DIRECTOR PELZ), THE BOARD APPROVED ALL PRACTITIONERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, REVIEW/RELEASE OF PROCTORING, REQUEST FOR CHANGE IN STAFF STATUS, VOLUNTARY RESIGNATION OF PRIVILEGES, AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 11 concerning Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 12 concerning CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Isaac Salas, a minor, by and through his Guardian ad Litem Ariana Santiago v. Kern County Hospital Authority dba Kern Medical, et al., Kern County Superior Court Case No. BCV-20-100675 TSC – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 13 concerning CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Farzin Tayefeh, M.D., et al. v. County of Kern, et al., Kern County Superior Court, Case No. BCV-15-100647 – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 14 concerning CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Guadalupe Maldonado v. Kern County Hospital Authority, et al., Kern County Superior Court Case No. BCV-19-101783 DRL – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 15 concerning CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Esperanza Maldonado v. Kern Medical, form unknown, et al., Kern County Superior Court Case No. BCV-20-100169 TSC – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 16 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Russell V. Judd, and designated staff - Employee organizations: Service Employees International Union, Local 521; Committee of Interns and Residents/Service Employees International Union, Local 1957 (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 17 concerning PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: President, Hospital and Clinic Operations (Government Code Section 54957) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 18 concerning Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, JUNE 16, 2021 AT 11:30 A.M.

**Alsop**

/s/ Mona A. Allen  
Authority Board Coordinator

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



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

June 16, 2021

**Subject:** Proposed Kern County Hospital Authority Purchase Order Terms & Conditions with Olympus America Inc. for the purchase of endoscopic supplies.

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

**Summary:**

Kern Medical requests your Board approve the proposed Kern County Hospital Authority Purchase Order Terms & Conditions for the purpose of creating a blanket purchase order to facilitate the routine purchase of products listed in Exhibit A of the purchase order.

Kern Medical recently installed an Olympus Endoscopic Reprocessor in our Diagnostic Treatment Center for the sterilization of highly sensitive/specialized equipment for use in both the Operating Room and the Diagnostic Treatment Center. In order to properly use the reprocessor, enzymatic detergents, filters, and test strips must be routinely used to ensure that the cleaning process results in appropriately sterilized scopes. The cost of the ancillary products is estimated at \$16,000 per year.

Counsel is unable to approve as to form due to non-standard terms which include the limitation of liability. Efforts were made to negotiate with the vendor, but to no avail.

Even with these issues, Kern Medical recommends that your Board approve the Kern County Hospital Authority Purchase Order Terms & Conditions with Olympus America Inc., for a term of three (3) years, containing non-standard terms and conditions, and authorize the Chairman to sign.

**KERN COUNTY HOSPITAL AUTHORITY PURCHASE ORDER TERMS & CONDITIONS**  
**(Kern County Hospital Authority – Olympus America Inc.)**

This Purchase Order (the "Blanket Purchase Order") is entered into this 16<sup>th</sup> day of June, 2021 (the "Effective Date"), by and between the Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center ("KCHA"), with its principal place of business at 1700 Mount Vernon Avenue, Bakersfield, CA 93306 and Olympus America Inc. ("Vendor"), a corporation, with its principal place of business at 3500 Corporate Parkway, Center Valley, Pennsylvania 18034.

This Blanket Purchase Order is for the purchase of products as set forth on Exhibit A (the "Products"), attached hereto and incorporated herein by this reference, on an as needed basis. This Blanket Purchase Order allows for a maximum payable of \$250,000 per year for up to three (3) years with a maximum payable of \$750,000 for the purchase of the Products under these terms. The following terms and conditions shall apply to any order made by KCHA pursuant to this Blanket Purchase Order and each party shall comply with all the following terms and conditions:

**Obligations of Vendor**

1. Vendor shall provide Products on an as ordered, as needed basis, as set forth in a Purchase Order issued by KCHA (the "Purchase Order"). Such order(s) may be modified by mutual agreement, by a written Purchase Order amendment prior to shipment.
2. Vendor shall provide the Products at the pricing identified in the Purchase Order. Unless otherwise clearly specified, the prices stated herein do not include California state sales or use tax.
3. Vendor warrants possession of clear and unencumbered title to the Products involved herein.
4. Unless stated otherwise on the Purchase Order, all Products provided by the Vendor shall be new, unused, in original manufacturer packaging and labeling, and shall conform to the manufacturer's published specifications provided herein, in accordance with Vendor's limited warranty.
5. Vendors may be required to provide proof of insurance for one or more of the following types of insurance coverages as determined by KCHA:
  - (a) **Workers' Compensation Insurance** in accordance with the provisions of section 3700 of the California Labor Code. This policy shall include employer's liability insurance with limits of at least one million dollars (\$1,000,000).
  - (b) **Commercial General Liability Insurance** in the minimum amounts indicated below or such additional amounts as may be determined by the KCHA Risk Manager, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of any Purchase Order or agreement with KCHA), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Vendor's performance of work hereunder. The amount of said insurance coverage required hereunder shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.
  - (c) **Intentionally Omitted – Not applicable**

The **Commercial General Liability Insurance** shall include an endorsement naming KCHA and KCHA's board members, officials, officers, agents and employees as additional insureds. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-;VII. All insurance provided by Vendor hereunder shall be primary to and not contributing to any other insurance maintained by KCHA. Any exception to these requirements must be approved by KCHA's Risk Manager. KCHA's Risk Manager may require higher limits depending on the nature of the Products being provided. All insurance coverage requirements shall be maintained by Vendor until completion of all of vendor's obligations to KCHA..

**6. Indemnification.**

**Product Liability Indemnity.**

(a) Vendor shall indemnify, defend, and hold harmless KCHA on any claim, suit or proceeding brought against KCHA and/or any of its subsidiaries and agents based on a third party's claim for bodily injury (including death) or property damage arising from the products or services provided hereunder, provided Vendor is (i) notified promptly in writing of any such claim; (ii) given authority to control fully any such suit or proceeding; and (iii) in receipt of information and reasonable assistance and cooperation from KCHA in preparation of the defense of any such suit or proceeding. Provided KCHA complies with the above requirements, Vendor shall pay all damages, costs, and expenses, including reasonable attorneys' fees of third parties (including KCHA and affiliates of KCHA), that KCHA shall be legally required to pay on the basis of bodily injury (including death) or property damage and shall reimburse KCHA for any authorized expense it incurs at Vendor's written request. .

Notwithstanding the foregoing, Vendor's liability to KCHA or the aforementioned damages, costs, and expenses shall not exceed \$50,000.00 per occurrence and \$250,000.00 for all occurrences combined. Notwithstanding the foregoing, Vendor's liability to KCHA or the aforementioned damages, costs, and expenses shall not exceed \$1,000,000.00 per occurrence and \$2,000,000.00 for all occurrences combined.

(b) Notwithstanding subsection (a) hereof, Vendor shall not be liable to KCHA to the extent the bodily injury or property damage claim is based on or arises out of: (i) the use of products not manufactured by Vendor and/or not bearing the "OLYMPUS" brand label; (ii) any product which has been disassembled, repaired, tampered with, altered, changed, or modified by persons other than Vendor's own authorized service personnel; (iii) the negligence, omissions, or other misconduct of KCHA; (iv) representations and warranties regarding the products or services made by KCHA or any agents, salespersons, or representatives of Vendor or KCHA; (v) the improper storage, usage, service, or maintenance of the products; (vi) failure of KCHA or the end-user to use updated components provided by Vendor for avoiding such injury or damage; or (vii) use of the products in a manner for which they were neither designed nor contemplated. THE FOREGOING SETS FORTH KCHA'S EXCLUSIVE REMEDY AND VENDOR'S SOLE OBLIGATION WITH RESPECT TO ANY CLAIMS OF BODILY INJURY OR PROPERTY DAMAGE RELATING TO THE PRODUCTS OR SERVICES SUPPLIED HEREUNDER. IN NO EVENT SHALL VENDOR BE RESPONSIBLE, WHETHER UNDER THIS SECTION, IN CONTRACT, TORT, OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER OR NOT VENDOR SHALL BE OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

**Infringement Indemnity.**

(a) Should any product supplied hereunder become the subject of a United States patent, copyright, or other intellectual property right infringement suit or proceeding, OLYMPUS will endeavor (at OLYMPUS's option) to: (i) obtain a license that would permit KCHA to continue to use the product, or (ii) modify the product to render it non-infringing, or (iii) refund the product's purchase price to KCHA on a straight-line five-year amortization basis.

(b) OLYMPUS shall defend any suit or proceeding brought against KCHA based on a third party's claim that any product supplied hereunder infringes a United States patent, copyright, or other intellectual property right, provided OLYMPUS is (i) notified promptly in writing of any such claim, (ii) given authority to control fully any such suit or proceeding, and (iii) in receipt of information and reasonable assistance and cooperation from KCHA in preparation of the defense of any such suit or proceeding. Provided KCHA complies with the above requirements, OLYMPUS shall pay all damages, costs, and expenses,

including reasonable attorneys' fees of third parties, that KCHA shall be legally required to pay on the basis of such infringement suit or proceeding and shall reimburse KCHA for any authorized expense it incurs at OLYMPUS's written request.

(c) Notwithstanding subsections (a) and (b) hereof, OLYMPUS shall not be liable to KCHA to the extent the patent, copyright, or other intellectual property infringement claim is based on or arises out of: (i) the use of equipment or materials not manufactured by OLYMPUS and/or not bearing the "OLYMPUS" brand label; (ii) any product which has been disassembled, repaired, tampered with, altered, changed, or modified by persons other than OLYMPUS's own authorized service personnel; (iii) failure of KCHA or the end-user to use updated components provided by OLYMPUS for avoiding such infringement; (iv) use of the products in combination with apparatus or software not furnished by OLYMPUS except for those expressly approved in writing by OLYMPUS; (v) processes or methods allegedly performed by the products; (vi) use of the products in the manner for which they were neither designed nor contemplated; (vii) the negligence, omissions, or other misconduct of KCHA; (viii) representations and warranties regarding the products made by KCHA or any agents, salespersons, or representatives of KCHA; (ix) a patent, copyright, or other intellectual property right in which KCHA or an affiliate of KCHA has a direct or indirect interest by license or otherwise; or (x) contributory or inducing infringement. THE FOREGOING SETS FORTH KCHA'S EXCLUSIVE REMEDY AND OLYMPUS'S SOLE OBLIGATION WITH RESPECT TO INFRINGEMENT OF ANY PROPRIETARY RIGHT OF ANY OTHER PARTY BY THE PRODUCTS SUPPLIED HEREUNDER. IN NO EVENT SHALL OLYMPUS BE RESPONSIBLE, WHETHER UNDER THIS SECTION, IN CONTRACT, TORT, OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL LOSSES OR DAMAGES INCURRED BY CUSTOMER, WHETHER OR NOT OLYMPUS SHALL BE OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

7. Each party shall perform hereunder in compliance with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.

#### Obligations of KCHA

8. KCHA shall receive shipments during regular business hours, or otherwise as previously arranged, at its receiving dock or other designated locations, and shall perform receiving inspections(s) in a time and manner appropriate for the Products involved.

9. KCHA shall notify Vendor of any discrepancies in Products shipped, be the quantity, condition, or otherwise, promptly upon completion of the receiving inspection.

#### Delivery, Invoicing, and Payment

10. Unless stated otherwise on the Purchase Order, all Products shall be delivered Free On Board (F.O.B) Shipping Point, with transfer of title and risk of loss to rest with KCHA upon carrier pickup. In the event of loss or damage during shipping, provide Vendor has selected the carrier, Vendor shall provide assistance to KCHA with claims

11. As consideration for the Products provided by Vendor hereunder, KCHA will pay Vendor in accordance with the prices identified on the Purchase Order. KCHA's finance office pays claims and Purchase Orders each week.

12. Invoices for payment shall be submitted in a form approved by KCHA and list each Product ordered and received. Payment shall be made to Vendor within 30 days of date of invoice.

13. KCHA may, without cause, terminate this Blanket Purchase Order by written notice ("**Notice of Termination**"). The Notice of Termination will be deemed effective fifteen (15) days after personal delivery, or twenty (20) days after mailing by regular U.S. Mail, postage prepaid. In addition, either party may immediately terminate this Blanket Purchase Order if the other party fails to substantially perform in accordance with the terms and conditions of this Blanket Purchase Order through no fault of the party initiating the termination. If either party terminates this Blanket Purchase Order as provided in this **Section 13**, KCHA shall pay Vendor for all satisfactory Products delivered by Vendor prior to the effective date of Notice of Termination in an amount not to exceed the maximum dollar amount shown on this Blanket Purchase Order.

14. The liabilities or obligations of KCHA with respect to its activities pursuant to this Blanket Purchase Order shall be the liabilities or obligations solely of KCHA and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

#### General Provisions

15. This Blanket Purchase Order, including any attachments hereto, and if applicable, the terms found at <https://www.kernmedical.com/wp-content/uploads/KCHA-TC.pdf> contains the entire agreement between KCHA and Vendor relating to the Products identified herein. Vendor agrees that in the event there is any inconsistency or conflict between this Blanket Purchase Order and any other terms and conditions, this Blanket Purchase Order terms and conditions shall control.

16. Intentionally omitted.

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

18. Audits, Inspection and Retention of Records. Vendor agrees to maintain and make available to KCHA, accurate books and records relative to all its activities under this Purchase Order. Vendor shall permit KCHA to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this Purchase Order. Vendor shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Purchase Order, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Purchase Order shall have the same rights conferred upon KCHA herein.

19. Health Insurance Portability and Accountability Act-HITECH., If appropriate Vendor agrees to execute a business associate agreement with KMC to supplement this Purchase Order if requested, subject to the Parties' agreement upon terms and conditions of the business associate agreement.

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

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

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

**KERN COUNTY HOSPITAL AUTHORITY**

**OLYMPUS AMERICA INC.**

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

DocuSigned by:  
*Michele Ryder*  
By \_\_\_\_\_  
Michele Ryder (Print Name)  
Director of Contract Operations and Administration (Title)  
6/10/2021 | 1:33 PM EDT  
Date: \_\_\_\_\_

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

**APPROVED AS TO CONTENT:**  
Kern Medical Center

By \_\_\_\_\_  
Toni Smith  
Chief Nursing Officer

**Reviewed ONLY**  
**NOT APPROVED AS TO FORM:**  
Legal Services Department

By *[Signature]*  
Hospital Counsel

**EXHIBIT A  
PRODUCTS**

<b>Model No.</b>	<b>Description</b>
ACECIDE-C	ACECIDE-C PERACETIC ACID 6 SETS/CASE
ACECIDE-C TEST	ACECIDE-C TEST TEST STRIPS 100 btl
ENDOQUICK	ENDOQUICK DETERGENT 3 BTLS/Case - 2L ea
MF01-0014PL	MF01-0014PL 1 MICRON EXTERNAL FILTER
MF01-0015PL	MF01-0015PL 0.45 MICRON EXTERNAL FILTER
MF01-65887	MF01-65887 Wrench For Bowl Removal



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

June 16, 2021

**Subject:** Proposed retroactive Master Services Agreement with HealthStream, Inc., to participate in an electronic platform for the onboarding of nursing students

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

**Summary:**

Kern Medical requests your Board approve the proposed Master Services Agreement with HealthStream, Inc. for the implementation of myClinicalExchange, a software solution used in collaboration with community hospitals and the Nursing Departments of California State University Bakersfield and Bakersfield College. The software performs two very useful functions for both nursing students and Kern Medical; 1) each community hospital can post clinical rotation availability and be reviewed by the schools in order to schedule students at the various hospitals for the required specialty rotations and; 2) hospitals can access student's health clearance documents with an expanded capability to exchange educational content and mandatory on-boarding documents on a single site. There is no direct cost to Kern Medical for adopting this platform. The fees associated with its use are paid by the students utilizing the system.

Counsel is unable to approve as to form due to non-standard terms which include the waiver of jury trial, the limitation of liability to the cost of the agreement, and no termination without cause. Efforts were made to negotiate with the vendor, but to no avail.

Even with these issues, Kern Medical recommends that your Board retroactively approve the Master Service Agreement with HealthStream, Inc., to allow Kern Medical to participate in an electronic platform for the onboarding of nursing students, beginning on May 20, 2021 for a term of one (1) year, containing non-standard terms and conditions, and authorize the Chairman to sign.

# Master Services Agreement



This Master Services Agreement ("**Agreement**") is entered into and effective as of May 20, 2021 ("**Effective Date**") by and between **HealthStream, Inc.**, a Tennessee corporation, having its principal place of business at 500 11<sup>th</sup> Avenue North, Suite 1000, Nashville, Tennessee 37203 ("**HealthStream**") and Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center, having its principal place of business at 1700 Mount Vernon Ave., Bakersfield, CA, 93306 ("**Customer**"). Unless otherwise specified herein, this Agreement shall supersede any and all previous master services or similar agreement(s) between HealthStream (which shall include any HealthStream acquired entity) and Customer.

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

## 1. Definitions.

"**Online Service(s)**" means certain subscription based Service(s) provided by HealthStream to Users over the Internet or other similar computer networks pursuant to this Agreement and any Order Form executed hereunder.

"**Order Form**" means the ordering documents, including any order forms, representing the initial purchase of any Services as well as any subsequent purchases agreed to between the parties in writing from time to time, that are signed under this Agreement. Customer has designated those entities set forth on Exhibit A as additional purchasers with the authority to enter into Order Forms under this Agreement and bind Customer.

"**Professional Services**" means fee-based migration, implementation, training, consulting, or customized services that HealthStream performs as described in an Order Form.

"**Service(s)**" means all service(s) provided by HealthStream, including but not limited to Professional Services, support services or the Online Service(s).

"**Users**" means Customer's employees, consultants, contractors, clients or agents who are authorized to use the Online Service(s) and have been supplied user identifications and passwords by Customer (or by HealthStream at Customer's request).

**2. Provision of Service(s).** HealthStream shall make the Service(s) available to Customer pursuant to the terms and conditions set forth in this Agreement and any and all Order Forms executed under this Agreement from time to time.

## 3. Use of Online Service(s).

**3.1 Dependent Online Service(s).** Certain Online Service(s) including, without limitation, content services, courseware services, and authoring services (collectively the "**Dependent Online Service(s)**"), require other Online Service(s) including, without limitation, hStream and any application(s) (e.g., learning, performance, delivery, or other applications) necessary to utilize the Dependent Online Services any learning application or delivery application (collectively the "**Required Online Service(s)**"), to be licensed by Customer to enable the Customer to use the Dependent Online Services. For example, the ability to assign and access *content* (a Dependent Online Services) may require our *learning application* and shall require hStream (both, a Required Online Service). HealthStream may require and Customer shall agree to contract for, license and purchase at least the minimum level of Required Online Services as a pre-requisite to contracting for, licensing and purchasing the Dependent Online Services. All Required Online Services and Dependent Online Services shall be set forth in the applicable Order Form(s).

**3.2 HealthStream Responsibilities.** HealthStream shall: (a) provide telephone and online standard support to designated representatives of Customer; and (b) use commercially reasonable efforts to make the Service(s) generally available 24 hours a day, 7 days a week, except for: (i) planned downtime; or (ii) any unavailability caused by circumstances beyond HealthStream'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 HealthStream employees), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within HealthStream's possession or reasonable control, and network intrusions or denial of service attacks.

**3.3 Customer Responsibilities.** Customer is responsible for all activities that occur under Customer's User accounts. Customer shall: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (b) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service(s), and notify HealthStream promptly of any unauthorized use; and (c) comply with all applicable local, state, federal, and foreign laws in using the Service(s) and, if using the Service(s) outside of the United States, not use the Service(s) in a manner that would violate any federal or state laws of the United States if conducted in the United States.

**3.4 Use Guidelines.** Customer shall use the Service(s) solely for its internal business purposes as contemplated by this Agreement and shall not: (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service(s) available to any third party, other than as contemplated by this Agreement; (b) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (c) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (d) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (e) interfere with or disrupt the integrity or performance of the Service(s) or the data contained in the Service(s); or (f) attempt to gain unauthorized access to the Service(s) or its related systems or networks.

## 4. Fees & Payment.

**4.1 Fees.** Customer shall pay all fees specified in all executed Order Forms. In the case of Service(s) and except as otherwise provided: (a) fees are based on the number of User subscriptions purchased in the relevant Order Form, not the extent of actual usage; (b) fees are non-refundable; (c) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form; and (d) except as otherwise set forth in an Order Form, User subscriptions are for named Users and cannot be shared or used by more than one User. HealthStream shall have the right at all times to review and audit the number of Users for any Service and to bill Customer for any Users in excess of that number of properly licensed and paid Users under all Order Forms and subscriptions.

**4.2 Invoicing & Payment; Suspension of Service.** Customer shall maintain complete and accurate billing and contact information with HealthStream at all times. Fees for the Service(s) will be invoiced in advance and otherwise in accordance with the terms set forth in the relevant Order Form. Unless otherwise stated in the Order Form, charges are due 30 days from the invoice date and all payments made under this Agreement shall be in United States dollars. If Customer's account is thirty (30) days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, HealthStream reserves the right to

suspend the Service(s) provided to Customer, without liability to Customer, until the overdue amounts are paid in full.

**4.3 Taxes.** Unless otherwise stated, HealthStream's fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("Taxes"). Customer is responsible for paying all Taxes, excluding only taxes based on HealthStream's income. If HealthStream has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides HealthStream with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 5. Proprietary Rights.

**5.1 Reservation of Rights.** Customer acknowledges that in providing the Service(s), HealthStream utilizes (a) the HealthStream name, the HealthStream logo, the HealthStream domain name, the product and service names associated with the Service(s), and other trademarks and service marks; (b) certain audio and visual information, documents, software and other works of authorship; (c) certain processes including, but not limited to, HealthStream's databases, questionnaires, market research procedures, tabulation procedures, creative processes, statistical methods, and production methods; and (d) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (collectively, "HealthStream IP") and that the HealthStream IP is covered by intellectual property rights owned or licensed by HealthStream (collectively, "HealthStream IP Rights"). Other than as expressly set forth in this Agreement, no license or other rights in or to the HealthStream IP or HealthStream IP Rights are granted to Customer, and all licenses and rights are expressly reserved.

**5.2 License Grant.** HealthStream grants Customer and its Users a worldwide, non-exclusive, non-transferable, non-sublicensable subscription based right to access and use the Service(s) in accordance with the terms of this Agreement.

**5.3 Restrictions.** Customer shall not (a) modify, copy or create derivative works based on the Service(s) or HealthStream IP; (b) create Internet "links" to or from the Online Service(s), or "frame" or "mirror" any content forming part of the Online Service(s), other than on Customer's own intranet; or (c) disassemble, reverse engineer, or decompile the Service(s) or HealthStream IP, or access it in order to build a similar or competitive product or service or copy any ideas, features, functions or graphics of the Service(s).

**5.4 Customer Data.** Customer shall provide HealthStream with data necessary to provide Users with full access to the Services. As between HealthStream and Customer, all data obtained by HealthStream from Customer and through the provision of the Service(s) (collectively, the "Customer Data") is owned exclusively by Customer. Customer grants HealthStream an unrestricted, royalty-free, irrevocable license to maintain and distribute aggregated compilations of Customer Data ("Aggregated Data") and to use such Aggregated Data for future studies and reports; provided, however, that the Aggregated Data will not reveal any personal information or the identity of Customer. HealthStream may distribute certain Customer Data to licensing and accreditation organizations for the benefit of Users. HealthStream will release the minimum data required to adequately credit Users for educational activities completed.

**5.5 Suggestions.** HealthStream shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Service(s) any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or its Users relating to the Service(s).

## 6. Confidentiality.

**6.1 Definition of Confidential Information.** As used in this Agreement, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed 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 including, without limitation, the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms under this Agreement), the Customer Data, the Service(s), the HealthStream IP, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for Customer Data) shall not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (d) is received from a third party without breach of any obligation owed to the Disclosing Party. HealthStream is aware that Customer is a government entity and is subject to the California Public Records Act, *Cal. Govt. Code §6250 et seq.*, the Brown Act, *Cal. Govt. Code §54950 et seq.*, and other laws pertaining to government entities.

**6.2 Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting the Confidential Information. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**6.3 Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 6, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin the acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

## 7. Warranties & Disclaimers.

### 7.1 Warranties.

(a) **General.** Each party represents and warrants that it has the legal power to enter into this Agreement. HealthStream represents and warrants that (i) it will provide the Service(s) in a manner consistent with general industry standards reasonably applicable to the provision of the Service; (ii) it owns or otherwise has sufficient rights to the Service(s) and the HealthStream IP to grant the rights and licenses granted in this Agreement; (iii) it will perform the Services in a skillful, professional, workmanlike and competent manner by qualified personnel; (iv) the Service(s) and HealthStream IP do not infringe any intellectual property rights of any third party. During the term of this Agreement, (i) the Service(s) shall perform materially in accordance with any applicable user guides or specifications; and (ii) the functionality of the Online Service(s) will not be materially decreased from that available as of the Effective Date. Customer agrees that its purchase of the Service(s) is not contingent upon the delivery of any future functionality or features nor is it dependent upon any oral or written public comments made by HealthStream with respect to future functionality or features. Notwithstanding the foregoing, subsequent updates, upgrades, enhancements to the Online Services made generally available to all subscribing customers will be made available to Customer at no additional charge.

(b) **Non-Exclusion.** HealthStream represents and warrants that HealthStream, its officers, directors, and employees (i) are not currently excluded, debarred, or otherwise ineligible to participate in the federal healthcare programs as defined in 42 U.S.C. §1320a-7b(f) (the "federal healthcare programs"), (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services and have not been excluded, debarred, or otherwise declared ineligible to participate in the federal healthcare programs, and (iii) are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in HealthStream being excluded from participation in the federal healthcare programs. This shall be an

ongoing representation and warranty and HealthStream shall immediately notify Customer of any change in the status of the representations and warranty set forth in this section.

**7.2 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, HEALTHSTREAM MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. HEALTHSTREAM SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **8. Mutual Indemnification.**

**8.1 Indemnification by HealthStream.** Subject to this Agreement, HealthStream shall defend, indemnify and hold Customer harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Customer by an unaffiliated third party alleging that the use of the Service(s) as contemplated under this Agreement infringes the intellectual property rights of such third party; provided, that Customer (a) promptly gives written notice of the Claim to HealthStream; (b) gives HealthStream sole control of the defense and settlement of the Claim (provided that HealthStream may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (c) provides to HealthStream, at HealthStream's cost, all reasonable assistance.

**8.2 Indemnification by Customer.** Subject to this Agreement, Customer shall defend, indemnify and hold HealthStream harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with Claims made or brought against HealthStream by an unaffiliated third party alleging that the Customer Data or Customer's use of the Service(s) (as opposed to the Service itself) infringes the intellectual property rights of, or has otherwise harmed, a third party; provided, that HealthStream (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases HealthStream of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

## **9. Limitation of Liability.**

**9.1 Limitation of Liability.** EXCEPT FOR LIABILITY ARISING UNDER SECTIONS 4 (PAYMENT OF FEES), 5.3 (RESTRICTIONS), OR 8 (INDEMNIFICATION), IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF \$100,000 OR THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER UNDER THIS AGREEMENT.

**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, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGE.

**9.3 Intentionally deleted.**

**9.4 WAIVER OF RIGHT TO JURY TRIAL.** EACH PARTY HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION OR LITIGATION IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY ORDER FORM UNDER THIS AGREEMENT.

## **10. Term & Termination.**

**10.1 Term of Agreement.** This Agreement commences on the Effective Date and, unless earlier terminated pursuant to the terms of this Agreement, continues until the later of the date when (a) all User subscriptions granted in accordance with this Agreement have expired

or been terminated and (b) no Service(s) is being provided by HealthStream.

**10.2 Term of User Subscriptions.** User subscriptions for Online Service(s) commence on the start date specified in the relevant Order Form and continue for the subscription term specified in the Order Form.

**10.3 Termination for Cause.** A party may terminate this Agreement for cause: (a) upon ninety (90) days written notice of a material breach to the other party if the breach remains uncured at the expiration of the cure period; or (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by Customer, HealthStream shall refund Customer any prepaid fees for Service(s) for the remainder of the User subscription term after the date of termination. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to HealthStream prior to the effective date of termination

**10.2 Surviving Provisions.** The following provisions shall survive any termination or expiration of this Agreement: Sections 4, 5 (excluding Section 5.2), 6, 7, 8, 9, 10 and 11.

## **11. General Provisions.**

**11.1 Relationship of the Parties; Publicity.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries to this Agreement. Neither party may issue press releases relating to this Agreement without the other party's prior written consent. Either party may include the name and logo of the other party in lists of customers or vendors in accordance with the other party's standard guidelines.

**11.2 Notices.** All notices required hereunder shall be in writing and shall be deemed to have been duly given upon receipt, and shall be either delivered in person, by registered or certified mail, postage prepaid, return receipt requested, or by overnight delivery service with proof of delivery. Notices to HealthStream shall be addressed to the attention of its Legal Department.

**11.3 Waiver and Cumulative Remedies; Severability.** 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 in this Agreement, the remedies provided in the Agreement are in addition to, and not exclusive of, any other remedies of a party at law or in equity. 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.

**11.4 Assignment.** Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement together with all rights and obligations under this Agreement, without consent of the other party, in connection with a merger, equity purchase, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**11.5 Intentionally deleted.**

**11.6 Entire Agreement.** This Agreement, including all exhibits and addenda to this Agreement and all Order Forms signed under this Agreement, constitutes 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 signed by both parties. In the event of any conflict between the provisions in this Agreement and any exhibit or addendum to this Agreement, or Order Form signed under this Agreement, the terms of the exhibit, addendum or Order Form

shall prevail to the extent of any inconsistency. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer 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. This Agreement may be executed in counterparts, which taken together shall form one legal instrument.

IN WITNESS WHEREOF, and intending to be legally bound hereby, each party hereto warrants and represents that this Agreement has been duly authorized by all necessary corporate action and that this Agreement has been duly executed by and constitutes a valid and binding agreement of that party.

**HealthStream, Inc.**

By: *Deborah B. Shapiro*  
Deborah B. Shapiro (May 27, 2021 15:17 EDT)

Print Name: Deborah B. Shapiro

Title: Senior Counsel

Date: May 27, 2021

**Kern County Hospital Authority**

By: \_\_\_\_\_

Print Name: Russell Bigler

Title: Chairman, Board of Governors

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

**REVIEWED ONLY  
NOT APPROVED AS TO FORM**

By *A. A. A.*  
**Legal Services Department**

**EXHIBIT A**

**Authorized Purchasing Entities**

To be attached listed by the Customer, these are entities authorized to enter into Order Forms and bind Customer under this Agreement.

# Order Form



**Submitted Date** February 3, 2021

**Order Number** ORD-0732129

**P.O. Number**

**Tax Exempt?** No

**Customer Information**

**Name** Kern Medical Center  
**Address** 1700 Mount Vernon Ave.  
Bakersfield, CA 93306

**Primary Contact**

**Name** Misty Dominguez  
**Email** misty.dominguez@kernmedical.com  
**Phone** 661.326.2822

**Billing Contact**

**Name** Misty Dominguez  
**Email** misty.dominguez@kernmedical.com  
**Phone** 661.326.2822

**HealthStream Information**

**Name** HealthStream, Inc.  
**Address** 500 11<sup>th</sup> Avenue North  
Suite 1000  
Nashville, TN 37203

**HealthStream Contact**

**Name** Shanti Gangadharan  
**Email** shanti.gangadharan@healthstream.com  
**Phone**

## ORDER DETAILS

Billing Frequency: UpFront				
Product	Term (Months)	Quantity	Unit Price	Total Price
myCE Individual	12	100	\$0.00	\$0.00
			<b>Subtotal:</b>	<b>\$0.00</b>

**Grand Total \$0.00**

## Product Specific Terms

### myClinicalExchange (Individual)

myClinicalExchange assists facilitators with the process of launching, educating, and management of students and instructors throughout the clinical placement process.

myClinicalExchange product features include:

- Using a single platform to manage multiple programs and placements
- Web-based training for healthcare organizations and academic institutions included at no additional cost
- Tracking of all placement requests in real-time
- Availability to view and approve placement requests
- The ability to differentiate preceptorships, internships, cohorts, volunteers, etc.

# Order Form



- The ability to customize online orientation and testing process
- The ability to customize assessments/surveys
- The ability to customize rotational compliance checklist by Program, Department, Unit, etc.
- Management of students' compliance status (checklist, documents, orientation, etc.)
- Receipt of contextual email alerts

## Minimum Technical Specifications

- Laptops, Desktops with Windows /MAC preferably most versions.
- Internet Explorer 11 and above, Google Chrome, and Firefox. Google Chrome is recommended.
- Internet connection with 1 Mbps and above.

## Payment Terms

The Customer will not pay HealthStream as the individual Users/instructors will pay the fees below directly to HealthStream at the following rates:

- Each Individual User will pay the following:
- 12 Month Subscription: \$39
- 24 Month Subscription: \$72
- 36 Month Subscription: \$99

Each Academic Instructor will pay the following:

- 12 Month Subscription: \$22

This Order Form, including all attachments and exhibits hereto, and the use of the Service(s) ordered shall be governed in all cases by the Master Services Agreement (the "Agreement" or "MSA") between Customer and HealthStream, Inc., as amended.

This Order Form is intended by both parties to run for the full term set forth for each Service in the Order Details table above, and the parties acknowledge they are aware of the current expiration date of this Order Form and the provisions for renewal and termination set forth in the Agreement. Third party courseware runs for the full term set forth herein and is not subject to any renewal provisions set forth in the Agreement. In the event the Agreement is terminated or expires prior to the expiration of the full term set forth above for each Service, the term of each Service license shall also expire at that time and the Customer will not recover any fees paid in advance for the Product(s) for any part of the term or quantity for that Product or those Products that go unused, except as otherwise provided in Section 10.3 of the Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, each party hereto warrants and represents that this Order Form has been duly authorized by all necessary corporate action and that this Order Form has been duly executed by and constitutes a valid and binding agreement of that party.

**Kern County Hospital Authority**

**HealthStream, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Russell Bigler

Print Name: \_\_\_\_\_

Print Title: Chairman, Board of Governors

Print Title: \_\_\_\_\_

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

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



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

June 16, 2021

**Subject:** Proposed Agreement with Sepideh Babaei, M.D., for professional medical services in the Department of Radiology

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

**Summary:**

Kern Medical is requesting your Board approve the proposed Agreement with Sepideh Babaei, M.D., a contract employee, for professional medical services in the Department of Radiology. Dr. Babaei has provided radiology services at Kern Medical since July 2018 as a contract employee.

Dr. Babaei's annual salary is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents reasonable fair market value compensation for the services provided. Dr. Babaei's compensation is comprised of (i) a base salary for teaching and administrative duties; and, (ii) payment for care of KMC patients; and, (iii) maintaining a median level (50th percentile) of worked relative value units; and, (iv) weekday and weekend coverage. Dr. Babaei will continue to receive the same complement of benefits, including eligibility to participate in the physicians' pension plan, health care coverage, vacation and sick leave, education days and CME reimbursement, and the option to elect voluntary benefits at no cost to Kern Medical.

Therefore, it is recommended that your Board approve the Agreement with Sepideh Babaei, M.D. for professional medical services in the Department of Radiology, for the period July, 7 2021 through July 6, 2024, in an amount not to exceed \$1,950,000, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES  
CONTRACT EMPLOYEE  
(Kern County Hospital Authority – Sepideh Babaei, M.D.)**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Sepideh Babaei, M.D. (“Physician”).

**I.  
RECITALS**

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

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

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

(d) Authority currently contracts with Physician as a contract employee for the provision of professional medical services in the Department and teaching services to resident physicians employed by Authority (Agt. #20518, dated July 7, 2018), for the period July 7, 2018 through July 6, 2021; and

(e) Each party expressly understands and agrees that Agt. #20518 is superseded by this Agreement as of the Commencement Date;

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

**II.  
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall be for a period of three (3) years, commencing as of July 7, 2021 (the “Commencement Date”), and shall end July 6, 2024 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional terms, but only upon mutual written agreement of the parties. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

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

3. **Representations and Warranties.** Physician represents and warrants to Authority and KMC, upon execution and throughout the Term of this Agreement, as follows: (i) Physician is not bound by any agreement or arrangement which would preclude Physician from entering into, or from fully performing the services required under this Agreement; (ii) Physician’s license to practice medicine in the state of California or in any other jurisdiction has never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to the terms of probation or other restriction; (iii) Physician’s medical staff privileges at any health care facility have never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction; (iv) Physician holds a valid Controlled Substance Registration Certificate issued by the Drug Enforcement Administration that has never been revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (v) Physician is not currently and has never been an Ineligible Person<sup>1</sup>; (vi) Physician is not currently the subject of a disciplinary or other proceeding or action before any governmental, professional, medical staff or peer review body; and (vii) Physician has, and shall maintain throughout the term of this Agreement, an unrestricted license to practice medicine in the state of California and staff membership and privileges at KMC.

4. **Obligations of Physician.**

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

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

4.3 **Qualifications.**

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

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

4.3.2 Board Certification. Physician shall be board certified by the American Board of Radiology in diagnostic radiology-general and maintain such certification at all times during the Term of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

## 5. Compensation Package.

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

5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$560,000 per year, to be paid as follows: Physician shall be paid \$21,538.46 biweekly not to exceed \$560,000 annually. Physician understands and agrees that (i) the annual salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") for specialty and (ii) Physician will maintain a median level (50th percentile) of worked relative value units ("Worked RVU") based on the current MGMA Survey and fulfill all the duties set forth in Exhibit "A" during the term of this Agreement.

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

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

5.2 Additional Shifts. Authority shall pay Physician for additional shifts (excludes nonproductive time<sup>2</sup>; diagnostic imaging only) as follows:

5.2.1 Weekday Coverage. Physician shall be paid a fixed fee of \$1,700 for every weekday shift (Monday-Friday) that exceeds 17 10-hour shifts per month.

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<sup>2</sup> Nonproductive time is defined to include, without limitation, holidays, education leave, vacation, and sick leave.

5.2.2 Weekend Coverage. Physician shall be paid a fixed fee of \$1,900 for every weekend shift (Saturday and Sunday) that exceeds 17 10-hour shifts per month.

5.2.3 Taxes. All payments made by Authority to Physician for additional shifts shall be subject to all applicable federal and state taxes and withholding requirements.

### 5.3 Retention Bonus.

5.3.1 Bonus. Physician shall be paid an annual retention bonus in the amount of \$10,000, less all applicable federal and state taxes and withholdings, payable within 30 days of the end of each Employment Year. If the conditions for Physician to receive the retention bonus are met, the retention bonus would become payable to Physician on July 7, 2022, for the previous Employment Year, and each July 7 thereafter.

5.3.2 Repayment. In the event that Physician voluntarily terminates her employment with Authority for any reason whatsoever during an Employment Year in which a retention bonus is paid, Physician will repay to Authority an amount equal to \$10,000 multiplied by the fraction, the numerator of which is 365 less the number of days during which Physician was employed by Authority, and the denominator of which is 365. Such repayment shall be made by Physician in full within 30 days of the effective date of her termination of employment with Authority.

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

### 5.4 Professional Fee Billing.

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

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

5.5 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$1,950,000 over the three-year Term of this Agreement.

6. **Benefits Package.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. **Authority to Incur Financial Obligation.** It is understood that Physician, in her performance of any and all duties under this Agreement, has no right, power or authority to bind Authority to any agreements or undertakings.
10. **Captions and Interpretation.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.
11. **Choice of Law/Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the state of California, with venue of any action relating to this Agreement in the County of Kern, state of California.
12. **Compliance with Law.** Physician shall observe and comply with all applicable Authority, local, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which is hereby made a part hereof and incorporated herein by reference.
13. **Confidentiality.** Physician shall maintain confidentiality with respect to information that she receives in the course of her employment and not use or permit the use of or disclose any such information in connection with any activity or business to any person, firm or corporation whatsoever, unless such disclosure is required in response to a validly issued subpoena or other process of law or as required by Government Code section 6250 et seq. Upon completion of the Agreement, the provisions of this paragraph shall continue to survive.
14. **Conflict of Interest.** Physician covenants that she has no interest and that she will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law (Gov. Code, § 81000 et seq.) or that would otherwise conflict in any manner or degree with the performance of her services hereunder. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, Authority may immediately terminate this Agreement by giving written notice thereof.
15. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
16. **Dispute Resolution.** In the event of any dispute involving the enforcement or interpretation of this Agreement or any of the rights or obligations arising hereunder, the parties shall first attempt to resolve their differences by mediation before a mediator of their mutual selection. If the parties are, after mutual good faith efforts, unable to resolve their differences by mediation, the dispute shall be submitted for trial before a privately compensated temporary judge appointed by the Kern County Superior Court pursuant to Article VI, section 21 of the California Constitution and Rules 3.810 through 3.830 of the California Rules of Court. All costs of any dispute resolution procedure shall be borne equally by the parties.

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

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

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

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

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

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

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

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

Notice to Physician:

Sepideh Babaei, M.D.  
901 Mohawk Street, Apt. 53  
Bakersfield, California 93309

Notice to Authority:

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

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

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

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

28. **Termination.**

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

28.2 **Immediate Termination.** Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events: (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or regulatory rule or regulation or

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

29. **Effect of Termination.**

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

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

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

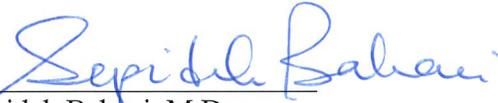
29.4 **No Hearing Rights.** Termination of this Agreement by Authority or KMC for any reason shall not provide Physician the right to a fair hearing or the other rights more particularly set forth in the KMC medical staff bylaws.

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

[Signatures follow on next page]

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

PHYSICIAN

By   
Sepideh Babaei, M.D.

KERN COUNTY HOSPITAL AUTHORITY

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

APPROVED AS TO CONTENT:

By \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

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

Agreement.Babaei.051721

**EXHIBIT “A”**  
**JOB DESCRIPTION**  
**Sepideh Babaei, M.D.**

**Position Description:** Reports to Chair, Department of Radiology; serves as full-time faculty member in the Department; provides diagnostic radiology and special procedures with an emphasis on musculoskeletal imaging; works collaboratively with the Department manager to ensure efficient workflow and adequacy of support equipment; work effort will be at a minimum 2,500 hours annually in teaching, administrative, and clinical activity; works collaboratively with clinic staff as well as hospital administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience.

**Essential Functions:**

1. Clinical Responsibilities.

- Provide radiology services on-site at KMC and in accordance with generally accepted professional standards
- Provide professional services for all patients who present to KMC for treatment
- Participate in special procedures and in rotations in the various departmental image reading queues
- Provide weekday shift coverage, as assigned by the Department chair
- Provide weekend shift coverage, as assigned by the Department chair
- Provide call coverage weekday nights, as assigned by the Department chair
- Provide 24-hour weekend call coverage, as assigned by the Department chair
- Provide first call and backup call for vascular and interventional radiology, as assigned by the Department chair
- Carry a pager when on call and respond to call within 10 minutes

2. Administrative Responsibilities.

- Assist in clinical and administrative integration efforts across KMC as appropriate for the department, assisting with proper program planning, physician recruitment, faculty development, resource allocation, analysis, communication and assessment
- Gather data through best practices and collaborate with other members of the Department to recommend services that will increase productivity, minimize duplication of services, increase workflow efficiency, and provide the highest quality of care to KMC patients
- Support the Department Chair to develop monitoring tools to measure financial, access, quality and satisfaction outcomes
- Participate in the preparation, monitoring, review, and performance of clinical activity in the Department
- Participate in the quality improvement and risk management activities, including peer review and quality control functions as assigned to services in the Department
- Complete medical records in a timely fashion and work to improve the quality, accuracy, and completeness of documentation

- Work collaboratively with other clinical departments to further develop a cohesive and collaborative environment across departments with a focus of enhancing access to patient care for inpatient and outpatient services
- Follow and comply with the medical staff bylaws, rules, regulations, and policies, Department rules, policies, and procedures, and Authority and KMC policies and procedures
- Attend department staff meetings and the annual medical staff meeting
- Attend and actively participate in medical staff and hospital committees, as assigned
- Participate in other clinical, academic, and administrative activities, as assigned by the Department chair
- Participate in the training of residents and medical students, including the review of active and past case material as required for patient care
- Participate in proficiency testing and performance improvement programs as required
- Pursue optimized musculoskeletal imaging services, development of a comprehensive musculoskeletal imaging program, and work cooperatively with other physician specialties
- Participate in additional administrative responsibilities as required

**Employment Standards:**

Completion of an accredited residency program in diagnostic radiology; one (1) year of post-residency experience in diagnostic radiology

AND

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

AND

Certification by the American Board of Radiology in diagnostic radiology-general

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

[Intentionally left blank]

**EXHIBIT "B"**  
**AUTHORIZATION TO RELEASE INFORMATION**

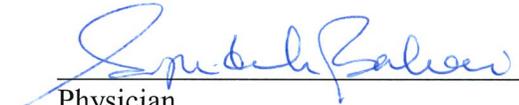
**[See attached]**

**AUTHORIZATION TO RELEASE INFORMATION**

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

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

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

  
\_\_\_\_\_  
Physician

05/18/21  
\_\_\_\_\_  
Date



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

June 16, 2021

**Subject:** Proposed Amendment No. 3 to Agreement 2016-041 with the County of Kern, as represented by the Administrative Office, Kern County Sheriff's Office, and Kern County Probation Department

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

**Summary:**

Kern Medical is requesting that your Board approve proposed Amendment No. 3 to the Agreement with the County of Kern, as represented by the Administrative Office, Kern County Sheriff's Office, and Kern County Probation Department, for the provision of medical services to adult inmates and juvenile detainees at county-owned and –operated jail facilities. The Authority, through Kern Medical, has provided these services since July 1, 2016. The Agreement is set to expire by its terms on June 30, 2021.

Kern Medical provides correctional medical services on behalf of the Kern County Sheriff's Department and the Kern County Probation Department, to meet the county's obligation to provide healthcare services under Titles 15 and 24 of the California Code of Regulations. The County reimburses the Authority for such services based on a mutually agreed upon annual budget. The proposed Amendment extends the term of the Agreement for one year from July 1, 2021 through June 30, 2022, unless the Board of Supervisors selects a replacement provider during that time frame.

Therefore, it is recommended that your Board approve Amendment No. 3, extending the term of the Agreement for one year from July 1, 2021 through June 30, 2022, and authorize the Chairman to sign.

**AMENDMENT NO. 3  
TO  
CORRECTIONAL MEDICINE AGREEMENT  
(County of Kern – Kern County Hospital Authority)**

This Amendment No. 3 to the Correctional Medicine Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, between County of Kern, a political subdivision of the state of California (“County”), on behalf of County Administrative Office (“CAO”), Kern County Sheriff’s Office and Kern County Probation Department (collectively “Responsible County Departments”), and Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”).

**RECITALS**

(a) County and Authority have heretofore entered into a Correctional Medicine Agreement (Kern County Agt. #718-2016, dated June 22, 2016), Amendment No. 1 (Kern County Agt. #148-2019, dated March 26, 2019), and Amendment No. 2 (Kern County Agt. #446-2020, dated July 14, 2020) (the “Agreement”), for the period July 1, 2016 through June 30, 2021, whereby Authority through KMC provides health care services to adult inmates and juvenile wards under the responsibility of Responsible County Departments; and

(b) The Agreement relates solely to services provided by KMC at County-owned and -operated Adult Jail Facilities, which include Central Receiving Facility, Lerdo Pre-Trial Facility, Male Minimum Facility, Female Minimum Facility, and Maximum-Medium; and Juvenile Detention Facilities and Programs, which include Kern Crossroads Facility, Juvenile Hall and incorporated rehabilitative programs, and Camp Erwin Owen; 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, 2021;

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 shall be effective as of July 1, 2016, and remain in effect through June 30, 2022, unless the Kern County Board of Supervisors has selected a replacement provider of healthcare services to adult inmates and juvenile wards under the responsibility of Responsible County Departments.”

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

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

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

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

[Signatures follow on next page]

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

COUNTY OF KERN

KERN COUNTY HOSPITAL AUTHORITY

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

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

APPROVED AS TO CONTENT:  
ADMINISTRATIVE OFFICE

APPROVED AS TO CONTENT:

By \_\_\_\_\_  
Ryan J. Alsop  
Chief Administrative Officer

By \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

SHERIFF'S OFFICE

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

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

By *Karen S. Garner*  
Vice President & General Counsel  
Kern County Hospital Authority

PROBATION DEPARTMENT

By \_\_\_\_\_  
TR Merickel  
Chief Probation Officer

APPROVED AS TO FORM:  
OFFICE OF COUNTY COUNSEL

By \_\_\_\_\_  
Chief Deputy



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

June 16, 2021

**Subject:** Proposed Amendment No. 2 to Agreement 038-2018 with the County of Kern, as represented by the Administrative Office and Kern County Sheriff's Office

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

**Summary:**

Kern Medical is requesting that your Board approve proposed Amendment No. 2 to the Agreement with the County of Kern, as represented by the Administrative Office and Kern County Sheriff's Office, for the provision of medical services to adult inmates detained in the Kern Justice Facility.

On May 12, 2018, the Kern County Sheriff's Office opened the Kern County Justice Facility. Kern County Hospital Authority entered into an Agreement with the County initially for the period May 12, 2018 through June 30, 2020. Amendment No. 1 extended the term of the Agreement for one year from July 1, 2020 through June 30, 2021.

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

The proposed Amendment No. 2 extends the term of the Agreement for a period of one year from July 1, 2021 through June 30, 2022, unless the Board of Supervisors selects a replacement provider during that time frame.

Therefore, it is recommended that your Board approve Amendment No. 2, extending the term of the Agreement for one year from July 1, 2021 through June 30, 2022, 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 \_\_\_\_\_, 2021, 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 a Justice Facility Medical Services Agreement (Kern County Agt. #147-2019, dated March 26, 2019) and Amendment No. 1 (Kern County Agt. # 445-2020 dated July 14, 2020) (the “Agreement”), for the period May 12, 2018, through June 30, 2021, whereby Authority through KMC provides health care services to in-custody adult inmates housed in Kern County Justice Facility; and

(b) The Agreement relates solely to services provided by KMC to in-custody adult inmates housed in Kern County Justice 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, 2021.

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 May 12, 2018, and remain in effect through June 30, 2022, unless the Kern County Board of Supervisors has selected a replacement provider of healthcare services to adult inmates under the responsibility of Sheriff.”

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

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

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

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

[Signatures follow on next page]

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

COUNTY OF KERN

KERN COUNTY HOSPITAL AUTHORITY

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

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

APPROVED AS TO CONTENT:  
ADMINISTRATIVE OFFICE

APPROVED AS TO CONTENT:  
KERN MEDICAL CENTER

By \_\_\_\_\_  
Ryan J. Alsop  
Chief Administrative Officer

By \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

SHERIFF'S OFFICE

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

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

By *Karen S. James*  
Vice President & General Counsel  
Kern County Hospital Authority

APPROVED AS TO FORM:  
OFFICE OF COUNTY COUNSEL

By \_\_\_\_\_  
Chief Deputy

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



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

June 16, 2021

**SUBJECT:** Proposed Amendment No. 1 to Agreement 022-2021 with Acute Care Surgery Medical Group, Inc., an independent contractor

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

**Summary:**

Kern Medical requests your Board approve the Amendment No. 1 to Agreement 022-2021 with Acute Care Surgery Medical Group, Inc. ("Group"), for professional medical and administrative services in the General Surgery Department.

Kern Medical has had a current agreement in place with this Group since November 2018 for trauma and acute care surgery coverage. On April 21, 2021, your Board approved an agreement for this Group to provide support to Kern Medical to re-establish the general surgery residency. This proposed amendment is for the recruitment in the subspecialty of vascular surgery to provide emergency vascular surgery coverage and further develop vascular surgical services.

Therefore, it is recommended that your Board approve the Agreement with Acute Care Surgery Medical Group, Inc., for medical and administrative services in the General Surgery Program from July 1, 2021 through June 30, 2025, increasing the maximum payable by \$2,968,757, from \$18,394,210 to \$21,362,967, to cover the cost of additional services, and authorize the Chairman to sign.

## **AMENDMENT NO. 1 TO GENERAL SURGERY AND RESIDENCY PROGRAM DEVELOPMENT AND MANAGEMENT AGREEMENT**

This Amendment No. 1 to General Surgery and Residency Program Development and Management Agreement (“Amendment”) is entered into effective as of July 1, 2021, by and between **Kern County Hospital Authority** (“Authority”), and **Acute Care Surgery Medical Group, Inc.** (“Medical Group”).

### **RECITALS**

A. Authority and Medical Group entered in that certain General Surgery and Residency Program Development and Management Agreement (“Agreement”) which will become effective on July 1, 2021.

B. The parties now desire to amend the Agreement in order to increase the number of physicians to be recruited by Medical Group, and to adjust the compensation accordingly.

NOW, THEREFORE, the parties hereby agree as follows:

1. **Section 5.1(b)**. Section 5.1(b) of the Agreement shall be replaced in its entirety with the following:

“[5.1(b)]. **Incentive Compensation**. Medical Group shall have the opportunity to earn additional compensation for achieving certain incentives (“Incentive Compensation”). For the first and second Contract Years (as defined below) of this Agreement, Hospital shall pay Medical Group the sum of Eleven Thousand Dollars (\$11,000.00) for each Physician FTE provided by Medical Group as of the final day of the applicable Contract Year. The Residency Program Director shall be considered as a Physician FTE for purposes of calculating Incentive Compensation during the first and second Contract Years, and total Incentive Compensation shall not exceed Sixty-Six Thousand Dollars (\$66,000.00) during any Contract Year. Prior to the second anniversary of the Effective Date, and prior to each subsequent Effective Date anniversary thereafter, the parties shall mutually determine the incentives that Medical Group must achieve in order to earn Incentive Compensation for the following Contract Year and amend this Agreement accordingly. If the parties are unable to agree upon the incentives that Medical Group must achieve, then the incentives in place at such time shall continue until the parties are able to agree on new incentives and amend this Agreement accordingly. A “Contract Year” shall mean the twelve (12) month periods commencing on the Effective Date, and each anniversary thereof. Medical Group shall send Hospital an invoice for Incentive Compensation earned within fifteen (15) days after the end of the month during which the Effective Date anniversary occurs, and Incentive Compensation shall be due and payable upon Hospital’s receipt of such invoice.”

2. **Section 5.10**. Section 5.10 of the Agreement shall be replaced in its entirety with the following:

“5.10 **Maximum Payable.** The maximum payable under this Agreement shall not exceed Twenty-One Million Three Hundred Sixty-Two Thousand Nine Hundred Sixty-Seven Dollars (\$21,362,967) over the four-year term of this Agreement.”

3. **Exhibit 2.1.** Exhibit 2.1 shall be replaced in its entirety with the following:

.....

**“EXHIBIT 2.1”**

**GENERAL SURGERY PROGRAM SERVICES**

Medical Group shall develop and manage a General Surgery Program at Hospital that will drive and support community engagement, and that will provide the subspecialty services necessary to attract and maintain a wide breadth of patients that will ultimately allow for the reestablishment of the Residency Program.

1. **Vascular Surgery Services.** Beginning on the Effective Date, Medical Group shall begin recruitment of 2.0 Physician FTEs in the subspecialty of vascular surgery (“Vascular Surgeons”). The Vascular Surgeons shall (i) provide general and subspecialty support in the subspecialty of vascular surgery, (ii) provide forty-six (46) weeks per year of clinic support, (iii) perform all necessary elective and emergent operations for the vascular surgery service line, and, in conjunction with the trauma and acute care surgery service lines already established by Medical Group at Hospital, (iv) provide call coverage in the Subspecialty Service Lines on a 24 hours per day, 7 days per week, 365 days per year basis. Medical Group anticipates that the first Vascular Surgeon will begin providing services approximately two (2) months after the Effective Date, and that the second Vascular Surgeon will begin providing services approximately six (6) months after the Effective Date.

2. **Determine the Scope of the General Surgery Program.** Beginning on the Effective Date, Medical Group shall review the General Surgery Program’s activities and ensure that inclusion of the Subspecialty Service Lines (as defined below) is sufficient to (i) provide the necessary patient care services to Hospital’s community, and to (ii) meet the Accreditation Council for Graduate Medical Education’s (“ACGME”) requirement that accredited surgery programs be conducted in institutions that routinely care for patients with a broad spectrum of surgical diseases and conditions. The parties currently anticipate the Subspecialty Service Lines will be colorectal surgery, minimally invasive surgery, and surgical oncology (including breast); provided, however, that different Subspecialty Service Lines may be provided depending upon the results of Medical Group’s review of the current General Surgery Program.

3. **Physician Recruitment and Management of Subspecialty Service Lines.** Upon completion of Medical Group’s review of the General Surgery Program, Medical Group shall begin recruitment of 1.0 Physician FTEs in each of the Subspecialty Service Lines except where Hospital may already have such general surgeon or subspecialty surgeon employed. The Physicians shall (i) provide general and subspecialty support in their respective Subspecialty

Service Lines, (ii) provide forty-six (46) weeks per year of clinic support, (iii) perform all necessary elective operations for the service line, and, in conjunction with the trauma and acute care surgery service lines already established by Medical Group at Hospital, (iv) provide call coverage in the Subspecialty Service Lines on a 24 hours per day, 7 days per week, 365 days per year basis. Medical Group anticipates that the first Physician will begin providing services approximately six (6) months after the Effective Date, and that one Physician FTE in each Subspecialty Service Line shall be in place twelve (12) months after the Effective Date.

4. **Residency Program Director Recruitment.** After Medical Group’s review of the General Surgery Program has concluded, Medical Group shall begin recruitment of the Residency Program Director. Medical Group anticipates the Residency Program Director will be in place approximately twelve (12) months after the Effective Date. The duties of the Residency Program Director are specifically described in **Exhibit 2.5** to this Agreement.

5. **Reestablish Surgical Residency Program.** Medical Group shall ensure the Residency Program meets the requirements found in the ACGME publication “Program Requirements for Graduate Medical Education in General Surgery,” published July 1, 2020 (the “ACGME Requirements”) that relate to education and service. Medical Group shall also assist Hospital to meet the ACGME Requirements that relate to facility/sponsoring institution expectations. In accordance with ACGME Requirements and Association of Program Directors in Surgery (“APDS”) standards, Medical Group shall design a curriculum including skills lab training, didactic sessions, core competency training, SCORE participation, and Fundamentals of Laparoscopic Surgery, as well as all additional necessary clinical training. Medical Group shall apply for ACGME reaccreditation at a time to be determined by Medical Group and Hospital; the parties currently anticipate such application for reaccreditation to be submitted approximately twenty-four (24) months after the Effective Date of this Agreement.”



4. **Same Terms and Conditions.** All other terms and conditions of the Agreement shall remain unchanged, and except as expressly modified by this Amendment, the Agreement shall remain in full force and effect. This Amendment may be executed by the parties in any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

5. **Effective Date.** This Amendment shall be effective as of July 1, 2021.

*[signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below to be effective as of the Effective Date.

**AUTHORITY:**

Kern County Hospital Authority

By: \_\_\_\_\_  
Name: Russell E. Bigler  
Title: Chairman, Board of Governors

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

**MEDICAL GROUP:**

Acute Care Surgery Medical Group, Inc.

DocuSigned by:  
*Lynette A. Scherer, M.D.*  
By: \_\_\_\_\_  
Name: Lynette A. Scherer, M.D.  
Title: President and CEO

Date: 6/9/2021

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Name: Russell V. Judd  
Title: Chief Executive Officer

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

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By: \_\_\_\_\_  
Name: Karen S. Barnes  
Title: Vice President & General Counsel

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



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

June 16, 2021

**SUBJECT:** Proposed Agreement with Acute Care Surgery Medical Group, Inc., an independent contractor

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

**Summary:**

Kern Medical requests your Board approve the Agreement with Acute Care Surgery Medical Group, Inc. ("Group"), for professional medical and administrative services in the General Surgery Department for non-urgent general surgery coverage.

Kern Medical has had a current agreement in place with this Group since November 2018 for trauma and acute care surgery coverage. Acute Care Surgery Medical Group will provide professional medical services to non-urgent general surgery patients as well as providing call coverage for non-urgent general surgical cases that arise among Kern Medical's inpatient population; perform scheduled non-urgent general surgical procedures in the Hospital's operating room; and treat patients with potential non-urgent general surgical issues that present to Kern Medical's outpatient clinics.

Therefore, it is recommended that your Board approve the Agreement with Acute Care Surgery Medical Group, Inc., for professional medical and administrative services in the General Surgery Program from July 1, 2021 through June 30, 2024, in an amount not to exceed \$750,000, and authorize the Chairman to sign.

## NON-URGENT GENERAL SURGERY COVERAGE AGREEMENT

This Non-Urgent General Surgery Coverage Agreement (“Agreement”) is effective as of July 1, 2021, (the “Effective Date”), by and between **Kern County Hospital Authority** (“Authority”), and **Acute Care Surgery Medical Group, Inc.** (“Medical Group”).

### RECITALS

A. Authority is a local unit of government, which owns and operates Kern Medical Center (“Hospital”), an acute care general hospital located in Bakersfield, California. Hospital desires to expand the ability of its general surgery program (“General Surgery Program”) to provide non-urgent general surgery services in order to increase the quality and availability of surgical services provided to patients in Hospital’s community. References to Hospital in this Agreement shall, where appropriate, also refer to Authority.

B. Medical Group is a professional corporation that contracts with physicians (“Physician” or “Physicians”) who are duly licensed to practice medicine in the state of California, experienced in non-urgent general surgery (the “Specialty”), and qualified to provide the non-urgent general surgery services required by Hospital. Medical Group is managed by Surgical Affiliates Management Group, Inc. (“Manager”), which as Manager, shall have access to Medical Group information as necessary for operational purposes on Medical Group’s behalf.

D. Hospital and Medical Group recognize the need for quality treatment, care, and services for Hospital’s general surgery patients, which can be realized through the provision of non-urgent general surgery coverage services (“Non-Urgent General Surgery Coverage Services”).

E. Authority wishes to contract with Medical Group, and Medical Group wishes to contract with Authority, for provision of Non-Urgent General Surgery Coverage Services, upon the terms and conditions set forth herein.

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

### **AGREEMENT**

#### **SECTION 1. SUMMARY OF TERMS**

**1.1 Effective Date:** This Agreement shall become effective on July 1, 2021 (the “Effective Date”).

**1.2 Expiration Date:** This Agreement shall expire on June 30, 2024.

**1.3 Compensation for Non-Urgent General Surgery Coverage Services:** See Section 5.1(a)(1).

**1.4 Medical Group's Tax I.D. Number:**  
26-1491885

**1.5 Medical Group's Address:**  
2450 Del Paso Road, Suite 250  
Sacramento, CA 95834

**1.6 Hospital's Address:**  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306

## **SECTION 2. MEDICAL GROUP'S SERVICES**

**2.1 Non-Urgent General Surgery Coverage Services.** Medical Group shall provide coverage services in the Specialty by Physicians on a per diem basis, as specifically described in **Exhibit 2.1**, attached hereto.

**2.2 Professional Qualifications.** Each Physician providing Non-Urgent General Surgery Coverage Services shall at all times:

- (a) Hold an unrestricted license to practice medicine in the state of California and be competent to provide the services required by this Agreement;
- (b) Be permitted to prescribe medications and hold a valid Drug Enforcement Agency permit;
- (c) Hold a certificate or evidence of eligibility for certification in the relevant specialty by the American Board of Surgery and/or the American Osteopathic Board of Surgery, or be so certified within three (3) years of eligibility;
- (d) Be a member in good standing of Hospital's Medical Staff in accordance with Hospital's medical staff bylaws with applicable unrestricted clinical privileges in the specialty and be subject to all of the attendant responsibilities and conditions of such membership;
- (e) Meet all position requirements as established by Medical Group and Hospital;
- (f) Be eligible at all times to provide services to beneficiaries under the Medicare and Medicaid programs or any other federal healthcare reimbursement programs, qualify for and maintain status as a participating physician under Medicare and Medicaid, qualify for Medicare risk-based and cost-based managed care plans, and execute and maintain on file with the appropriate Medicare and Medicaid carriers a valid agreement to accept assignment for professional medical services to individual patients; and
- (g) Not be in residency training, except as otherwise agreed upon in writing by the parties.

**2.3 Representations and Warranties.** Medical Group represents and warrants to Hospital that:

(a) Neither Medical Group nor any Physician is bound by any agreement or arrangement which would preclude Medical Group from entering into this Agreement, or Medical Group or any Physician from fully performing the Non-Urgent General Surgery Coverage Services, or any other services under this Agreement;

(b) No Physician's license to practice medicine in the state of California or in any other jurisdiction has ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way for medical disciplinary cause or reason;

(c) No Physician's medical staff privileges at any health care facility have ever been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction for medical disciplinary cause or reason;

(d) No Physician or any other employee of Medical Group has ever been convicted of an offense related to health care, or listed by the Medicare or Medicaid programs or any other federal or state agency as debarred, excluded or otherwise ineligible for any federal or state program participation;

(e) Medical Group has no information that would reasonably indicate that any Physician is not able to perform any of the services required under this Agreement; and

(f) Notwithstanding the foregoing representations and warranties made to Hospital in this Section 2.3, Medical Group may engage the services of a Physician who fails to meet all of the criteria contained herein, so long as (i) the Physician's record substantially complies with this Section 2.3, and (ii) so long as Hospital approves, in writing, of Medical Group's decision to engage the Physician.

**2.4 Notice of Failure to Meet Professional Qualifications.** Medical Group shall promptly notify Hospital if Medical Group becomes aware of any event causing or likely to cause a failure by any Physician to meet the requirements set forth in Section 2.2 (Professional Qualifications) and Section 2.3 (Representations and Warranties) hereof, and any of the following:

(a) Any investigation of any Physician or disciplinary proceeding against any Physician by a state licensing board or any governmental agency with jurisdiction over federal health care programs (e.g., Medicare or Medicaid);

(b) Any malpractice action against any Physician or other action against any Physician in connection with such Physician's administrative or professional services;

(c) Any investigation of any Physician or disciplinary action against any Physician by a hospital medical staff, other facility staff, managed care organization, Independent Practice Association, or any other professional organization relating to the practice of medicine by such Physician; or

(d) Any other material breach of the terms of this Agreement.

**2.5 Working Cooperatively with Others.** Physicians shall at all times work cooperatively with others toward enhancing the quality of patient care. Physicians shall refrain from engaging in behavior that is professionally inappropriate toward staff or patients, or is otherwise disruptive to Hospital or the workplace setting.

**2.6 Compliance with Rules and Laws.** Medical Group and Physicians will provide services in accordance with Hospital's standards of quality and efficiency and will comply with all applicable laws, statutes, ordinances, rules, regulations and standards of any governmental authority having either mandatory or voluntary jurisdiction over Hospital, including but not limited to The Joint Commission, and with the bylaws, rules, regulations and policies of Hospital, Hospital's Medical Staff, and any duly authorized committee thereof. Medical Group and Physicians shall also adhere to and comply with Hospital's utilization management, quality assurance, risk management, peer review and credentialing activities, programs, policies and procedures. Notwithstanding anything contained herein to the contrary, the parties understand and agree that all decisions regarding a Physician's medical practice will be based solely upon such Physician's professional medical judgment and will be made in the best interests of such Physician's patients.

**2.7 Corporate Compliance Program.** Medical Group and each Physician shall comply with Hospital's corporate compliance program. Medical Group and Physicians shall cooperate with any corporate compliance audits, reviews and investigations that relate to Medical Group or any Physician and/or any of the services provided by Medical Group or any Physician under this Agreement. Subject to request by Hospital, such cooperation shall include, without limitation, the provision of any and all documents and/or information related to Non-Urgent General Surgery Coverage Services provided by Medical Group or Physicians under this Agreement.

**2.8 Quality Improvement and Risk Management.** Medical Group and Physicians shall participate in the quality improvement, utilization review and risk management programs of Hospital, and shall cooperate with any related audits, reviews or investigations.

**2.9 Use of Hospital Facilities.** No part of Hospital's premises shall be used at any time by Medical Group or any Physician for purposes other than the provision of Non-Urgent General Surgery Coverage Services pursuant to the terms of this Agreement, except as agreed to under a separate lease arrangement with Hospital or as appropriate by virtue of a Physician's membership on the Hospital Medical Staff and exercise of the Physician's clinical privileges.

**2.10 Expenses.** Neither Medical Group nor any Physician shall incur any financial obligation on behalf of Hospital without Hospital's prior written consent, which consent shall be in Hospital's sole and absolute discretion. Except as otherwise specifically provided in this

Agreement, Hospital shall have no responsibility for the following: (a) Physician compensation and benefits; (b) professional license fees and professional association membership fees and dues; (c) professional conventions and meetings; or (d) any compensation attributable to any employees, subcontractors, or back-up physicians engaged by Medical Group or a Physician.

**2.11 Expert Witness Conflict of Interest.** Neither Medical Group nor any Physician shall accept any consulting assignment or otherwise contract, agree or enter into any engagement to provide expert testimony, evaluation or other services on behalf of a plaintiff in connection with any claim asserting negligence, malpractice or professional liability on the part of Hospital or any other hospital or health care facility owned or operated by, or affiliated with Hospital, or any employee of Hospital or such other hospital or health care facility if the claim relates to the acts or omissions of Hospital or such employee within the scope of such employee's employment. Notwithstanding the foregoing, nothing herein shall prevent Medical Group and/or any Physician from testifying as a factual witness in an action pursuant to a subpoena or other court order.

**2.12 Anti-Referral Laws.** Nothing in this Agreement, nor any other written or oral agreement, or any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business between Medical Group or any Physician and Hospital. This Agreement is not intended to influence Medical Group's or any Physician's judgment in choosing the medical facility appropriate for the proper care and treatment of Hospital's patients, or restrict any Physician from establishing medical staff membership or clinical privileges at any other healthcare facility.

**2.13 Non-Discrimination.** Neither Medical Group nor any Physician will discriminate against any Hospital patient by refusing to provide any service or privilege offered to or enjoyed by the general public because of race, religion, color, age, creed, ancestry, national or ethnic origin, political opinion, sex, disability, marital status, sexual orientation, citizenship, medical condition, insurance status, economic status, ability to pay for medical services or any other basis protected by law. Medical Group and Physicians will treat all patients, including those patients who have no insurance and are deemed by Hospital to be unable to pay for medical services provided.

**2.14 Immigration Compliance.** Medical Group shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified, and shall provide Hospital with a copy of such verification required in 8 USCA section 1324a. Medical Group agrees to indemnify, defend, and hold harmless Hospital, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Medical Group's failure to comply with this Section 2.14.

**2.15 Cost Control.** Medical Group shall monitor and facilitate controlling the expenses of providing Non-Urgent General Surgery Coverage Services in order to provide clinically appropriate, high quality, cost-effective service.

**2.16 EMTALA.** Medical Group and Physicians shall at all times comply with the Emergency Medical Treatment and Active Labor Act (“EMTALA”) and other state and federal laws and regulations governing the responsibility of Medical Group with respect to patients to whom emergency services are provided at Hospital.

### **SECTION 3. HOSPITAL FACILITIES AND SERVICES**

**3.1 Space.** Hospital shall furnish for the use of Medical Group such space and facilities as may be deemed necessary by Hospital for the proper provision of the Non-Urgent General Surgery Coverage Services (the “Premises”). Hospital shall, in its sole discretion, determine the amount and type of space and facilities to be provided herein. Medical Group shall use the space and equipment solely for the performance of the services required under this Agreement. Neither Medical Group nor Physicians shall use such space or equipment for other business or personal use.

**3.2 Use Limitations on Space.** The use of any part of the space occupied for the purpose of providing Non-Urgent General Surgery Coverage Services for the general or private practice of medicine is prohibited. Medical Group shall use the items furnished under this Agreement only for the performance of services required by this Agreement. This Agreement shall not be construed to be a lease to Medical Group or any Physician of any portion of the Premises, and insofar as Medical Group or Physicians may use a portion of said Premises, Medical Group and Physicians do so as licensees only, and Authority and Hospital shall, at all times, have full and free access to the same.

**3.3 Equipment.** Hospital shall furnish for the provision of Non-Urgent General Surgery Coverage Services such equipment as is deemed necessary by Hospital for the proper operation and conduct of the General Surgery Program consistent with community standards. Hospital shall keep and maintain this equipment in good order and repair and replace such equipment, as is reasonably necessary and subject to the usual purchasing practices of Authority and Hospital budget constraints.

**3.4 Services and Supplies.** Hospital shall provide or arrange for the provision of janitorial services, housekeeping services, laundry and utilities, together with such other hospital services, including medical records, administrative and engineering services, and expendable supplies as Hospital deems necessary for the proper operation and provision of Non-Urgent General Surgery Coverage Services.

**3.5 Rest Area.** Hospital shall provide access to rest areas in Hospital for Physicians’ reasonable use in the proper delivery of Non-Urgent General Surgery Coverage Services, which shall include access to Hospital’s sleep room, shower/bath facilities, and computer access. Medical Group shall not use such rest area, or equipment therein, for any purpose other than performance of the services required by this Agreement.

**3.6 Patient Information Utilization and Quality Data.** Hospital shall provide to Medical Group, via an HL7 feed, information regarding patients treated by Physicians pursuant to this Agreement including medical records, patient demographic information, and patient billing information (the “Data”) which is necessary for Medical Group to monitor the quality of

its performance, monitor patient outcomes, monitor hospital outcomes, and perform its obligations under this Agreement. The Data shall be provided in such a manner that Medical Group can distinguish between patients on each general surgery subspecialty service line., and Hospital shall designate personnel who shall be responsible for assisting Medical Group in the event the HL7 feed experiences technical difficulties.

**3.7 Intentionally Omitted.**

**3.8 Performance Assessment.** Hospital shall assess Medical Group's performance annually, and from time to time as otherwise deemed appropriate or necessary.

**3.9 Interpreters.** Hospital shall provide the services of interpreters as required by law and as necessary for the effective provision of Non-Urgent General Surgery Coverage Services.

**3.10 Transcription.** Hospital shall provide dictation and transcription services and medical record access.

**3.11 Responsibility for General Surgery Program.** To the extent required by applicable laws and regulations, Hospital shall retain administrative responsibility for the services rendered to patients pursuant to this Agreement.

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

**SECTION 4. QUALITY GOALS AND PERFORMANCE REVIEW**

**4.1 General Surgery Program Goals.** Hospital and Medical Group agree and understand the need for an organized and well-managed General Surgery Program. The goal of the parties is to demonstrably improve patient care, clinical quality and efficiency, patient satisfaction, patient safety, patient treatment identification, care coordination and care transition management through the provision of Non-Urgent General Surgery Coverage Services as part of the General Surgery Program.

**4.2 Service Excellence Commitment.** Medical Group, along with Hospital, shall lead the General Surgery Program efforts to enhance patient satisfaction and achieve Hospital's service goals by providing Non-Urgent General Surgery Coverage Services. Medical Group acknowledges that the dedication of all Physicians toward the achievement of this goal is a key indicator of success for Hospital and an essential element of this Agreement. Medical Group and Physicians shall participate fully and provide leadership in service excellence teams and other quality improvement and risk management efforts focused on surgery services.

**4.3 Active Participation in Quality, Efficiency, and Care System Improvement Initiatives.** Medical Group shall ensure the active participation of Physicians in Hospital care improvement initiatives, including initiatives that relate to (a) the implementation of the

electronic medical record and computerized physician order entry, (b) MD/RN rounding, (c) transitions of care process improvements, (d) Physician role in disease management, (e) common training priorities and programs for Physicians and The Joint Commission compliance programs such as core measures, (f) setting priorities for improvement, establishing common best practices to develop and implement and adopting approaches to achieve higher consistency (less variation) in care provided to inpatients, (g) planning for common Physician training and development, (h) assuring the coordination of discharge planning needs with patients, patients' families and the case manager/discharge planner, (i) actively participating with Hospital's emergency physicians in coordinating and maintaining efficient patient flow in the Emergency Department and (j) paired leadership and coordination with Hospital management, with ongoing communication and coordination with Hospital's administrative team liaison; including joint planning, shared communications and prompt response regarding patient management.

**4.4 Quarterly Performance Review.** Hospital and Medical Group shall meet on a quarterly basis during the term of this Agreement to review Medical Group's performance in providing Non-Urgent General Surgery Coverage Services. After the first six (6) months of the term, Hospital and Medical Group may meet more or less frequently if Authority's Chief Executive Officer deems such necessary. Such quarterly meetings shall include the appropriate representatives of Medical Group and Hospital assigned staff who may include an administrative liaison, Hospital patient care executive, Hospital director(s) of quality and case management, and Hospital's President as deemed appropriate by Hospital. Such quarterly meetings may be held via video or tele-conference. The performance items to be reviewed are those items more particularly described in Exhibit 4.4 attached hereto.

## **SECTION 5. COMPENSATION AND BILLING**

**5.1 Compensation.** As payment for the provision of Non-Urgent General Surgery Coverage Services provided pursuant to this Agreement, Hospital shall pay to Medical Group the sum of *One Thousand Two Hundred Thirty-Two Dollars and Eighty-Eight Cents (\$1,232.88)* per day that Non-Urgent General Surgery Coverage Services are provided. Neither Medical Group nor any Physician shall receive compensation for providing services to Hospital not contemplated in this Agreement, unless such services are the subject of a separate agreement between the parties.

**5.2 Invoice and Timely Payment.** During the term of this Agreement, Medical Group shall record the actual number of days worked by Physicians on an invoice ("Non-Urgent General Surgery Coverage Services Invoice," or "Invoice"). On a monthly basis, Medical Group shall deliver to Hospital completed and signed copies of the Invoice within fifteen (15) days after the end of each calendar month during the term of this Agreement. Each Invoice shall contain, at a minimum, the names of Physicians who provided services and the dates each Physician provided services during the prior month. The compensation described in Section 5.1 shall be due and payable upon Hospital's receipt of the Invoice. All compensation payable to Medical Group pursuant to Section 5.1 shall be considered timely paid if received by Medical Group not later than forty-five (45) days after Hospital's receipt of the Invoice.

**5.3 Fair Market Value Compensation.** The compensation provided under Section 5.1 represents the parties' good faith determination of the reasonable fair market value

compensation for the services to be provided by Medical Group and the Physicians under this Agreement.

#### **5.4 Billing for Professional Services.**

(a) **Hospital Billing.** Hospital shall have the exclusive right to set, bill and collect for (i) the facility/technical component of hospital services delivered to all General Surgery Program patients, and (ii) the medical professional services rendered to General Surgery Program patients by Medical Group and Physicians pursuant to the provision of Non-Urgent General Surgery Call Coverage Services. All professional fees generated by Medical Group and Physicians for services rendered to Hospital patients at Hospital or a Hospital location during the term of this Agreement, including both cash collections and accounts receivable, will be the sole and exclusive property of Hospital, whether received by Hospital or by Medical Group or Physicians and whether received during the term of this Agreement or anytime thereafter. Medical Group hereby reassigns to Hospital all payments for medical professional services performed by Physicians when providing Professional Services, including those provided to beneficiaries of the Medicare and the Medicaid Programs. Medical Group and Hospital agree to comply with all federal and state statutes and regulations regarding such reassignment (including, but not limited to, the completion and execution of form CMS-855R).

(b) **Billing Records.** Hospital shall allow Medical Group to examine, inspect or make copies of General Surgery Program patient billing records, at Medical Group's expense, if such access is necessary to comply with any laws, rules or regulations.

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

**5.6 Nondiscrimination Based on Payor Status.** "Member" means a person who is enrolled with a third-party payor as a subscriber, beneficiary, employee or dependent, or a person who is enrolled with a payor under the Medicare Risk Program or Medicare+Choice Program Plan as a subscriber, beneficiary, employee or dependent, and who is eligible to receive professional services at Hospital. Medical Group shall not impose any limitations on the acceptance of Members for care or treatment unless such limitations are applied generally to all Members. Medical Group shall not improperly differentiate or discriminate

against Members in the provision of professional services and shall render professional services to Members in the same manner and in accordance with the same standards, and within the same time availability, as offered to non-Members consistent with existing medical, ethical, or legal requirements for providing continuity of care to any patient. Medical Group and all Physicians and subcontractors under this Agreement, (if any), shall not request, demand, require or otherwise seek, directly or indirectly, the transfer of, or termination from any health care service plan of any Member based upon the Member's need for or utilization of professional services or in order to gain financially or otherwise from such termination.

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

**5.8 Cooperation with Payor Medical Directors.** Medical Group understands that payors may place certain obligations upon Hospital regarding the quality of care received by and utilization of professional services provided to Hospital patients and that payors, in certain instances, will have the right to oversee and review the quality of care and utilization of professional services provided to Members. Medical Group and Physicians agree to notify Hospital within three (3) business days of receiving questions, complaints, or requests for assistance from payors contracted with Hospital regarding the quality of care provided to patients, or the utilization of professional services. Medical Group and Physicians shall also cooperate with Hospital and the medical directors of the various payors in the review of the quality of care and utilization of professional services provided to Members.

**5.9 Medical Group's Compensation of Individual Physicians.** Medical Group shall be solely responsible for developing and implementing its own system for compensating Physicians, whether employees or subcontractors of Medical Group; provided, however, that Medical Group represents, warrants and covenants that its compensation system shall at all times be structured in a manner that complies with all federal and state physician self-referral laws (including Section 1877 of the Social Security Act known as the Stark Law), anti-kickback and other applicable laws as they may apply to the direct and indirect relationships created under this Agreement among Hospital, Medical Group and individual Physicians. Without limiting the generality of the foregoing, Medical Group represents, warrants, and covenants that compensation paid to each Physician shall be fair market value compensation for the service

provided by that Physician and shall not take into account the value or volume of referrals of “designated health services” (as defined under the Stark Law) or other business generated by the Physician for Hospital.

**5.10 Maximum Payable.** The maximum payable under this Agreement shall not exceed *Seven Hundred Fifty Thousand Dollars (\$750,000.00)* over the three-year term of this Agreement.

## **SECTION 6. TERM AND TERMINATION**

**6.1 Term.** The term of this Agreement shall commence on the Effective Date and continue for a period of three (3) years unless terminated earlier pursuant to this section. This Agreement shall automatically renew for one (1) additional term of one (1) year, but only upon mutual written agreement of the parties, unless either party gives the other party written notice of its intention not to renew this Agreement at least one hundred eighty (180) days prior to the expiration of the initial three-year term.

**6.2 Early Termination.** This Agreement may be terminated prior to its expiration for any of the following reasons:

(a) **Immediate Termination by Hospital.** Hospital may terminate this Agreement immediately by written notice to Medical Group upon the occurrence of any of the following events:

- (1) Medical Group’s misrepresentation of any material fact referenced in Section 2.3 of this Agreement (Representations and Warranties);
- (2) Failure of Medical Group to remove a Physician after requested by Hospital pursuant to Section 7 (Removal of a Physician);
- (3) Medical Group’s unauthorized disclosure of Patient Information or Hospital Information, as defined in Section 12 (Confidentiality);
- (4) Loss or restriction of Hospital’s license or accreditation, or destruction of Hospital or the portion(s) thereof dedicated to the operation of the General Surgery Program, such that Hospital is not able to continue the uninterrupted operation of the General Surgery Program;
- (5) Either party becomes insolvent or declares bankruptcy;
- (6) Closure of Hospital’s surgery department or sale or closure of Hospital, so long as Hospital provides Medical Group with at least thirty (30) days’ advanced notice of such sale or closure; or
- (7) The dissolution or discontinuance of the operations of Medical Group.

(b) **Material Breach.** Subject to the immediate termination rights of Hospital set forth in Section 6.2(a) (Immediate Termination by Hospital), either party shall have the right to terminate this Agreement upon a material breach of any terms or conditions of this Agreement by the other party, provided such breach continues uncured for thirty (30) days after receipt by the breaching party of written notice of such breach from the non-breaching party. The parties expressly acknowledge and agree that each of the following constitutes a material breach of this Agreement: (i) failure to provide the Non-Urgent General Surgery Coverage Services described in Section 2.1 (Non-Urgent General Surgery Coverage Services) or in **Exhibit 2.1**; (ii) failure to satisfy the requirements of Section 12 (Confidentiality); or (iii) any act or omission by Medical Group or any Physician that jeopardizes the quality of care provided to Hospital's patients.

(c) **Legal Jeopardy.** If either party obtains an opinion of outside legal counsel stating that, in the event of an audit or investigation, this Agreement is likely to be challenged by any governmental agency as illegal or improper or to result in fines, penalties or exclusion from the Medicare or Medicaid programs, that party may provide written notice of termination of this Agreement, including a short statement of why this section has been determined applicable, to the other party. If the parties agree and enter into a joint defense agreement, the party that obtained the legal opinion shall agree to waive any attorney-client privilege with regard to the legal opinion and provide a copy of such opinion to the other party. Within fifteen (15) days of such notice, the parties shall meet and confer to discuss mutually acceptable means of restructuring the relationship to eliminate the legal concern. In the event that the parties are unable to reach agreement on new terms within thirty (30) days of their meeting, this Agreement shall automatically terminate.

(d) **Non-appropriation.** Hospital reserves the right to terminate this Agreement in the event insufficient funds are appropriated or budgeted for this Agreement in any fiscal year. Upon such termination, Authority will be released from any further financial obligation to Medical Group, except for services performed prior to the date of termination or any liability due to any default existing at the time this Section 6.2(d) is exercised. Medical Group will be given thirty (30) days' prior written notice in the event that Hospital requires such an action.

(e) **Without Cause Termination.** Either party may elect to terminate this Agreement, without cause, upon one hundred eighty (180) days' advance written notice to the other party.

### **6.3 Effect of Expiration or Termination.**

(a) **Obligations.** Except as otherwise provided in this Section 6.3, upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement. Notwithstanding the foregoing, each party understands and agrees that termination of this Agreement shall not release or discharge the parties from any obligation, debt or liability which shall have previously accrued and remains to be performed upon the date of termination.

(b) **Continuation of Patient Services.** Except for termination due to legal jeopardy, illegality or risk to patient welfare, Medical Group shall continue to be obligated under this Agreement, until the effective date of its termination, to continue to provide professional services to any patients in Hospital for whom a Physician has assumed responsibility in the course of providing Non-Urgent General Surgery Coverage Services. In addition, if circumstances applicable to such a patient require the continuation of such services after the effective date of termination of this Agreement, Medical Group shall continue to provide professional services to such patient for a reasonable period in order to accomplish the orderly transfer of care to another physician.

(c) **Liability for Breach.** Termination of this Agreement by any party as a result of a material breach by the other party shall not be an exclusive remedy, and the non-breaching party shall be entitled to pursue other remedies for such breach available at law or in equity, subject to Section 13 (Dispute Resolution) of this Agreement.

(d) **Vacating Premises and Removing Property.** Except as otherwise permitted for other similarly situated members of Hospital's Medical Staff, upon expiration or termination of this Agreement and upon the request of Hospital, Medical Group shall cause all Physicians to immediately vacate Hospital premises and remove all of their personal property. Any personal property that is not removed shall be removed by Hospital at Medical Group's expense.

(e) **Survival.** The provisions of Sections 2.7 (Corporate Compliance Program), 6 (Term and Termination), 9 (Medical Records), 10 (Access to Books and Records), 11 (Independent Contractor Relationship), 12 (Confidentiality), 13 (Dispute Resolution), 14 (Insurance and Indemnification), 15 (Non-Solicitation), 16 (Notices) and 17 (Miscellaneous Provisions) other than 17.11 (Litigation Cooperation) and 17.10 (Other Service Agreements) shall survive termination of this Agreement.

(f) **Medical Staff Privileges.**

(1) **Termination of Physician.** If a Physician is no longer eligible to provide Non-Urgent General Surgery Coverage Services at Hospital pursuant to and as contemplated by this Agreement, the medical staff membership and clinical privileges of the Physician shall automatically terminate concurrently with the loss of Physician's eligibility to provide such services. In such circumstances, Physician's medical staff membership and clinical privileges shall automatically terminate without the necessity of Hospital following the procedures set forth in the medical staff bylaws, and the Physician shall have no right to exercise or assert any procedural rights that are set forth in or based on the medical staff bylaws; provided, however, in the event any action or proposed action by Hospital results or would result, if taken, in a report to the Medical Board of California or the National Practitioner Data Bank as an adverse professional review action against one or more Physicians, then Hospital shall comply with the procedural requirements set forth in the medical staff bylaws, including the provisions regarding the conduct of investigations, hearings and appeals. Nothing in this Agreement shall preclude any current or former Physician from applying for medical staff membership or clinical privileges at Hospital, provided that neither the governing body nor the medical staff of Hospital shall have any obligation to grant such privileges. Except as provided

herein, Physicians shall be entitled to all rights otherwise provided to members of the medical staff in the bylaws, rules, regulations or policies of the medical staff or Hospital.

(2) **Termination of Contract.** In the event of the termination or expiration of this Agreement, the medical staff membership and clinical privileges of all Physicians providing Non-Urgent General Surgery Coverage Services pursuant to this Agreement shall automatically terminate concurrently with the termination or expiration of this Agreement. In such circumstances, the medical staff membership and clinical privileges of each Physician shall terminate without the necessity of Hospital following the procedures set forth in the medical staff bylaws, and Physicians shall have no right to exercise or assert any procedural rights that are set forth in or based on the medical staff bylaws.

(3) **Election to Participate.** Each Physician shall execute an “Election to Participate,” in the form set forth in **Exhibit 6.3(f)**, attached hereto, prior to the Physician being approved by Hospital to provide services pursuant to this Agreement.

(g) **Renewal, Extensions, New Agreements.** Neither party shall have any obligation to renew or extend, nor to negotiate a renewal or extension of, this Agreement, nor enter into a new agreement for any period after this Agreement is terminated. If this Agreement is terminated prior to its first anniversary for any reason, the parties shall not enter into a renewal or extension of this Agreement or a new agreement for the same or substantially similar services of Medical Group prior to the first anniversary of the Effective Date of this Agreement.

## **SECTION 7. REMOVAL OF A PHYSICIAN**

**7.1 Without Cause.** All Physicians providing Non-Urgent General Surgery Coverage Services are subject to continuing approval by Hospital. However, Hospital acknowledges that in the normal course of events, Medical Group must have at least ninety (90) days prior notice to remove a Physician without cause from the coverage schedule. Accordingly, except as otherwise provided in Section 7.2 (Removal for Cause), Hospital agrees to give Medical Group not less than ninety (90) days’ written notice before it will require removal of a Physician without cause.

**7.2 Cause for Removal.** Hospital may require the immediate cessation of services by any Physician and/or require Medical Group to immediately remove from the coverage schedule under this Agreement any Physician for cause upon written notice to Medical Group specifying the reasons therefore. Cause shall mean:

(a) Failure of a Physician to meet any of the requirements of Section 2.6 (Professional Qualifications);

(b) The disability of a Physician (for purposes of this Agreement, “disability” shall mean a physical or mental condition, verified by a physician designated by Hospital, which prevents, or is substantially certain to prevent, Physician from carrying out one or more of the essential functions of Physician’s position, with or without reasonable accommodation, for a continuous period of ninety (90) days, or if otherwise an undue hardship on Hospital;

(c) A Physician becomes legally incompetent or is convicted of a felony, uses, possesses, or is found under the influence of alcohol, drugs or other controlled substances at the work place and while on duty;

(d) Any act or omission by a Physician that appears to create the risk of imminent danger to the health of any individual pursuant to Medical Staff bylaws;

(e) Failure of a Physician to comply with Section 2.9 (Working Cooperatively with Others); or

(f) Failure of a Physician to abide by any of the terms and conditions of this Agreement applicable to Physicians.

## **SECTION 8. INTENTIONALLY OMITTED**

## **SECTION 9. MEDICAL RECORDS**

**9.1 Medical Records and Reports.** Medical Group shall cause Physicians to prepare complete, timely and accurate medical and other records with respect to the services and treatment provided by Physicians under this Agreement. All such medical and other records shall be prepared in accordance with Hospital and Medical Staff bylaws, rules, policies and procedures and in accordance with all applicable laws, and standards and recommendations of The Joint Commission. Medical Group and Physicians agree that all records and reports required by this Section 9.1 shall be the exclusive personal property of Hospital, with the exception of Medical Group's Intellectual Property (as defined in Section 9.4 below).

**9.2 Patient Records.** Any and all patient records and charts produced as a result of either party's performance under this Agreement shall be and remain the sole property of Hospital, provided that, Hospital shall allow Medical Group access to the medical records for purposes related to the provision of post-surgical follow-up care and to the registrar for purposes of Medical Group's clinical outcomes database which is a "limited data set" in compliance with all applicable rules and regulations. Both during and after the term of this Agreement, Medical Group shall be permitted to inspect and/or duplicate, at Medical Group's expense, any individual chart or record to the extent necessary to meet professional responsibilities to such patient(s), to assist in the defense of any malpractice or similar claim, to generate patient bills for professional services rendered, and/or for any other lawful purpose to which such chart or record may be pertinent; provided, however, that such inspection or duplication shall be conducted in accordance with applicable legal requirements and pursuant to commonly accepted standards of patient confidentiality. Medical Group shall be solely responsible for maintaining patient confidentiality with respect to any information obtained by Medical Group pursuant to this Section 9.2.

**9.3 Record Requirements.** Each party agrees in connection with the subject matter of this Agreement to cooperate fully with the other party in order to assure that each party will be able to meet all requirements for record keeping associated with public or private third-party payment programs.

**9.4 Intellectual Property Ownership and Assignment.** Hospital shall be the owner of all proprietary rights in and to any documentation, records, text and other works of authorship, data, databases, information, know-how, conceptions, discoveries, inventions, designs, symbols, names, procedures, methods, processes, improvements, products, prototypes, samples and other property and materials, tangible or intangible, whether or not patentable or registrable under copyright, patent or similar laws, within the foregoing: (i) furnished to Medical Group, or to which Medical Group is given access by Hospital in connection with the performance of this Agreement; and/or (ii) conceived, reduced to practice, or otherwise created, authored, developed or generated in connection with performance of this Agreement by Medical Group either solely or jointly with Hospital (collectively “Intellectual Property”). Medical Group shall not have any interest in such Intellectual Property. Accordingly, Medical Group hereby assigns to Hospital all of Medical Group’s right, title and interest in and to the Intellectual Property. The parties further agree that nothing in this paragraph or in this Agreement shall limit Hospital’s sole and exclusive intellectual property rights in and to its own data provided to Medical Group during the course of this Agreement. Hospital hereby grants to Medical Group a non-exclusive, revocable (for any material breach of this Agreement), non-sublicensable license in order for Medical Group to make, use, reproduce, modify, distribute, publicly display and publicly perform, for patient care, educational and marketing purposes only, certain Intellectual Property items that do not place Hospital or its affiliated organization(s) at a competitive disadvantage, or create any potential for disclosure of confidential or propriety information of Hospital in the course of Medical Group executing the rights granted to it under the license. Except as expressly set forth herein, no right, title or interest in or to any Intellectual Property is granted to Medical Group by virtue of this Agreement, whether by implication, estoppel or otherwise.

## **SECTION 10. ACCESS TO BOOKS AND RECORDS**

**10.1 Access.** Medical Group shall maintain and make available all necessary books, documents and records applicable to the services provided under this Agreement in order to assure that Hospital will be able to meet all requirements of the Medicare and Medicaid programs, including, but not limited to, matters covered by Section 1861(v)(1)(I) of the Social Security Act, as amended.

(a) Until expiration of seven (7) years after furnishing services pursuant to this Agreement, Medical Group shall make available upon written request of the Secretary of Health and Human Services (“Secretary”) or the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, this Agreement, books, documents, and records of Medical Group that are necessary to verify the nature and extent of costs incurred by Hospital under this Agreement.

(b) If Medical Group carries out any of the duties of this Agreement by way of a subcontract with a value of \$10,000 or more over a 12-month period, such subcontract shall contain, and Medical Group shall enforce, a clause to the same effect as subparagraph (1) immediately above.

**10.2 Limits.** The availability of Medical Group’s books, documents, and records shall be available at all times subject to all applicable legal requirements, including, without

limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation.

## **SECTION 11. INDEPENDENT CONTRACTOR RELATIONSHIP**

In performing the services described in this Agreement, Physicians and Medical Group are acting as independent contractors, and shall not be considered employees, joint venturers or partners of Hospital for any purpose whatsoever. Hospital shall neither have nor exercise any control or direction over the methods by which Physicians shall perform the services required under this Agreement, and Medical Group shall neither have nor exercise any control or direction over Hospital's affairs. The sole interest and responsibility of Hospital is to assure that such services are performed in a competent, efficient and satisfactory manner. Neither party shall have any claim against the other party arising under this Agreement or otherwise for workers' compensation, severance pay, front pay, back pay, vacation pay, sick leave, retirement benefits, health plan benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits or any other benefits of any kind. Each party shall indemnify, defend and hold harmless the other party from and against any claim, liability or expense related to its duties regarding any and all income tax withholding, estimated income tax, social security tax, self-employment tax, unemployment tax or any other tax obligations related to the compensation payable by each party to its respective employees.

## **SECTION 12. CONFIDENTIALITY**

**12.1 Confidential Information.** Each party recognizes and acknowledges that, by virtue of entering into this Agreement, each party and its representatives (specifically including Physicians and Manager in the case of Medical Group) may have access to certain information of the other party that is confidential and constitutes valuable, special and unique property of the other party. Each party agrees that neither such party nor its representatives will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without the other party's express prior written consent, except pursuant to such party's duties hereunder, any confidential or proprietary information of the other party, including, but not limited to, information that concerns the other party's patients, costs, prices and treatment methods at any time used, developed or made by the other party, and that is not otherwise available to the public.

**12.2 Terms of this Agreement.** Except for disclosure to the parties' legal counsel, accountant or financial advisors, neither party will disclose the terms of this Agreement to any person who is not a party to this Agreement, unless disclosure is required by law or otherwise authorized by this Agreement or consented to in writing by the other party.

**12.3 Patient Information.** Medical Group will not disclose, and will ensure that the Physicians and Manager will not disclose, to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital in writing, any patient or medical record information regarding Hospital patients, and Medical Group will comply, and will ensure that Physicians and Manager will comply, with all federal and state laws and regulations, all rules, regulations and policies of Hospital and its Medical Staff, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability

and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), Subtitle D of the Federal HITECH Act (“HITECH Act,” 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations,” 45 C.F.R. Part 160, et seq.), the Confidentiality of Medical Information Act (Civ. Code, § 56 et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

**12.4 Business Associate Agreement.** By signing and/or acknowledging this Agreement, the parties hereby agree to comply with the HIPAA security and privacy regulations (in current or amended form) regarding the use or disclosure of Protected Health Information (“PHI”). The parties further agree to comply with and execute the Business Associate Agreement set forth in **Exhibit 12.4**, attached hereto.

## **SECTION 13. DISPUTE RESOLUTION**

**13.1 Meet and Confer.** In the event of any dispute between Medical Group (including Physicians) and Hospital arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted for trial before a privately compensated temporary judge appointed by the Kern County Superior Court pursuant to Article VI, Section 21 of the California Constitution and Rules 3.810 through 3.830 of the California Rules of Court.

**13.2 Attorneys’ Fees and Costs.** The cost of any dispute resolution shall be shared equally by Hospital and Medical Group, provided that each party shall bear its own legal expenses, including attorneys’ and experts’ fees and costs, and such fees and costs that may be encountered enforcing a judgment or order entered in any legal action, except as ordered by the temporary judge as part of his/her damages award pursuant to an applicable fee-shifting statute.

**13.3 Venue.** Venue for any dispute resolution shall be the County of Kern.

## **SECTION 14. INSURANCE AND INDEMNIFICATION**

**14.1 Business Insurance.** With respect to performance of work under this Agreement, Medical Group shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in **Exhibit 14.1**, attached hereto.

**14.2 Indemnification Related to Professional Services.** Authority shall assume liability for, indemnify, defend, and hold Medical Group harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys’ fees and judgments incurred by Medical Group or for which Medical Group becomes liable, arising out of or related to professional services rendered by Medical Group (or which a third party alleges should have been rendered

by Medical Group) pursuant to this Agreement. “Medical Group” as used in this Section 8.1 shall include Medical Group, its Physicians, and Manager. Authority’s obligation under this paragraph shall extend from the Effective Date and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of professional services Medical Group rendered on behalf of Authority and Hospital; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than Hospital without approval by the Kern County Hospital Authority Board of Governors and, provided further, that Authority shall have no duty or obligation to defend, indemnify or hold Medical Group harmless for any act or omission of Medical Group, which act or omission constitutes an intentional or willful tort, including but not limited to harassment, sexual battery, and intentional infliction of emotional distress, acts that do not arise from or were not directly related to Medical Group’s performance of an official duty under this Agreement, or any conduct or misconduct that is found to be criminal.

**14.3 Indemnification Not Related to Professional Services.** Each party (the “Indemnifying Party”) agrees to defend, indemnify, and hold harmless the other party (the “Indemnified Party”) and its directors, trustees, members, shareholders, partners, officers, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys’ fees) or claims for injury or damages arising out of the performance of this Agreement (except for claims related to Medical Group’s provision of professional services pursuant to Section 14.2 of this Agreement), but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, trustees, members, shareholders, partners, officers, employees or agents.

**14.4 Indemnification Related to PHI.** Each party agrees to indemnify and defend, and hold harmless the other party, its affiliates, and any of its or their officers, directors, attorneys, agents or employees, from all claims, costs (including costs of settlement and attorneys’ fees), losses, damages, liabilities and penalties arising from or connected with the breach by the Indemnifying Party, or any of its officers, directors, agents, subcontractors or employees, of its obligations under the Agreement with respect to PHI. The foregoing sentence shall not apply to (i) any Civil Monetary Penalties (or any other claims, costs, losses, damages, liabilities, fines or penalties which are derivative of a Civil Monetary Penalty) levied by the Office of the Inspector General, the Department of Health and Human Services, or any other agency or governing body possessing the power to levy such penalties, nor to (ii) any claims, costs, losses, damages, liabilities, fines or penalties levied by the state of California for violations of state law.

## **SECTION 15. NON-SOLICITATION**

During the term of this Agreement and for a period of one (1) year thereafter, neither party nor any of their affiliates shall, without the prior written approval of the other (i) employ, retain, offer employment to or offer retention of any person who is or was employed by or under contract with the non-soliciting party during the term of this Agreement, (ii) solicit, advise or otherwise do, or attempt to do, business with any employee or independent contractor of the non-soliciting party who is or was employed by or under contract with the non-soliciting party during the term of this Agreement, or (iii) directly or indirectly, induce or attempt to induce any person

who is under contract with the non-soliciting party to terminate his or her contract with such non-soliciting party. In the event either party breaches this Section 15, the breaching party agrees to pay to the non-breaching party as liquidated damages, which the parties agree is not a penalty, an amount equal to One Hundred Fifty Thousand Dollars (\$150,000.00) per instance of breach. The parties agree that the true damages incurred by the non-breaching party in the event of a breach of this Section 15 are difficult to estimate, and that the liquidated damages sum provided for herein (i) fairly represents the market cost of recruiting, relocating, and replacing the employee/agent, and for the non-breaching party to provide a *locum tenens* in the interim, and (ii) is reasonably proportionate to the non-breaching party's expected damages from such breach. Notwithstanding the foregoing, this Section 15 shall not apply to any Medical Group Physician who is a member of Hospital's medical staff prior to the Effective Date of this Agreement, or who was introduced to Medical Group by Hospital.

## SECTION 16. NOTICES

All written notices to be given in connection with this Agreement shall be sufficient if sent by certified or registered mail, postage prepaid or by national overnight delivery service addressed to the party entitled to receive such notice at the address specified by such party below, or, if inconsistent, at the address as provided by any W-9 tax form to Hospital. Either party may from time to time change its address for purpose of receipt of notice by a notice delivered in compliance with this subsection.

If to Authority:	Kern County Hospital Authority 1700 Mount Vernon Avenue Bakersfield, CA 93306 Attn: Chief Executive Officer
With a copy to:	Kern County Hospital Authority 4520 California Avenue, Suite 100 Bakersfield, CA 93309 Attn: Legal Services Department
If to Medical Group:	Acute Care Surgery Medical Group, Inc. 2450 Del Paso Road, Suite 250 Sacramento, CA 95834 Attn: Lynette A. Scherer, M.D.

## SECTION 17. MISCELLANEOUS PROVISIONS

**17.1 Recitals, Exhibits, and Appendices.** The recitals, exhibits, and appendices attached hereto or referred to herein are hereby incorporated into this Agreement by reference.

**17.2 Ambiguities.** This Agreement has been negotiated at arm's length, and the parties have participated fully in the review and revision of this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities to be resolved against the drafting party shall not apply in interpreting this Agreement, and is hereby waived.

**17.3 No Waiver.** No waiver of a breach of any provision of this Agreement may be construed as a waiver of any breach of any other provision. To be effective, a waiver must be in writing. No single waiver may be treated as an ongoing waiver unless expressly agreed in writing.

**17.4 Severability.** Except as provided in Section 6.2(c) (Legal Jeopardy), the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision, unless the effect of such severance would substantially alter the Agreement or the obligations of either party, in which case the Agreement may be terminated by either party upon thirty (30) days prior written notice or as otherwise allowed by the term and termination provisions of this Agreement.

**17.5 Assignability and Subcontracting.** The rights and obligations of each party under this Agreement shall inure to the benefit of said party and to its successors and permitted assigns. Neither party may subcontract or otherwise assign any of its rights or obligations under this Agreement to a third party without obtaining the prior written consent of the other party.

**17.6 Use of Name.** Medical Group shall not use the name of Hospital or any affiliated entity of Hospital, or any of their trademarks, service marks, or trade names for any purpose without the prior written consent of Hospital.

**17.7 No Third Party Rights.** Unless otherwise expressly provided in this Agreement, nothing contained herein is intended nor shall be construed to create rights running to the benefit of any person or entity not a party to this Agreement.

**17.8 Governing Law.** This Agreement, and all transactions contemplated by this Agreement, shall in all respects be governed by, and construed and interpreted in accordance with, the laws of the state of California without giving effect to any conflicts of law principles of such state that might refer the governance, construction or interpretation of this Agreement to the laws of another jurisdiction.

**17.9 Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended or extended at any time by mutual agreement of the parties, but any such amendment or extension must be in writing, dated, and signed by the parties.

**17.10 Other Service Agreements.** Hospital will maintain a database that shall include copies of all other agreements under which Medical Group, any Medical Group physician (or any immediate family member of Medical Group physician), provides services to Hospital.

**17.11 Litigation Cooperation.** Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any claims, litigation, audits, proceedings or disputes relating to this Agreement or the services (“Disputes”), other than proceedings or disputes between the parties to this Agreement. Medical Group shall ensure that Physicians cooperate with Hospital’s legal, risk management, and other relevant departments, and with any outside counsel retained by Hospital, in connection with the administration of any Disputes. Such cooperation shall include, without limitation, speaking to

Hospital representatives and providing information about Disputes, providing testimony in court or alternative dispute resolution forums, and following the legal advice of Hospital counsel.

**17.12 Excess Payment.** Subject to defenses based on waiver, estoppel, accord and satisfaction, laches, statute of limitations or any similar doctrine, if either party discovers that Hospital has made a payment or payments to Medical Group in deficit or in excess of the amount(s) due and payable under this Agreement (the “Erroneous Payment”), the party shall promptly notify the other party (“Notice of Error”). The Notice of Error shall be specific enough to fairly notify the other party of the nature of the error. The parties shall work diligently to calculate the error, and shall mutually agree on the amount of the Erroneous Payment (“Payment Amount”), if any. If the Payment Amount is an underpayment, Hospital shall pay to Medical Group the Payment Amount within not more than ninety (90) days following the Notice of Error. If the Payment Amount is an overpayment, Hospital may offset the Payment Amount from future payments owed to Medical Group under this Agreement or any successor agreement pertaining to the same subject matter as this Agreement. In the event that there are no future payments owed under this Agreement or a successor agreement, or that future payments are not sufficient to cover the Payment Amount, Hospital may seek repayment of the Payment Amount or the remaining Payment Amount from Medical Group and Medical Group shall repay within ninety (90) days following the Notice of Error.

**17.13 No Referrals/Non-Exclusivity.** Nothing in this Agreement is intended to obligate, nor shall anything in this Agreement obligate any party to the Agreement to refer business to any other party. Medical Group understands and agrees that Hospital will utilize the services of Medical Group pursuant to the terms of this Agreement on a non-exclusive basis. Medical Group further agrees that Hospital shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

**17.14 Tax Reporting.** To ensure proper tax reporting of the compensation paid under this Agreement, Medical Group shall complete, execute and deliver to Hospital an IRS Form W-9, and any analogous California state forms (if requested by Hospital) which sets forth the correct taxpayer identification number for Medical Group. To the extent required by law, Hospital shall report all payments to Medical Group on IRS Form 1099 and its state law counterpart.

**17.15 Counterparts.** This Agreement may be executed in counterparts, each of which will be an original and which together will constitute one and the same instrument. A photocopy or scanned version of the executed Agreement may be used as if it were the original Agreement.

**17.16 Execution.** By their signatures below, the signatories to this Agreement represent that they have the authority to execute this Agreement and to bind the party on whose behalf the execution is made.

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

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

**17.19 Conflict of Interest.** Medical Group covenants that it has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Medical Group further covenants that in the performance of this Agreement no person having any such interests shall be employed. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, Authority may immediately terminate this Agreement by giving written notice thereof. Manager shall complete and file a "Statement of Economic Interest" with Hospital if required by Hospital's Conflict of Interest Code.

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

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below to be effective as of the Effective Date.

**AUTHORITY:**

Kern County Hospital Authority

By: \_\_\_\_\_  
Name: Russell E. Bigler  
Title: Chairman, Board of Governors

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

**MEDICAL GROUP:**

Acute Care Surgery Medical Group, Inc.

DocuSigned by:  
*Lynette A. Scherer, M.D.*  
By: \_\_\_\_\_  
Name: Lynette A. Scherer, M.D.  
Title: President and CEO

Date: 6/9/2021

**APPROVED AS TO CONTENT:**

By: \_\_\_\_\_  
Name: Russell V. Judd  
Title: Chief Executive Officer

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

**APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT**

By: \_\_\_\_\_  
Name: Karen S. Barnes  
Title: Vice President & General Counsel

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

## EXHIBIT 2.1

### NON-URGENT GENERAL SURGERY COVERAGE SERVICES

1. **Non-Urgent General Surgery Coverage Services.** Medical Group shall ensure that one (1) Physician is available on those days requested by Hospital (“Coverage Days”) to provide professional medical services to non-urgent general surgery patients, which shall include the following: (1) providing call coverage for non-urgent general surgical cases that arise among Hospital’s inpatient population; (2) performing scheduled non-urgent general surgical procedures in Hospital’s operating room; and (3) treating patients with potential non-urgent general surgical issues that present to Hospital’s outpatient clinic. In the course of providing Non-Urgent General Surgery Coverage Services, Medical Group’s Physicians shall provide (1) consultation or assistance within the scope of their respective Medical Staff privileges to other Medical Staff members who require non-urgent general surgery consults for their patients who are also Hospital inpatients, (2) direct treatment to all patients who present to Hospital’s outpatient clinic who are in need of non-urgent general surgical care as required in accordance with Hospital’s Medical Staff Bylaws, policies and procedures; and (d) follow-up services to patients treated in the course of providing Non-Urgent General Surgery Coverage Services (including but not limited to rounding on patients post-surgery) within the scope of Physician’s Medical Staff privileges. In furtherance but not in limitation of the above, Medical Group shall ensure that Physicians:

- Dictate all required documentation such as admitting history and physical examinations, procedure notes and discharge summaries within twenty-four (24) hours of the admission, procedure or discharge, respectively;
- Provide postoperative follow-up care, including any postoperative or post discharge procedures and/or surgery that could reasonably be considered an extension of care rendered during their hospital stay;
- Provide inpatient surgical consults as requested by any attending/admitting physician;
- Coordinate relationships with the Medical Staff members, the Hospital staff, specialist physicians, health plans, and patient family members;
- Participate in family meetings, as appropriate;
- Communicate with primary care physicians regarding follow-up needs;
- Implement Medical Group initiatives to promote improved bedside communication with patients;
- Carry a pager or mobile phone and respond to pages/calls immediately upon receipt of such pages/calls;

- Be available for both telephonic and in-person consultation with individual members of the Medical Staff, committees of the Medical Staff, and Hospital's nursing and administrative staff regarding the provision of Non-Urgent General Surgery Coverage Services; and
- Provide all clinical services within the scope of Medical Group and Physicians' practice reasonably requested by Hospital for hospitalized patients needing non-urgent general surgery care and treatment.

2. **Presence and Response Time.** The Physician providing Non-Urgent General Surgery Coverage Services shall remain on Hospital's campus from 8:00 am until 4:00 pm on Coverage Days, and be on-call for all other hours of the Coverage Day with a response time of thirty (30) minutes of receiving a request from Hospital. If a Physician is encumbered because s/he is providing services to another patient at Hospital and is unable to respond to Hospital's request within thirty (30) minutes, the Physician shall respond to Hospital's request as soon as possible thereafter.

3. **Scheduling.** Hospital shall provide Medical Group with sixty (60) days' advanced notice of the days that Non-Urgent General Surgery Coverage Services are required. Medical Group may, but shall not be obligated to, provide Non-Urgent General Surgery Coverage Services if Hospital provides less than sixty (60) days' notice. The parties understand and agree the inability of Medical Group to provide Non-Urgent General Surgery Coverage Services on less than sixty (60) days' notice shall not constitute a breach of the terms of this Agreement.

**EXHIBIT 4.4****QUARTERLY PERFORMANCE REVIEW CRITERIA**

**Care Management of Inpatient Stay.** Participating as part of a multi-disciplinary team, Medical Group will provide physician leadership to implementation of the inpatient plan of care. This includes:

- Maintaining a patient-centered and service-oriented approach;
- Communicating with patients and families regarding care preferences, the overall plan of care, discharge plans (and date) and the role of the Physician in the process; including explanation of how multiple Physicians provide continuous coverage for patient care;
- Assuring accurate and effective hand-offs between the different Physicians caring for the same patient;
- Coordinating with case management on care transitions and discharge planning, including daily meetings to coordinate patient care and implement plan of care;
- Encouraging consistency, quality, service and teamwork among hospital staff members, such as nurses and ancillary staff (e.g., multidisciplinary rounding, huddles, etc.);
- Assisting and/or reinforcing patient education concerning the disease/disease process, symptoms/symptom management, medications and overall self-efficacy;
- Providing consistency in inpatient care, including use of clinical care pathways and other standardized procedures and processes; and
- Acting cooperatively, cost-consciously, efficiently and providing high-quality care.

**Care Coordination and Transitions of Care Management.** Participating as part of a multi-disciplinary team, Medical Group shall provide physician leadership in assuring care coordination and care transitions for the patient including:

- Communications with the patient's PCP upon admission and discharge, with Physician making reasonable efforts to communicate directly with PCP;
- Verify and document that next level of care provider has received all relevant medical documentation prior to the patient's discharge. This includes (as may be applicable):
  - Reconciled list of medications
  - Patient education provided
  - Advanced care plan documents (including POLST)
  - All consult summaries, and
  - Discharge summary
- Assuring that education and information are provided to the patient about the following subjects, while the patient is in the hospital, so that the patient is properly prepared for post-hospitalization:
  - **R** – “Red flags” and symptom management (patient awareness/ability)
  - **E** – Education on disease and disease process (interactive/coaching)
  - **A** – Appointments; follow-up with PCP, tests and procedures (as may be applicable)
  - **D** – Drugs and medication reconciliation/management, and
  - **Y** – Your (the patient's) wishes being known; advance care planning/POLST

**Discharge from Hospital.** Participating as part of a multi-disciplinary team, Medical Group shall provide physician leadership in assuring an effective, patient-centered hospital discharge. This includes:

- Reviewing discharge plan and discussing patient expectations for next level of care;
- Reinforcing key elements of the plan, such as reason and importance of follow-up appointments, “red flags” and symptom management, medication management/reconciliation, and advance care planning;
- Assuring the patient has written discharge instructions; and
- Assuring that the patient receives a follow-up call within a reasonable time of discharge to verify transition to next level of care, reinforce follow-up appointments and assure they have been able to access any needed prescribed medications, and undertake reasonable efforts to communicate directly with patient and/or family.

**Meeting Participation.** Physicians shall participate in ongoing utilization management and quality/service/risk management activities as facilitated by analysis of reports. Physicians will also participate in Hospital medical staff department and committee meetings as requested.

**Quality and Care Systems Improvement.** Physicians shall assist in developing and implementing care guidelines and other quality tools, including protocols to expedite care and provide care more efficiently.

**EXHIBIT 6.3(f)**

**ELECTION TO PARTICIPATE**

[See attached]

**ELECTION TO PARTICIPATE**

I, the undersigned Physician, am a member of the Medical Staff of Kern Medical Center (“Hospital”), and am an employee/independent contractor/member/shareholder (**circle all that apply**) of Acute Care Surgery Medical Group, Inc., a California professional medical corporation organized under the laws of the state of California (“Medical Group”). I further state that I am board certified/eligible for board certification (**circle one if applicable**) in - \_\_\_\_\_ by the American Board of \_\_\_\_\_.

I hereby acknowledge that I have read the provisions of the General Surgery Coverage Services Agreement between the Kern County Hospital Authority, which owns and operates Hospital, and Medical Group (the “Agreement”) that affect my professional obligations, prohibited conduct, and medical staff membership, and hereby elect to participate in the rendering of Non-Urgent General Surgery Coverage Services pursuant to the Agreement and agree to abide by the provisions of the Agreement. I have been specifically advised and agree that my medical staff membership and clinical privileges at Hospital, including access to and use of Hospital facilities, equipment, personnel, and resources necessary to exercise such privileges, shall automatically terminate concurrently with loss of my eligibility to provide Non-Urgent General Surgery Coverage Services pursuant to and as contemplated by the Agreement, without the necessity of Hospital or its medical staff following the procedures set forth in the medical staff bylaws, and, in such circumstances, I shall have no right to exercise or assert any procedural rights based on or set forth in the medical staff bylaws. I have also been advised and agree that in the event Medical Group ceases to provide Non-Urgent General Surgery Coverage Services to Hospital pursuant to the Agreement for any reason whatsoever, my medical staff membership and clinical privileges, including access to and use of Hospital facilities, equipment, personnel, and resources necessary to exercise such privileges, shall terminate concurrently with the cessation of such services without the necessity of Hospital or its medical staff following the procedures set forth in the medical staff bylaws. In such circumstances, I further acknowledge and agree that I shall have no right to exercise or assert any procedural rights that are set forth in or based on the medical staff bylaws.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
(Signature of Physician)

Print Name: \_\_\_\_\_, M.D./D.O. (**circle one**)

\_\_\_\_\_  
\_\_\_\_\_  
(Address of Physician)

## **EXHIBIT 14.1 BUSINESS INSURANCE**

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

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

1. Workers' Compensation and Employers Liability Insurance:

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

2. General Liability Insurance:

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

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

3. Automobile Liability Insurance:

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

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

5. Additional Insured Wording: "**Kern County Hospital Authority, its officers, officials, employees and volunteers**" are to be named as Additional Insureds as per each section where noted above.

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

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

7. Documentation:

- (a) The Certificate of Insurance must include the following reference: **“Non-Urgent General Surgery Coverage Services Agreement.”**
- (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Medical Group agrees to maintain current Evidence of Insurance on file with Hospital for the entire Term of this Agreement and any additional periods if specified in sections 1, 2 or 3 above.
- (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is: Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.
- (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
- (e) Medical Group shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
- (f) Upon written request, certified copies of required insurance policies must be provided to Hospital within 30 days.

8. Policy Obligations: Medical Group’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

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

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

11. Material Breach: If Medical Group fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. Hospital, at its sole option, may terminate this Agreement and obtain damages from Medical Group resulting from said breach. Alternatively, Hospital may purchase the required insurance, and without further notice to Medical Group, Hospital may deduct from sums due to Medical Group any premium costs advanced by Hospital for such insurance. These remedies shall be in addition to any other remedies available to Hospital.

## **EXHIBIT 12.4 BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“**BAA**”) is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center (“**Covered Entity**”) and Acute Care Surgery Medical Group, Inc. (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of July 1, 2021 (the “**Effective Date**”).

### **RECITALS**

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

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

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

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

### **AGREEMENT**

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

#### **ARTICLE I DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE**

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or Subcontractors that is not specifically permitted by this BAA no later than twenty-four (24) hours days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section

2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

2.3.2 Breach of Unsecured PHI. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) calendar days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

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

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

2.5 Use of Subcontractors. Business Associate shall require each of its Subcontractors that creates, maintains, receives, or transmits PHI on behalf of Business Associate, to execute a Business Associate Agreement that imposes on such Subcontractors

substantially the same restrictions, conditions, and requirements that apply to Business Associate under this BAA with respect to PHI.

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

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

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

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

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

PHI provided, created, received, maintained or transmitted by Business Associate on behalf of Covered Entity for such purpose.

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

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

### **ARTICLE III OBLIGATIONS OF COVERED ENTITY**

#### 3.1 Covered Entity's Obligations.

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

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

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

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

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

### **ARTICLE IV TERM AND TERMINATION**

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

#### 4.2 Termination of Underlying Agreement.

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

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

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

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

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

#### 4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

## **ARTICLE V MISCELLANEOUS**

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

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

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

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

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

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

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

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

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

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

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

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

Acute Care Surgery Medical Group, Inc.  
2450 Del Paso Road, Suite 250  
Sacramento, CA 95834  
Attn: Lynette A. Scherer, M.D.

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

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

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

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

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

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

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

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

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

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

**COVERED ENTITY:**

The Kern County Hospital Authority on behalf of Kern Medical Center

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

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

**BUSINESS ASSOCIATE:**

Acute Care Surgery Medical Group, Inc.

DocuSigned by:  
*Lynette A. Scherer, M.D.*  
\_\_\_\_\_  
BF006C6BA1F9479...  
Title: President and Chief Executive Officer  
Date: 6/9/2021



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

June 16, 2021

**Subject:** Proposed Amendment No. 1 to Agreement 069-2019 with Aslan Ghandforoush, D.O., a contract employee

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

**Summary:**

Kern Medical requests that your Board approve the proposed Amendment No. 1 to the Agreement with Aslan Ghandforoush, D.O., a contract employee, for professional medical services in the Department of Medicine, Division of Cardiology. Dr. Ghandforoush has served full-time at Kern Medical since October 2016 in the role as Chief, Division of Cardiology in the Department of Medicine.

Dr. Ghandforoush is trained as an interventional cardiologist meaning he specializes in diagnosing and treating conditions and diseases of the heart using nonsurgical, catheter-based procedures and specialized imaging techniques. Currently, the Agreement prohibits Dr. Ghandforoush from engaging in the private practice of medicine and providing services as an independent contractor to other organizations. The proposed Amendment would allow Dr. Ghandforoush to work as an independent contractor with Kern Medical's former cardiology group to allow him to maintain his interventional cardiology skills.

Therefore, it is recommended that your Board approve the Amendment No. 1 to Agreement 069-2019 with Aslan Ghandforoush, D.O., to permit outside practice, and authorize the Chairman to sign.

**AMENDMENT NO. 1  
TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
CONTRACT EMPLOYEE  
(Kern County Hospital Authority – Aslan Ghandforoush, D.O.)**

This Amendment No. 1 to the Agreement for Professional Services is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Aslan Ghandforoush, D.O. (“Physician”).

**RECITALS**

(a) Authority and Physician have heretofore entered into an Agreement for Professional Services (Agt. #069-2019, dated November 13, 2019) (the “Agreement”), for the period November 26, 2019 through November 25, 2024, whereby Physician provides professional medical services in the Department of Medicine at KMC and teaching services to resident physicians and fellows employed by Authority; and

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

(c) The Agreement is amended effective June 16, 2021;

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 4, Obligations of Physician, paragraph 4.9, Physician Private Practice, shall be deleted in its entirety and replaced with the following:

“4.9 Physician Private Practice. Physician understands and agrees that he shall not enter into any other physician employment contract or otherwise engage in the private practice of medicine, directly or indirectly, during the Term of this Agreement or any extensions thereof. Notwithstanding the foregoing, Authority agrees that Physician may provide similar services as an independent contractor to other organizations for purposes of maintaining his skills as an interventional cardiologist. Physician agrees that he shall not provide similar services to other organizations during Authority work days between the hours of 8:00 a.m. and 5:00 p.m. (except on scheduled days off), or at any time when Physician has not completed the pre-determined clinic and work schedule assignments. Physician understands and agrees that, while engaged in activities outside KMC or the scope of this Agreement, Physician is not covered by the professional liability insurance provided by Authority under this Agreement during the performance of such activities, nor does the obligation of Authority under this Agreement to provide indemnification to Physician extend to other service agreements. If Physician engages in activities outside KMC or beyond the scope of this Agreement, Physician hereby agrees to indemnify and

hold Authority and KMC harmless from and against any and all liability arising therefrom. Physician understands and agrees that the provision of such services shall be subordinate to his obligations and duties under this Agreement.”

2. Section 18, Indemnification, shall be deleted in its entirety and replaced with the following:

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

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 shall remain in full force and effect.

[Signatures follow on next page]

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

PHYSICIAN

By  \_\_\_\_\_  
Aslan Ghandforoush, D.O.

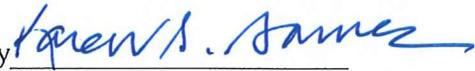
KERN COUNTY HOSPITAL AUTHORITY

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

APPROVED AS TO CONTENT:

By \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

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

Amend 1.Ghandforoush.053121



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

June 2, 2021

**Subject:** Proposed Master Agreement for the renewal of services that support Kern Medical's Cancer Registry data management with SSG Sub, LLC, formerly nThrive

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

**Summary:**

Kern Medical requests your Board approve the proposed Master Agreement with SSG Sub, LLC for oncology data management and abstracting services which is a requirement to maintain certification with the American College of Surgeons.

SSG Sub, LLC will assist Kern Medical in meeting its compliance with all Coe and SCR reporting requirements, and provide full-time, permanent CTR(s) and other personnel as necessary. The level and scope of Registry Strategic Source services to be provided will be based on the information provided by Kern Medical. The scope of services includes cancer surveillance reporting requirements of patients with a date of first contract six months prior to Live Status. The term of the agreement is for 12 months beginning on July 1, 2021, with an estimated monthly rate of \$12,829.

Counsel is unable to approve as to form due to non-standard terms which include the limitation of liability to the amounts paid pursuant to the Agreement which includes the Business Associates Agreement. Efforts were made to negotiate with the vendor, but to no avail.

Even with these issues, Kern Medical recommends that your Board approve the Master Agreement with SSG Sub, LLC to support Cancer registry services, beginning on July 1, 2021 for a term of one (1) year, containing nonstandard terms and conditions, with an annual not-to-exceed of \$160,000, and authorize the Chairman to sign.

**MASTER AGREEMENT BETWEEN  
KERN COUNTY HOSPITAL AUTHORITY AND SSG SUB, LLC**

This MASTER AGREEMENT (the "Agreement") between SSG Sub, LLC ("SSG"), a Delaware limited liability company, and Kern County Hospital Authority, a local unit of government ("KCHA"), which owns and operates Kern Medical Center ("KMC") (collectively shall be named "Client"), is effective July 1, 2021 (the "Effective Date"). The Agreement shall be in effect commencing on the Effective Date and shall remain in effect until every Statement of Work ("SOW") duly entered into hereunder expires or is terminated (the "Term").

SSG and its affiliate nThrive Global Healthcare Services, LLC (collectively, shall be deemed "Vendor") offer products and services which assist customers in improving business processes, operating margin, and cash flow. Vendor and Client are deemed a "Party" and collectively, the "Parties". In the event nThrive Global Healthcare Services, LLC enter into a binding SOW with Client pursuant to the terms of this Agreement, such entity shall also be deemed a "Party" hereunder.

Client (i) owns healthcare facilities and wishes to enter into an agreement for the Vendor Service(s) described in the SOW(s), and (ii) represents that it has authority to bind each Client to this Agreement and that this Agreement is binding on each Client.

The Parties agree as follows:

**1. Definitions.**

"Client" means those entities participating under any SOW which are listed as Clients in such SOW.

"Client Data" means any data or information transmitted by Client, to Vendor in connection with the Vendor Service(s).

"Deliverable(s)" means any report or other output that Vendor delivers to Client as set forth in the applicable SOW. Deliverable(s) do not include any Vendor Technology or any Vendor Proprietary Information.

"Intellectual Property Rights" means the patent rights, copyright rights (including, but not limited to, moral rights), trademarks, trade secret rights, and any other intellectual property rights recognized by the law of any applicable jurisdiction.

"Vendor Service(s)" means Vendor's professional, consulting, or contracting services, and any Vendor Technology or Deliverable(s) identified under any SOW.

"Vendor Technology" means any software or software-as-a-service applications that Vendor provides to Client under any SOW including all documentation. Vendor Technology also include any technology required for the applications to function, including but not limited to any tangible or intangible aspects such as processes, logic, techniques, algorithms, content, protocols, or business processes.

"Proprietary Information" means: (i) the terms of this Agreement and its Exhibits, Schedules and SOW(s); (ii) each Party's business processes and plans; (iii) Client Data provided to Vendor; (iv) Vendor Technology; and (v) any other information which is disclosed to another Party which by its nature should reasonably be considered as confidential or proprietary.

"SOW" or "Statement of Work" means any document(s) Vendor and Client have executed pursuant to this Agreement that describes any of the Vendor Service(s) which are provided to Client.

**2. Agreement Attachments.** The following attachments, and any future documents executed by the Parties pursuant to the terms hereof, are an integral part of this Agreement and are incorporated by reference:

Exhibit A: Business Associate Agreement  
SOW for Registry Strategic Source

**3. Compensation.**

3.1 Payment for Vendor Service(s). Client shall pay Vendor the fees set forth in the SOW(s) as consideration for the Vendor Service(s). The Parties acknowledge that any modification to the "Clients" set forth in any SOW may require a change in fees charged, and that any change in fees not otherwise provided for in any SOW shall be mutually agreed to by the Parties in writing.

3.2 Taxes Excluded. Unless otherwise stated, Vendor fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("Taxes"). Client is responsible for paying all Taxes, excluding only Taxes based upon Vendor's net income. If Vendor has the legal obligation to pay or collect Taxes for which Client is responsible under this section, the appropriate amount shall be invoiced to and paid by Client unless Client provides Vendor with a valid tax exemption certificate authorized by the appropriate taxing authority.

3.3 Terms of Payment. Vendor shall submit invoices for the services set forth in any SOW entered into pursuant to the terms of this Agreement. Client shall remit payment within 30 days from the invoice date via electronic payment or Automated Clearing House ("ACH") direct to Vendor. Client agrees that it shall not use a third-party payer for any such payment. Vendor reserves the right to suspend the services set forth in any SOW in the event Client has any unpaid past-due invoices with Vendor or any of Vendor's affiliates.

3.4 Expenses. Client shall reimburse Vendor for all pre-approved reasonable travel and lodging expenses Vendor incurs in performing the services set forth in any SOW.

3.5 Consumer Price Index ("CPI"). Vendor, in its sole discretion, may annually increase the fees set forth in any SOW by an amount equal to the lesser of: (i) the Annual CPI; or (ii) 5%. "Annual CPI" means average CPI for the previous 12-month Period in the Professional Services Component of the Medical Index of the "All cities-All urban consumers" index of the Consumer Price Index prepared by the Bureau of Labor Statistics of the United States Department of Labor. Notwithstanding the foregoing, Vendor will not apply the CPI annual increase to any contingency fees for services set forth in a SOW.

3.6 Third-Party Pass-Through Fees. Vendor shall pass through to Client any third-party licensing fees applicable to the services set forth in any SOW. Any third-party licensing fees shall be set forth in a SOW or through written notice prior to any such fee becoming due and owing.

3.7 Third-Party Access to the Vendor Technology. Access to Vendor Technology is only for the listed number of Client users. Users must be employees of Client. No third-party access is permitted to Vendor Technology, without Vendor's prior written consent. Vendor may, in its sole discretion, permit third-party access to consultants or other service providers of Client's on a case-by-case basis and such third-party access may require additional licensing fees. Vendor reserves the right to deny access to any third party that competes with Vendor. Client must not permit or attempt to permit any Vendor competitor or any unauthorized third-party to access, view, interact with, evaluate, or otherwise use Vendor Technology without Vendor's prior written consent. Vendor may immediately disable any unauthorized access from its systems.

#### **4. Change Requests and Cooperation.**

4.1 Project Changes. All statements concerning the estimated time to perform the Vendor Service(s) are good faith estimates based upon information available at the time made. Each SOW is subject to equitable adjustment upon any material change in such information, the occurrence of an excusable delay (as provided in Section 4.2), or upon any modification of the scope, timing or level of Vendor Service(s) that the Parties agree to in writing. Any change in scope that modifies the fees or the project schedule must be agreed to in writing by the Parties.

4.2 Failure to Cooperate. If Client impedes or delays completion of the Vendor Service(s) by: (i) failing or delaying to provide necessary information, equipment or access to facilities to Vendor; (ii) failing to complete required tasks or perform its obligations under this Agreement, for any reason; or (iii) providing materially untrue or incorrect information; then Vendor's failure or delay in completion shall be excused.

4.3 Support Exclusions. Vendor has no obligation to provide ongoing support services for: (i) any professional service provided by Vendor outside of the scope of any SOW; (ii) any third-party computer program, technology, or hardware; (iii) any customized services, other than as specifically set forth in any SOW; (iv) any customized services arising out of or relating to a change in Client's systems or data; or (v) any Vendor Solution that is not the most recent version or release and Client has been notified of the update.

**5. Client Commitments**. Client shall: (i) be available to assist Vendor's personnel by answering questions and promptly providing requested documents; (ii) participate in Vendor Service related meetings; (iii) contribute to system and data integrity testing; and (iv) assist Vendor with any activities or tasks required to complete the Vendor Service(s).

Client represents and warrants that it has the lawful right to disclose to Vendor any information, ideas, suggestions or other feedback being provided to Vendor in the course of this Agreement, regardless of whether written or oral (collectively, the "Feedback"). Further, Client agrees that Vendor is the exclusive owner of the Feedback; and Client irrevocably and unconditionally assigns to Vendor and its successors, and assigns, all right (including, without limitation, sublicensing rights), title, and interest in and to all Feedback.

## 6. Confidentiality.

6.1 Treatment of Proprietary Information. Each Party, as a recipient of Proprietary Information (a "Recipient"), shall: (i) hold all Proprietary Information in confidence; (ii) not disclose any Proprietary Information to any person outside of the Recipient's business organization (except to Recipient's contractors and consultants in connection with the Recipient performing its obligations under this Agreement and only if the Recipient's contractors and consultants are subject to appropriate nondisclosure obligations consistent with the obligations in this Section 6); (iii) only disclose Proprietary Information within its organization on a "need-to-know" basis to individuals who understand the confidential nature of the Proprietary Information; and (iv) treat the Proprietary Information with the same degree of care regarding its secrecy and confidentiality as Recipient treats confidential information within its business organization, but in no event, less than a reasonable degree of care. Proprietary Information remains the property of the disclosing Party, and its disclosure to the Recipient creates only a limited right for the Recipient to use the Proprietary Information in furtherance of its obligations under this Agreement or as otherwise provided for herein.

6.2 Exceptions. Recipient's confidentiality and nondisclosure obligations do not apply to any information that:

- (i) is or becomes publicly available (other than by a breach of this Agreement), including any information filed with any governmental agency and available to the public;
- (ii) is obtained from a third party that to its knowledge is legally entitled to disclose the information;
- (iii) Recipient can document it knew before the disclosing party disclosed the information; or
- (iv) Recipient can document it developed independently of any disclosure made by the disclosing party.

6.3 Legal Obligations to Disclose. If Recipient is requested or required by a subpoena, court order, or other legal or regulatory requirement to disclose any Proprietary Information, then Recipient may disclose any portion of the Proprietary Information that its counsel recommends is required to be disclosed. The Recipient shall promptly notify the disclosing Party in writing of the obligation to disclose so that the disclosing Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. Vendor is aware that Client is a government entity and is subject to the California Public Records Act, *Cal.Govt.Code §6250 et seq.*, the Brown Act, *Cal.Govt.Code §54950 et seq.*, and other laws pertaining to government entities. Information required by law to be disclosed will not be considered Proprietary and Confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation.

6.4 Client Data. All Client Data is Proprietary Information of Client. Client represent and warrant that it will only provide to Vendor the data that it owns, or has the right and license to use. Client grants to Vendor and any current or future Vendor affiliate, a non-exclusive, fully-paid, royalty-free, and irrevocable right and license to use and modify Client Data. The use and modification of any such Client Data that is subject to the Department of Justice Guidelines on aggregation of pricing data will be in compliance with these Guidelines if applicable. From time-to-time, Vendor may deploy Client Data into its performance lab for purposes of testing updates, upgrades, or new functionality.

Additionally, any use of Protected Health Information must be in full compliance with: (i) HIPAA; (ii) the HITECH Act; (iii) corresponding California privacy laws, and (iv) any Business Associates Agreement entered into by the Parties during the Term.

6.5 HIPAA. The Parties agree to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Confidentiality of Medical Information Act as set forth in Exhibit A.

6.6 Information Security Incidents. In the event either Party experiences an Information Security Incident, it shall promptly notify the other Party. For the purposes of this paragraph, an "Information Security Incident" means any actions or omissions including but not limited to ransomware, malware, and data breach incidents that compromise the security, confidentiality, or integrity of any safeguards put in place that relate to or impact data and systems of the Parties that interact. Upon receiving such notice, such Party may immediately suspend access to its systems, services and products until such time as it reasonably determines there is no longer a security risk.

6.7 Duration of Obligations. This Section 6 governs any disclosure of Proprietary Information made during the Term. The nondisclosure obligations of the Recipient under Section 6.1 remain in effect for a period of 36 months following the expiration or termination of this Agreement provided, however, that the nondisclosure obligations for Vendor Technology shall survive in perpetuity.

6.8 Regardless of any provision in this Agreement that conflicts or may appear to conflict:

- (i) Nothing in this Agreement prohibits Client from disclosing information in order to comply with a court order, subpoena, or similar legal process, or from providing truthful testimony in connection with a legal proceeding, including any proceeding conducted by a state or federal agency, provided that any confidential information disclosed is designated and otherwise treated as confidential; and

- (ii) Client shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Accordingly, Client may disclose in confidence trade secrets to federal, state, and local government officials, or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law. Client may also disclose trade secrets in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal and protected from public disclosure. Nothing in this Agreement is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by 18 U.S.C. § 1833(b).

## 7. Warranty.

7.1 Warranties of Vendor. Vendor represents and warrants that: (i) the Vendor Service(s) will be performed in a professional manner; (ii) any Vendor Technology provided under this Agreement will reasonably conform in all material respects to the specifications agreed to by the Parties during the term of the applicable SOW (the "Warranty Period").

7.2 Sole and Exclusive Remedy. Client's sole and exclusive remedy, and Vendor's sole and exclusive liability, for a breach of the representations and warranties in Section 7.1 are: (i) the specific support services in the applicable SOW; (ii) repeating or reprocessing of the Vendor Service(s) (if possible) by Vendor at no additional charge; or (iii) termination pursuant to the terms of Section 10.2.

7.3 Disclaimers. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS AGREEMENT, VENDOR EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED BY LAW, USAGE OF TRADE, COURSE OF DEALING OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE TECHNOLOGY IS PROVIDED "AS IS." CLIENT UNDERSTANDS AND AGREES THAT NEITHER VENDOR NOR ITS SUPPLIERS IS ENGAGED IN THE PRACTICE OF MEDICINE. THE SERVICES ARE NOT A SUBSTITUTE FOR PROFESSIONAL MEDICAL REVIEW AND JUDGMENT. CLIENT IS RESPONSIBLE FOR VERIFYING THE ACCURACY OF ALL PATIENT, VISIT AND OTHER INFORMATION AND/OR DATA IN OR GENERATED BY THE TECHNOLOGY OR THE SERVICES BEFORE ACTING ON OR ALLOWING IT TO BE USED FOR CLINICAL PURPOSES. VENDOR IS NOT RESPONSIBLE FOR AND SHALL HAVE NO LIABILITY FOR CLAIMS BY KERN OR OTHERS RELATING TO: (I) THE ACCURACY OF DATA ORIGINATING FROM THIRD PARTY CONTENT DATABASES OR SYSTEMS THAT HAVE BEEN INTEGRATED WITH VENDOR TECHNOLOGY, (II) ANY DATA ENTERED OR PROVIDED BY CLIENT OR ANY USER OF TECHNOLOGY, INCLUDING THE ACCURACY OF CODES, (III) ANY BODILY INJURY OR DEATH RESULTING FROM CLIENT'S OR ANY HEALTHCARE PROVIDER'S RELIANCE ON THE PATIENT INFORMATION IN OR GENERATED BY THE TECHNOLOGY OR THE SERVICES, OR (IV) BACKUP AND RECOVERY OF ANY DATABASE AND ANY STORED DATA.

7.4 Third-Party Providers' Warranties. Vendor Technology may contain content provided by third-parties (each, a "Third-Party Provider"). To the extent permitted or required by a Third-Party Provider, Vendor will pass through all terms and conditions from Third-Party Providers directly to Client including any warranties.

## 8. Indemnification, Insurance and Limitation of Liability.

8.1 General Indemnification. Each Party shall defend, indemnify, and hold the other harmless against all claims, losses, damages and costs, including reasonable attorneys' fees and expenses, arising out of any action brought by any third-party in connection with any negligent act, omission or breach of any obligation under this Agreement by the indemnifying party or by any of that party's employees, officers or agents. Neither Party is responsible for losses incurred by reason of the other Party's negligence or willful misconduct.

### 8.2 Intellectual Property Indemnification.

8.2.1 Exclusive Remedy. The provisions of this Section 8.2 state the sole and exclusive obligations and liability of Vendor and its licensors and suppliers (including Third-Party Providers) for any patent, copyright, trademark, trade secret or other intellectual property rights infringement arising out of or relating to the Vendor Technology.

8.2.2 Indemnity. Except as set forth in Section 8.2, Vendor agrees to defend at its expense and pay any final judgment or settlement in connection with any third-party claim based on infringement or misappropriation of U.S. copyrights, U.S. patents, trade secrets, or other proprietary rights of any third party arising out of the Vendor Technology. Vendor's indemnification obligations are contingent upon: (i) Client promptly notifying Vendor of the claim; (ii) Vendor having the sole authority to defend or

settle the claim; and (iii) Client providing reasonable assistance in connection with the defense of the claim at Vendor's expense.

- 8.2.3 Indemnity Exclusions. Vendor has no obligation with respect to any claim of infringement that is based upon or arises out of: (i) Client's unauthorized use or combination of the Vendor Technology with any hardware, software, products, data, or other materials not provided by Vendor; (ii) Client's use of the Vendor Technology other than in accordance with Vendor's written directions or policies given to Client; or (iii) any components or content provided by any Third-Party Provider.
- 8.2.4 Right to Procure or Modify. If a claim of infringement under this Section 8.2 occurs, or if Vendor determines that a claim is likely to occur, then Vendor has the right, in its sole discretion, to either: (i) procure for Client the right or license to continue to use the Vendor Technology free of the infringement claim; or (ii) modify the Vendor Technology to make it non-infringing. If these remedies are not reasonably available to Vendor, then Vendor may, at its option, terminate the applicable SOW and return any prepaid fees for Vendor Service(s) not yet rendered.

8.3 Insurance. Vendor shall maintain the below coverage with coverage underwritten by an insurance carrier with an A.M. Best Company rating of no less than "A-". All insurance coverages shall not be cancelled or materially amended with less than 30 days' prior written notice to Client.

- 8.3.1 Commercial General Liability Insurance. Vendor shall maintain on occurrence basis forms: (i) primary commercial general liability insurance to cover Vendor and its employees for bodily injury and property damage to third parties in an amount not less than \$1 million per occurrence and \$2 million general aggregate; (ii) products-completed operations in an amount not less than \$2 million aggregate; (iii) blanket contractual liability in an amount of not less than \$1 million per occurrence; and (iv) personal and advertising injury in an amount not less than \$1 million per occurrence.
- 8.3.2 Workers' Compensation/Employer's Liability Insurance. Vendor shall maintain workers' compensation coverage as required by statute, which (unless otherwise agreed to by Vendor and Client) shall be in the form of a workers' compensation insurance policy. Vendor shall maintain employer's liability insurance in an amount not less than: (i) \$1 million per accident; (ii) \$1 million for disease policy limit; and (iii) \$1 million disease coverage per employee.
- 8.3.3 Commercial Automobile Liability Insurance. Vendor shall maintain primary commercial automobile liability insurance to cover Vendor and its employees for bodily injury and property damage to third parties arising from the ownership, maintenance, or use of an owned, non-owned, or hired vehicle in an amount not less than \$1 million combined single limit.
- 8.3.4 Umbrella Liability Insurance. Vendor shall maintain an umbrella liability or excess liability insurance policy of not less than \$5 million per occurrence and \$5 million aggregate, in addition to the required commercial general liability, employer's liability, and commercial automobile liability coverages.
- 8.3.5 Professional Liability Insurance. Vendor shall maintain professional liability insurance covering financial loss resulting from:
- (i) any negligence or error or omission involving Vendor's technology utilized in the rendering of professional services under the Agreement, as applicable, in an amount not less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate; and
  - (ii) any security or privacy incident or breach, network security failure, data damage, destruction or corruption, unauthorized access, unauthorized use, virus transmission, denial of service, unauthorized disclosure of nonpublic personal or corporate information, or loss of income from, in the rendering professional services under the Agreement, as applicable, in an amount not less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate.

8.4 Limitation of Liability. Client acknowledges that Vendor's consulting services are advisory in nature and that should Client desire to implement any recommendations made, Client is solely responsible for the results therefrom. Client is solely responsible for its compliance with state and federal statutes, laws, regulations, policies or other governmental regulations including Medicare reimbursement, and accurate and complete code assignment. Vendor is not liable for claims attributable to any errors, omissions, or other inaccuracies in the information or material contained in the Client Data or data Vendor receives from third-parties. EXCEPT FOR CLIENT'S FAILURE TO PAY FOR THE VENDOR SERVICE(S), THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF LEGAL THEORY (WHETHER IN CONTRACT, TORT OR OTHERWISE), SHALL NOT EXCEED THE SUM OF \$500,000. THE FOREGOING LIMITATION DOES NOT APPLY TO A PARTY'S BREACH OF THE BUSINESS ASSOCIATE AGREEMENT. EXCEPT FOR GROSS NEGLIGENCE OR WILFULL MISCONDUCT,

THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR RELATED TO A BREACH OF THE BUSINESS ASSOCIATE AGREEMENT, REGARDLESS OF LEGAL THEORY (WHETHER IN CONTRACT, TORT OR OTHERWISE), SHALL NOT EXCEED THE SUM OF \$1,000,000.

IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE VENDOR SERVICE(S) (including, without limitation, any damages for lost or damaged files or data, lost profits, lost savings, or loss of business opportunity or goodwill), EVEN IF INFORMED OF THE POSSIBILITY IN ADVANCE.

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

This limitation of liability is fundamental to this Agreement. The Parties reviewed and bargained these terms and neither Party would be willing to enter into this Agreement without this limitation.

## **9. General Licensing Terms for Vendor Technology.**

9.1 Ownership. The Vendor Technology is (are) the exclusive property of Vendor. Vendor retains all right, title, and interest in its intellectual property rights related to the Vendor Technology. The Vendor Technology are licensed and not sold. Each SOW may further define specific licensing terms related to the use and access to the Vendor Technology and corresponding Deliverable(s).

9.2 Limited License Grant. These licensing terms apply only to Client accessing the Vendor Technology under each applicable SOW. Subject to the payment of all fees due, and Client's compliance with the licensing terms. Vendor grants to Client, and Client accepts, a non-transferable, non-exclusive, limited license to access and use any Vendor Technology provided under any SOW for Client's internal business purposes for the Term of the applicable SOW (the "License"). The License is only valid in the United States and its territories. Upon first access to the Vendor Technology, Client may be presented with additional terms and conditions related to the particular Vendor Technology (the "Clickwrap"). Client acknowledges that access to the Vendor Technology by one of its representatives (as evidenced by the associated username and password) is sufficient to bind Client to any terms and conditions contained in any Clickwrap. Except for the express licenses granted in this Agreement or an applicable Clickwrap, no other licenses or rights are granted by Vendor to Client in the Vendor Technology. Notwithstanding the foregoing, Sections 7, 8, 9, nor the fees due under any SOW may be modified by the Clickwrap agreement.

9.3 License Restrictions. Except as otherwise provided for in this Agreement, or an applicable SOW, Client shall not and shall not permit a third-party to: (i) use the Vendor Technology, or any portion of the Vendor Technology, for any unlawful purpose; (ii) market, sublicense, publish, distribute, lend, transfer, or otherwise make the Vendor Technology, or any components or output from the Vendor Technology, available to any third-party; (iii) alter, maintain, enhance, modify, or create derivatives of the Vendor Technology; (iv) remove any trademark, copyright, or proprietary notices; (v) copy, decompile, disassemble, or otherwise reverse engineer the Vendor Technology or perform any similar means or actions to discover the source code or trade secrets in the Vendor Technology; (vi) use the Vendor Technology as a substitute for the medical judgment of a physician or qualified healthcare provider; (vii) use the Vendor Technology to provide service bureau, time sharing, or other computer services to third-parties; (viii) circumvent any technological measures that control access to the Vendor Technology; or (ix) use the Vendor Technology to benefit any party other than Client.

9.4 Third-Party Intellectual Property Rights. Third-Party Providers may retain independent intellectual property rights in any content they provide which is contained in the Vendor Technology, and may provide additional terms and conditions related to their provided content.

## **10. Termination.**

10.1 Termination of Agreement for Breach. If any Party breaches any material provision of this Agreement (excluding any SOW), then the non-breaching Party shall provide written notice of the breach to the other Party. If the breaching Party fails to cure the breach within 30 days after receiving written notice, then the non-breaching Party may terminate the Agreement, and all attached SOWs, in its sole discretion, by providing a letter of termination to the breaching Party specifying the exact date of termination.

10.2 Termination of any SOW for Breach. If any Party breaches any material provision of any SOW, then the non-breaching Party to the SOW shall provide written notice of the breach to the other Party to the SOW. If the breaching Party fails to timely cure the breach within 30 days after receiving written notice, then the non-breaching Party may terminate only the applicable SOW, in its sole discretion, by providing a letter of termination to the breaching Party specifying the exact date of termination of the SOW.

10.3 Effect of SOW Expiration or Termination. Expiration of any SOW's term, or termination of any SOW, does not terminate this Agreement, or any remaining SOWs, unless the terminating or expiring SOW is the last-remaining SOW in effect, in which case its termination or expiration will terminate the Agreement.

## 11. General Provisions.

11.1 Statutory Audit Rights for Services. In connection with 42 U.S.C. § 1395x(v)(1)(I) (and the implementing regulations set forth at 42 C.F.R. §§ 420.300-.304), and until the expiration of four years after the furnishing of the Vendor Service(s), Vendor shall grant to the Secretary of the Department of Health and Human Services, the Secretary's duly-authorized representative, the Comptroller General of the United States, or the Comptroller General's duly-authorized representative, the right to review any and all books, documents, and records as may be necessary to certify the nature and extent of the costs of the services in excess of \$10,000 per year. If Vendor performs any of its duties under this Agreement by way of a subcontract with a related organization, and the value or cost of those subcontracted duties is \$10,000 or more over a 12-month period, then that subcontract shall contain a clause to the same effect as this Section 11.1.

11.2 Compliance with Law. Throughout the Term each Party's respective performance under this Agreement shall comply with all applicable federal, state, and local laws and regulations.

11.3 Staffing. Vendor shall have sole discretion to utilize Vendor's global colleagues to assist in any provision of Vendor Services.

11.4 Subcontractors. Vendor may use subcontractors as necessary to provide the Vendor Services.

11.5 Force Majeure. The performance of any obligations to be performed under this Agreement (other than an obligation to pay money or issue credit) is excused to the extent that performance is prevented or delayed by an act of God or the public enemy, terrorism, insurrections, riots, fire, explosion, flood, government order, or other reasonably unforeseeable causes beyond the control and without fault or negligence of the Party so affected and if, by the exercise of due diligence, the Party is unable to prevent or overcome the event. The Party so affected must give prompt written notice to the other Party of the cause and take whatever reasonable steps are necessary to relieve the effect of the cause as rapidly as possible.

11.6 Facsimile/Electronic Mail. All documents pertaining to this Agreement may be executed by the exchange of faxed executed copies, certified electronic signatures or copies delivered by electronic mail in Adobe Portable Document Format or similar format. Any signature transmitted by those shall be deemed an "original signature". All documents pertaining to this Agreement may be executed in two or more counterparts, but all of which, taken together, shall constitute one and the same instrument.

11.7 Governing Law. This Agreement will be governed by, and construed and interpreted according to, the substantive laws of the State of California.

11.8 Independent Contractor. The relationship of Vendor to Client created by this Agreement is that of an independent contractor; there is no relationship of agency, partnership, joint venture, employment, or franchise between the Parties.

11.9 Non-Solicitation. No Party may knowingly, directly or indirectly, solicit, recruit, or otherwise encourage any employee of the other Party to leave his or her employment with that other Party for any reason. This restriction applies during the Term and for a period of 12 months after the termination or expiration of this Agreement. The preceding sentence does not, however, prohibit either Party from: (i) soliciting employment by placement of general advertisements for employees on any internet site, in newspapers, or via other media of general circulation not specifically directed at the employees of the other Party; or (ii) soliciting persons identified through employment search firms that are not specifically directed at the employees of the other Party.

11.10 Notices. Any notices or other communications required or permitted to be given under this Agreement shall be in writing and delivered by personal delivery, overnight courier service, or registered or certified mail (return receipt requested, postage prepaid). Notices are deemed to have been given on the later of: (i) the date when personally delivered; (ii) the date which immediately follows the date of delivery to an overnight courier service; or (iii) the date which is 7 days from the date of deposit in the United States Postal Service in the manner described in this Section 11.9. Notices shall be addressed as indicated below, and either Party may change its address in accordance with this Section 11.9.

**If to Vendor:**  
Attn: Legal/Contracting  
SSG Sub, LLC  
200 North Point Center East, Suite 600  
Alpharetta, GA 30022

**If to Client:**  
Attn: Legal/Contracting  
Kern Medical Center)  
1700 Mount Vernon Avenue  
Bakersfield, CA, 93306

11.11 Publicity/Use of Marks. Vendor may include Client in its listing of clients and may announce Client's selection of Vendor to perform the Vendor Service(s) in its marketing communications. Except as otherwise agreed to by the Parties in writing, neither Party may: (i) use each other's trademarks or service marks; or (ii) make any press release or other public disclosure regarding this Agreement or the transactions contemplated by this Agreement without the other Party's prior written consent, except as required under applicable law or by any governmental agency, in which case the Party required to make the press release or public disclosure shall use commercially reasonable efforts to obtain the approval of the other Party as to the form, nature and extent of the press release or public disclosure prior to issuing the press release or making the public disclosure.

11.12 Severability. In the event that any provision of this Agreement is held to be illegal, or otherwise unenforceable, that provision shall be severed and the remainder of the Agreement shall continue in full force and effect; provided, however, that if the severing of that provision results in a material alteration of this Agreement, the Parties shall equitably adjust the remaining provisions of this Agreement so that no Party benefits disproportionately.

11.13 Assignment. Vendor shall not assign this Agreement without Client's consent, except that it may freely assign, in whole or in part, this Agreement and any rights or obligations thereunder, and any SOW thereunder, to Vendor's parent or any affiliate thereof, or as part of a direct or indirect change of control transaction. Kern shall not assign this Agreement without Vendor's consent. except that it may freely assign, in whole or in part, this Agreement and any rights or obligations thereunder, and any SOW thereunder, to Client's parent or any affiliate thereof, or as part of a direct or indirect change of control transaction Any attempt to assign this Agreement without proper consent will be of no effect. Subject to the foregoing, this Agreement is for the benefit of, and will be binding upon, the Parties' respective successors and permitted assigns.

11.14 Survival. The provisions of Sections 6 (Confidentiality), 7 (Warranty), 8 (Indemnification and Limitation of Liability 9.1 (Ownership) and 11 (General Provisions) survive the termination or expiration of this Agreement. Additionally, undisputed obligations to pay for goods or services provided prior to the expiration or termination of this Agreement, or expiration or termination of any SOW, survive and are payable within 30 days of the effective date of the expiration or termination.

11.15 Waiver. The waiver of any breach of any term or condition of this Agreement does not waive any other breach of that term or condition or of any other term or condition, unless agreed to in a writing signed by the Parties.

11.16 Entire Agreement and Amendment. This Agreement, together with all attached Exhibits, Schedules, and SOWs, contains the entire understanding between the Parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, with respect to the subject matter of this Agreement including, but not limited to, the Agreement for Professional Services between Kern County Hospital Authority and SSG Sub, LLC (successor-in-interest to nThrive Solutions, Inc.) dated October 8, 2002. The express terms of this Agreement, together with all attached Exhibits, Schedules, and SOWs, control and supersede any course of performance or usage of the trade inconsistent with any of the terms of this Agreement. This Agreement, any Exhibit, any Schedule, or any SOW may not be modified or amended other than by an agreement in writing signed by both Parties. In the event of a conflict between the terms of this Agreement and the terms of any SOW, then the terms of the SOW will control.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized representatives as of the Effective Date.

**SSG SUB, LLC**

**KERN COUNTY HOSPITAL AUTHORITY**

*Natalie Gray*

Signature

Signature

Natalie Gray  
Printed Name

Russell Bigler  
Printed Name

VP, Associate General Counsel  
Title

6/2/2021  
Date

Chairman, Board of Governors  
Title

06/16/2021  
Date

**APPROVED AS TO CONTENT  
KERN MEDICAL CENTER**

Signature

Andrew Cantu  
Printed Name

Chief Financial Officer  
Title

Date

**REVIEWED ONLY -  
NOT APPROVED AS TO FORM  
Legal Services Department**

*Shannon Hochstein*

Signature

Shannon Hochstein  
Printed Name

Hospital Counsel  
Title

06/02/2021  
Date

**EXHIBIT A TO THE MASTER AGREEMENT  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA”) is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center (“Covered Entity”) and SSG Sub, LLC and its affiliate nThrive Global Healthcare Services, LLC (collectively “Business Associate”) (each a “Party” and collectively the “Parties”), effective as of the Effective Date (the “Effective Date”).

**RECITALS**

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

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

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

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

**AGREEMENT**

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

**ARTICLE I  
DEFINITIONS**

- 1.1 “Breach” shall have the meaning given under [45 C.F.R. § 164.402](#).
- 1.2 “Breach Notification Rule” shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.
- 1.3 “Designated Record Set” shall have the meaning given such term under [45 C.F.R. § 164.501](#).
- 1.4 “Disclose” and “Disclosure” mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in [45 C.F.R. § 160.103](#).
- 1.5 “Electronic PHI” or “e-PHI” means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).
- 1.6 “Protected Health Information” and “PHI” mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at [45 C.F.R. § 160.103](#). Protected Health Information includes e-PHI.
- 1.7 “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended from time to time.

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

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

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

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

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

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

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

## ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or SubContractors that is not specifically permitted by this BAA no later than three (3) business days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section 2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations

relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

**2.3.2 Breach of Unsecured PHI.** If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) business days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole, reasonable control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any out-of-pocket costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance for those Individuals whose unencrypted social security numbers were disclosed as the result of a Breach) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

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

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

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

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

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

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

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

2.10 Availability of Internal Practices, Books, and Records to Government. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity promptly available for inspection and copying to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the HIPAA Rules. Business Associate shall maintain appropriate auditing and monitoring procedures to evaluate its facilities and processes for compliance with applicable industry standards, laws and government regulations. Once per contract year during the term of Underlying Agreement, Covered Entity may request completion of a security questionnaire or similar survey-type assessment to evaluate Business Associate's compliance with the provisions in this Section. Completion of the questionnaire/survey-type assessment will not include provision of any internal audit work papers or proprietary documentation. In addition, Business Associate shall provide any readily available third party attestation report (e.g. SOC 2 report) or certification documentation that was produced for the purpose of distribution to external parties, such as Business Associate's customers, upon request. The products and data centers included in the scope of such reports or certifications are determined by Business Associate in its sole discretion.

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

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

### ARTICLE III OBLIGATIONS OF COVERED ENTITY

#### 3.1 Covered Entity's Obligations.

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

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

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

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

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

### ARTICLE IV TERM AND TERMINATION

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

#### 4.2 Termination of Underlying Agreement.

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

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

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

4.3.1 Notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach or end the violation within fifteen (15) business days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period to the satisfaction of Covered Entity, Covered Entity may terminate this BAA and any Underlying Agreement upon thirty (30) calendar days written notice to Business Associate; or

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

#### 4.4 Disposition of Protected Health Information Upon Termination or Expiration.

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

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

### ARTICLE V MISCELLANEOUS

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

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

5.3 Relationship to Underlying Agreement Provisions. In the event that a provision of this BAA is contrary to a provision of an Underlying Agreement, the provision of this BAA shall control to the extent required for the Parties to comply with HIPAA, the HIPAA Rules, or the HITECH Act. Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered an amendment of and supplement to such Underlying Agreement.

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

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

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

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

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

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

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

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

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

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

Business Associate's Notice Address:

SSG Sub, LLC  
200 North Point Center East, Suite 600  
Alpharetta, GA 30022  
Attn: Legal/Contracting

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

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

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

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

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

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

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

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

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

**SOW FOR REGISTRY STRATEGIC SOURCE**

**1. Term.** The services provided under this SOW (the "Registry Strategic Source") shall be provided by SSG, Sub, LLC and shall commence on the Effective Date (the "Registry Strategic Source Effective Date") and continue for 12 months therefrom (the "Registry Strategic Source Term").

**2. Clients.** Individual sites and departments covered by this SOW (each a "Client" for the purposes of this SOW) are listed below. Each site or department must be listed individually (i.e. multiple sites shall not be grouped under a common name) to receive the Registry Strategic Source. KCHA may request Vendor to add a site or department to the list of Clients through an amendment to this SOW. KCHA represents and warrants it has the legal authorization to execute this SOW on behalf of itself and the Clients.

CLIENT LIST		
Facility ID	Account Name	Facility City, State
8878	Kern Medical Center	Bakersfield, CA

**3. Definitions.** The following definitions are in addition to those contained in the Agreement and shall pertain only to the Registry Strategic Source:

ACoS means American College of Surgeons.

CoC means Commission on Cancer.

Connectivity means remote access by Vendor to Client systems as required for completion of the work associated with this SOW.

CTR(s) means Certified Tumor Registrar(s).

Department means Client's Cancer Registry.

Hours Lost means any time over the designated period to establish or maintain Connectivity. That time will be considered a delay and may be subject to per hour/per colleague fees as identified in Section 4.

Live Status means the date that all required system access is activated for designated colleagues and all project training has been completed by the client to enable project work to begin.

NCDB means National Cancer Data Base.

RCRS means Rapid Cancer Reporting System.

SCR means State Cancer Registry.

TJC means The Joint Commission.

**4. Fees.** Vendor shall commence invoicing on or promptly after the Registry Strategic Source Effective Date and monthly thereafter. The invoice for the first month shall be prorated based upon the number of days the Registry Strategic Source services were in use.

Monthly Rate
\$12,829

\*In the event Client requires Trauma Abstracting, Client will engage the services of Vendor to perform the Trauma Abstracting under a separate mutually agreed upon SOW.

**5. Description, Deliverables and Obligations of the Parties.**

**5.1 Scope of Services.** Vendor will lead the Department to assist in meeting its compliance with all CoC and SCR reporting requirements, and provide full-time, permanent CTR(s) and other personnel as Vendor deems necessary. Client acknowledges that Vendor employees are entitled to four weeks of vacation/sick leave per year, in addition to the nine major holidays. Vendor shall not be responsible for replacement staff during the aforementioned leave unless Vendor deems necessary. At the time of Live Status, Client further acknowledges that Vendor colleagues will participate in the project review process to ensure the completeness of the work output during the initial two weeks of the project. If Client chooses to forego project review, then it must notify Vendor in writing within three days of the Registry Strategic Source Effective Date.

The level and scope of Registry Strategic Source services to be provided by Vendor under this SOW are equal to the level and scope of services in place at Client on the Registry Strategic Source Effective Date based on the information provided by the Client. The scope of services includes cancer surveillance reporting requirements of patients with a date of first contract six months prior to Live Status. All required cancer reporting beyond the six-month timeframe prior to Live Status will be considered backlog and is not covered within this scope of services. If changes to current service levels, backlog, volumes, or increased caseload or scope, are requested by Client or identified by Vendor colleagues, the Parties shall amend this SOW in good faith to reflect such changes and change in fee structure. If such renegotiation is not resolved to within 30 days of the initial request, the Parties will proceed under the existing contract terms, and Vendor shall have the right to terminate this SOW by providing Client 30 days prior written notice.

Vendor will perform all day-to-day functions of the Department and advise the Client of activities required for a CoC accredited cancer program to include:

- (i) Case-finding - Responsible for complete and accurate case-finding in accordance with the CoC standards and SCR requirements;
- (ii) Suspense File – Ongoing maintenance and review of the cancer database suspense file;
- (iii) Abstracting - Abstract reportable cases in accordance with the CoC and SCR guidelines;
- (iv) Data Set - Complete all data fields included in the required data set as per the CoC and SCR guidelines;
- (v) Follow-up - Perform annual follow-up on all required cases per the CoC standards and maintain established follow-up rates with required physician participation;
- (vi) Cancer Committee – Attend designated cancer committee meetings. Participate in the preparation for the agenda and minutes with the assistance of the cancer chairman, cancer committee members and designated Client administrative support;
- (vii) Quality Improvement Studies – Assist the Client's Quality Improvement Coordinator with the completion and follow-up of one current Quality Improvement study annually, with the required involvement of the cancer committee and designated physician representatives;
- (viii) Annual Report – (optional – not required by CoC). Provide the cancer data and assist with the development and completion of the cancer program annual report draft by Client's established timeframes, with the required participation of the Cancer Committee and other Client personnel;
- (ix) Policy and Procedures – Responsible for the annual review, development and implementation of the Departments policies and procedures approved by the cancer committee;
- (x) Physician Quality Review – Maintain the documentation and make corrections resulting from physician 10% review of the annual analytical caseload as needed;
- (xi) ACoS Survey - Assist with the organization's ACoS survey preparations in conjunction with the Cancer Committee members and Cancer Chairman;
- (xii) Transmittals – Electronically transmit cancer data to the SCR, NCDB and RCRS within established timeframes;
- (xiii) Vendor will schedule staff and work assignments within the Department;
- (xiv) Vendor will formalize and operationalize the steps necessary for an efficient, dynamic and cost-effective department;
- (xv) Vendor will identify and monitor the data flow, reporting system, and productivity standards within the Department;
- (xvi) Vendor will identify appropriate staffing-to-work load levels;
- (xvii) Vendor will liaison with cancer registry software vendor providing services to the Department;
- (xviii) Vendor will liaison with other Client departments as necessary. Vendor personnel will respond in a positive manner to recommendations made by other Client management and make recommendations as to improvements needed in other Client departments which impact the delivery of cancer registry services;
- (xix) Vendor will continuously review the operations of the Department, report the results of such review and implement improvements as needed;
- (xx) Vendor will review information systems with respect to cancer registry functions, recommend changes to Client management and implement approved changes;
- (xxi) Vendor will assure that the Client's Department operations and policies and procedures which are within its direct control are always in compliance with CoC, TJC, State standards; and
- (xxii) Vendor will report to the assigned Client personnel a written cancer registry status report on a monthly basis.

## 5.2 Client Responsibilities. Client shall:

- (i) provide the elements necessary for Vendor to complete the services as outlined: a general orientation, workspace including desk, network access, identification / security badges and access to software necessary to complete tasks;
- (ii) provide a technology contact and ongoing support to meeting Connectivity requirements;

- (iii) provide access to all medical record documentation to ensure accurate completion of this scope of services within 10 business days of Registry Strategic Source Effective Date;
- (iv) orient Vendor personnel as to Client specific cancer registry and cancer program practices and procedures;
- (v) be responsible for the following costs, which will be reflected as costs of the Department:
  - a) Employee health related requirements not required under Federal, State or local regulations;
  - b) All registration and travel expenses for required education as specified by the Commission on Cancer.
  - c) References / journal subscriptions.

5.3 Connectivity. Vendor requires remote or onsite access to Client's systems to complete the work described in this SOW.

- (i) Vendor will provide Client with forms that include Connectivity requirements. Client will have five business days from receipt of those forms to complete Connectivity. Any time over that five-day period will be considered a delay and may be subject to additional per hour/per colleague fees;
- (ii) Vendor is prepared to spend up to four consecutive hours working with Client's staff to establish Connectivity. Any time over will be considered an access delay ("Access Delay") and may be subject to additional per hour/per colleague fees; and
- (iii) Vendor understands that Connectivity issues occur and is prepared to absorb two hours or less on any given workday. Any additional time Connectivity is not available will be considered "Hours Lost" and may be subject to additional per hour/per colleague fees.

5.4 Deliverables. Vendor will provide regular status reports on a mutually-agreeable basis to the appropriate Client personnel.

## **6. Rights and Responsibilities Relating to Staff.**

6.1 Supervised Client Employees. To the extent any Vendor management staff provides any supervision or other management of or relating to any Client employee, Client understands and acknowledges that: (a) Vendor's supervision or management is advisory only, and (b) Client remains solely responsible for: (i) the Client employees' performance and conduct; (ii) all employment-related decisions relating to Client employees, including any and all hiring, firing, promotion, transfer, and discipline decisions; and (iii) all other employment-related obligations relating to Client employees, including but not limited to compensation, group health benefits, disability accommodations and benefits, leave of absence management, unemployment insurance, workers' compensation coverage, and compliance with any applicable collective bargaining agreements. Regardless of any language that conflicts or appears to conflict, Client also remains solely responsible for any costs, notices, and other liabilities relating to or arising from the termination of employment of any and all Client employees.

6.2 Fair Notice. Client represents and warrants that: (a) Client is not a party to any collective bargaining agreement and is not negotiating any collective bargaining agreement which may control or dictate any terms or conditions of employment of any Client employees who is or may be supervised by Vendor (each, a "Supervised Client Employee"); (b) Client has no knowledge of any existing bargaining unit consisting of any Supervised Client Employee; (c) Client has no knowledge of any union campaign or any other effort to organize a bargaining unit that would consist of any Supervised Client Employee; and (d) Client does not maintain or participate in, and has no obligation to establish, join, maintain or participate in, a multiemployer pension fund or any other multiemployer welfare plan. Client understands that Vendor is relying on these representations and warranties, each of which is material, and Vendor would not enter into this SOW but for these representations and warranties.



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

June 16, 2021

**Subject:** Proposed Equipment Services Agreement with Agiliti Surgical, Inc. for the use of laser equipment, maintenance of equipment, and the purchase of the fibers necessary to perform laser procedures

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

**Summary:**

Kern Medical requests your Board approve the proposed Equipment Services Agreement with Agiliti Surgical, Inc., for the use of the Greenlight XPS Laser, service and maintenance of this Laser, and the purchase of the fibers, which are used in various procedures. This laser is used by the urologists and has redefined the standard of care for the treatment of benign prostatic hyperplasia. Kern Medical anticipates that the procedures completed with laser and fibers used will cover the costs of this agreement. Kern Medical had a previous agreement for these services, however, that vendor no longer has the ability to purchase the fibers needed for the required procedures.

Approximate laser, fiber, and maintenance cost for each procedure is \$2200. Using previous year's procedure numbers, we estimate that our physicians will complete approximately 20 procedures annually.

Counsel is unable to approve as to form due to non-standard terms which include adjustable fees, late fees, and the limitation of liability to the cost of the agreement. Efforts were made to negotiate with the vendor, but to no avail.

Even with these issues, Kern Medical recommends that your Board approve the Equipment Services Agreement with Agiliti Surgical, Inc. for the purchase of urological laser equipment, maintenance, and fibers, for a term of five (5) years beginning on June 16, 2021, with an approximate yearly cost of \$132,000, containing non-standard terms and conditions, and authorize the Chairman to sign.



**EQUIPMENT SERVICES AGREEMENT**

This Services Agreement ("Agreement") between Agiliti Surgical, Inc. ("Agiliti") and Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center ("Customer") is effective on the date of the last signature below ("Effective Date"). This Agreement has no force and effect unless it is signed by Customer on or before August 1, 2021 and thereafter signed by Agiliti.

**Services.** Customer engages Agiliti to perform the services described in the Exhibit(s) ("Services") on the equipment listed ("Equipment") and for the fees ("Fees") set forth in the Equipment and Fees Exhibit.

**Term.** This Agreement begins on the Effective Date and continues in effect for five year(s), unless it is terminated sooner pursuant to the Terms and Conditions Exhibit. Thereafter, this Agreement automatically renews for successive 12-month periods, unless either party gives the other written notice of its intent to terminate or amend the Agreement at least 90 days before the renewal date in the manner described in the Terms and Conditions Exhibit.

**Incorporation of Exhibits.** The following Exhibits are incorporated into this Agreement:

- Equipment Services Exhibit
- Equipment and Fees Exhibit
- Terms and Conditions Exhibit

ACCEPTED AND AGREED TO:

**Kern County Hospital Authority**  
1700 Mt. Vernon Avenue  
Bakersfield, CA 93306

**Agiliti Surgical, Inc.**  
6625 West 78<sup>th</sup> Street, Suite 300  
Minneapolis, MN 55439

Signature \_\_\_\_\_

Russell Bigler  
\_\_\_\_\_  
(Print name)

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

Date June 16, 2016  
\_\_\_\_\_

Signature \_\_\_\_\_

Matthew McCabe, VP  
\_\_\_\_\_  
(Print name) **McCabe, VP**  
Finance

Title VP  
\_\_\_\_\_ **VP**  
Date: 2021.06.10  
\_\_\_\_\_

Date 09:59:29 -05'00'  
\_\_\_\_\_ **Finance**

**REVIEWED ONLY  
NOT APPROVED AS TO FORM**

By [Signature]  
\_\_\_\_\_  
**Legal Services Department**

## EQUIPMENT SERVICES EXHIBIT

Agiliti will provide Services, Equipment and Supplies as described in this Exhibit (subject to availability).

### **1. AGILITI SERVICES**

- 1.1. During the term of this Agreement, Agiliti will provide to Customer the Equipment and Supplies as set forth on the Equipment and Fees Exhibit, and such services and personnel (collectively, the "Services") as Customer or its representatives determine is needed on a case by case basis for Customer patients (the "Patients").
  - 1.1.1. Agiliti will provide such upgrades to the Equipment as are provided to Agiliti without charge by the manufacturer.
  - 1.1.2. Agiliti will, at its sole expense, maintain and repair the Equipment in a reasonable and prompt manner. The previous sentence notwithstanding, Customer will be responsible for and will pay such costs and expenses to the extent that, directly or indirectly, the repair or maintenance is due to or arises from the negligent acts or failure to act of Customer and/or its employees, representatives, agents, contractors, or the physicians using the facilities of Customer including, but not limited to, the physicians on Customer's medical staff, (the "Physicians") outside normal wear and tear.
  - 1.1.3. Agiliti will provide safety and other appropriate technical training and services to Customer in connection with the use of the Equipment.
- 1.2. Agiliti will provide duly qualified technicians (the "Technicians") to provide technical support to the Physicians.
  - 1.2.1. Agiliti will ensure that the Technicians are duly qualified, certified and/or licensed in accordance with the laws of each state in which Customer requires the Technicians to provide services under this Agreement, and upon the request of Customer, will provide Customer with copies of such documentation (if any) which may include, but not be limited to, the following:
    - 1.2.1.1. Proof of current licensure and appropriate certification in the applicable state in which Customer is providing services (to be made available by Agiliti to Customer prior to the initial provision of any services to Customer and/or Physicians by such Technician);
    - 1.2.1.2. Proof of compliance with applicable immigration laws and maintenance of current I-9 documentation;
    - 1.2.1.3. Proof of Continuing Educational Units, if applicable; and
    - 1.2.1.4. Certification by Agiliti of the satisfactory results of a drug screening test.
  - 1.2.2. Upon the written request of Customer, Agiliti will cause each Technician to execute a confidentiality statement in form and substance agreed to by both Agiliti and Customer, and will provide a copy of such statement to Customer.
  - 1.2.3. Agiliti will cause each Technician to undergo a pre-employment physical, and will require that each Technician be and remain current with all medically recommended immunizations, including a TB vaccination. Upon the written request of Customer, Agiliti will provide Customer with documentation that the foregoing has been done to the satisfaction of Agiliti and the examining physicians.
  - 1.2.4. Agiliti will confirm that the Technicians speak, write, and read the English language at a level sufficient for the Technician to reasonably (A) communicate with Patients, Physicians and other staff at Customer; and (B) complete required documentation.

1.2.5. Agility will use reasonable efforts to ensure that the Technicians professionally, ethically and diligently carry out their responsibilities under this Agreement to best serve the interests of the Patients and Customer.

1.2.6. The Technicians will be employed by, or under contract with, Agility which will be exclusively responsible for payment to the Technicians of compensation (including any applicable withholds and tax payments), and benefits (if any), for services provided under this Agreement.

1.2.7. Agility agrees that the Technicians to be assigned to Customer are subject to the prior approval of Customer.

1.3. Agility will provide such other services as are ancillary to, and appropriate for, the provision of the Technicians and Equipment to Customer as are agreed upon by Agility and Customer.

## **2. CUSTOMER RESPONSIBILITIES**

2.1. Customer will cooperate with Agility, and will promptly provide to Agility any information and documentation that may be requested by any lender or leasing company of Agility in connection with the Equipment.

2.2. Upon reasonable notice, Customer will permit Agility and/or its representatives to inspect the books and records of Customer as such pertain to the use of the Equipment by Customer under this Agreement.

2.3. Customer agrees that it will be the responsibility of Customer and/or the Physicians to bill the Patients and/or third party payers for the provision of services using the Equipment and the Technicians, and that such billing will at times be in accordance with applicable federal and state laws and regulations.

2.4. Customer will use the Equipment and Supplies solely for the benefit of its Patients or Patients of health organizations and entities that are subsidiaries of or affiliated with Customer (collectively, the "Affiliates"). For purposes of this Agreement, "affiliated with" means a facility or entity that is controlled by Customer.

2.5. Customer will maintain at all times during this Agreement, all licenses and permits which are necessary or appropriate for Customer to operate and provide Services using the Equipment and Supplies.

2.6. As between Customer and Agility, Customer will ensure that the medical license of each Physician using the Equipment and Supplies is unrestricted, and that each Physician is duly licensed to practice medicine in the state in which such Physician is providing the service. Customer and Agility agree that Agility bears no responsibility for ensuring the licensure stated above.

2.7. Customer acknowledges and agrees that (i) Agility owns, leases and manages medical equipment, including but not limited to, the Equipment; (ii) some equipment which may, but not necessarily, include the Equipment, is leased from or managed on behalf of, companies whose owners may include, but are not limited to, physicians, including the Physicians utilizing the Equipment under this Agreement; (iii) the Fees and other consideration paid under this Agreement by Customer to Agility was determined as a result of an arms' length transaction and to the best of the knowledge of the parties, represents fair value for Services in this geographic area in which Customer serves Patients.

2.8. Customer will, as necessary, make proper disclosures to Patients of the relationship between Customer and Agility, the availability of other sources of treatment, and the Patient's right to choose other procedures or treatment.



**EQUIPMENT AND FEES EXHIBIT**

The Equipment and Supplies listed below will be updated, with an adjustment in Fees, as appropriate, upon the parties' agreement.

**1. TAXES AND CONSUMER PRICING INDEX**

Fees are exclusive of taxes and incremental third party costs incurred based on Customer direction. All sales, use, excise or similar taxes and incremental third party costs relating to the Services and Supplies are Customer's sole responsibility. Agility may increase Fees 3.5% once every 12 months. The increase is applied on a cumulative basis beginning on either the Agreement Effective Date or date of last increase, whichever is later. Not raising fees is not a waiver of Agility's right to do so.

Customer will provide a purchase order ("PO") for Services within 7 calendar days of Service.

**2. AGILITY EQUIPMENT, SUPPLIES AND FEES**

System Family	Description	Item Number		Committed Price
<u>BK Ultrasound</u>	Procedure	669	A	1,000.00
<u>BK Ultrasound</u>	Standby	669	M	850.00
	BK Lap Probe 8666RF	706		900.00
	BK Triplane Prostate Prob 8818	705		1,000.00
	BK Robotic Drop In Transducer	671		1,750.00
	Disp Biopsy Needle Trupath 18gx25c	8031258		140.00
	BK Biplane Prostate Probe 8848	707		1,500.00
	BK Craniotomy Probe 8862	722		1,750.00
	BK Endorectal Biplane Probe 88	723		1,750.00
	BK Intraoperative Biplane Prb	728		1,500.00
	BK Intraoperative I-Probe 8815	739		900.00
	BK Intraoperative T-Probe 8816	712		900.00
<u>BK5000 Ultrasound</u>	Procedure	741	A	1,250.00
<u>BK5000 Ultrasound</u>	Standby	741	M	1,000.00
	BK Drop-In Probe 9026	742		1,700.00
	BK Intra Operative T-Probe9016	747		1,700.00
	BK Intraoperative Biplane Prb	728		1,700.00
	BK Lap Probe 9066	743		1,700.00
	BK5000 Anorectal 3D Transducer	757		1,850.00
	BurrHole Neuro Transducer 9063	745		1,995.00
	Curved Array Transducer 9062	746		1,995.00
	Disp Biopsy Needle Trupath 18gx25c	8031258		140.00
	BK Triplane Endocavity 9018	762		1,995.00
	BK Curved Array Transduce 9040	776		1,995.00
	BK Curved Array Transduce 9085	777		1,900.00
	BK Intra Operative I-Probe9015	779		1,700.00
	BK5000 BIPLANE PROBE 9048	786		1,700.00



System Family	Description	Item Number		Committed Price
<u>CO2 AcuPulse Duo Fiber</u>				
<u>Optic</u>	Procedure	731	A	750.00
	Standby	731	M	595.00
	Acupulse FiberLase Robo Drop	8000068		300.00
	Lumenis FiberLase CO2 Fiber	8000010		1,495.00
	CO2 Otolase Fiber	8000179		600.00
	CO2 Otolase Tip - Curved	8000180		295.00
	CO2 Otolase Tip - Straight	8000181		295.00
<u>CO2 AcuPulse Duo Surgical</u>				
	Procedure	730	A	750.00
	Standby	730	M	595.00
	Lumenis AccuBlade W/ Microman	734		400.00
	Lumenis AcuSpot 712 Microman	733		250.00
<u>CO2 Omniguide</u>				
	Procedure	640	A	700.00
	Standby	640	M	595.00
	Beam-Path M 150 (OTO-M)	8013092		750.00
	BeamPath-S 130 (OTO-S)	8013090		750.00
<u>ESWL</u>				
	Procedure	645	A	1,795.00
	Standby	645	M	1,000.00
	Bilateral Procedure	646		900.00
	ESWL OEC9900 C-Arm	647		0.00
<u>ESWL (300+)</u>				
	Procedure	698	A	1,995.00
	Standby	698	M	1,250.00
	Bilateral Procedure	646		900.00
<u>Greenlight XPS</u>				
	Procedure	600	A	795.00
	Standby	600	M	595.00
	Greenlight Moxy Fiber	8010158		1,150.00
	Blown Scope/Laser Bridge	602		1,200.00
	Cystoscope Cont. Flow	601		150.00
<u>Holmium</u>				
	Procedure	616	A	450.00
	Standby	616	M	250.00
	(Agility) 365 UM Single Use	8000230		195.00
	(Agility) 550 UM Single Use	8000231		225.00
	(Agility) 940 UM Single Use	8000232		375.00
	(Agility) 550 UM Single Use Side Fire	8000237		600.00
	(LP) 272um NavTip Holmium Fiber	8000005		375.00



System Family	Description	Item Number		Committed Price
	(LI) 272 UM Single Use	8000146		195.00
	(LI) 365 UM Single Use	8000148		195.00
	(LI) 550 UM Single Use	8000164		225.00
	(LI) 940 UM Single Use	8000145		375.00
	Holm Abl Cystoscope Cont.Flow	614		150.00
<u>Holmium High Power</u>	Procedure	613	A	750.00
<del>Holmium High Power</del>	Standby	613	M	395.00
<u>KTP Aura [Surgical]</u>	Procedure	625	A	696.00
<del>KTP Aura [Surgical]</del>	Standby	625	M	395.00
	KTP Aura Fbr 125um Accustat S	8010150		725.00
	600 Micron Bare Fbr Rced Unst	8013064		350.00
	KTP Fbr 300um Endostat S	8010148		700.00
	KTP Fbr 400um BARE S	8013084		295.00
	KTP Fbr 400um Endostat	8010164		575.00
	KTP Fbr 600um Lsr Sf SMA S	8013001		350.00
	KTP Fbr Endostat .6mm,12ft	8013145		575.00
	KTP Fbr200um Endst Aura/OrionS	8010151		725.00
<u>Revolix</u>	Procedure	643	A	850.00
<del>Revolix</del>	Standby	643	M	495.00
	(LI) Fbr SU 800um	8000174		1,100.00
	(Agility) 550 UM Single Use Side Fire	8000237		600.00
	(LI) SideFire 600um	8000241		1,200.00
<u>Blue Light Laser</u>	Procedure	789	A	700.00
<del>Blue Light Laser</del>	Standby	789	M	495.00
<u>Technician Only</u>	Per Hour (2 Hour Minimum)	462	-	175.00

<u>Fees</u>			
Cancel less than 24 hours	Cancelled in less than 24 hours of case start time	453	67%
Cancellation upon arrival	Cancelled upon arrival at facility or after setup	454	80%
Emergency Fee	Cases scheduled within 24 hrs of Scheduled start time	459	100.00
Afterhours Fee	Cases starting after 5:00pm	456	100.00
Weekends/Holidays	Cases scheduled on weekends or on a holiday	457	100.00
Extended Hours Fee	Cases lasting more than two (2) hours of Scheduled start time (hourly fee billed in 15 min increments)	458	100.00
Delivery	Facilities 100 miles from local office	460	150.00
Fuel Charge	One time charge per technician on first case of the day	461	50.00



*Note: Technology subject to availability*  
*Pricing based on equipment available in market*

**3. FUEL SURCHARGE**

Agility may assess a temporary transportation fuel surcharge to offset inflationary increases in the cost of fuel. If the price of fuel increases by 15% or more from the U.S. National Average Diesel/Gas Fuel Index as of the Effective Date of this Agreement, Agility may assess a per case surcharge based on the number of cases between a Customer location and Agility district office. Agility will calculate the fuel surcharge using a formula, which takes into account the increase in Agility’s cost per gallon of fuel and equipment transportation fuel consumption levels. Below is an example of how the fuel surcharge would be calculated:

**Fuel Surcharge Calculation Example**

Price per gallon at contract (index)	\$2.50
Price per gallon current (index)	\$3.50
Cases at contract/current	300
Miles driven at contract/current	18,000
Miles per gallon at contract/current	20
Miles per Case	$18,000 \div 300 = 60$
Gallons per Case	$60 \div 20 = 3$
Cost at contract	$3 \times \$2.50 = \$7.50$
Cost current	$3 \times \$3.50 = 10.50$
Surcharge per case	\$3.00

In lieu of assessing a fuel surcharge, Agility may increase Fees for Services upon 30 days advance notice to Customer. Unless Customer gives Agility written notice of termination of Services within 20 days of the date of Agility’s notice of the fuel-related Fee increase, Customer will be deemed to have consented to the change in Fees for Services.

## TERMS AND CONDITIONS EXHIBIT

- 1. Payment Terms.** Invoices are typically rendered for each case and payment in full is due within 30 days of the date of invoice. Agiliti may charge an additional fee of 1.5% per month (18% per annum) or the maximum rate allowed by law, whichever is less, to late payments. On five days' notice to Customer, Agiliti may suspend performance of Services for non-payment until a reasonable time after the non-payment is cured. There is no right of off set, and Customer will take no deductions, unless authorized to do so by Agiliti through issuance of a credit memorandum. Customer will give Agiliti written notice of any incorrect charges within 90 days of the Agiliti invoice to which the claim relates. After 90 days, the originally invoiced amount will be deemed to be correct.
- 2. Confidentiality.** In connection with this Agreement, each party may disclose to the other certain confidential and proprietary information that is marked as confidential or that logically would be considered to be confidential (collectively, the "Confidential Information"). For the avoidance of doubt, Agiliti Confidential Information includes without limitation any and all technical information, techniques, know-how, processes, software programs, software source documents, insurance and pricing information that Agiliti or its subcontractor provides to Customer. Each recipient agrees that the Confidential Information provided to it, regardless of form, will be received and maintained by it in confidence for five years after this Agreement ends.

The obligation of confidentiality will not apply with respect to any Confidential Information that: (a) is in the public domain at the time of discloser's communication to recipient; (b) was or becomes generally available to the public other than as a result of a disclosure by recipient in breach of this Agreement; (c) was in recipient's possession, free of any obligation of confidentiality, at the time of discloser's communication to recipient; (d) is communicated to recipient free of any obligation of confidence by a third party, which third party was free to make such disclosure without breach of any legal obligation to discloser; or (e) recipient is compelled to disclose by deposition, subpoena or other court or governmental action, as evidenced by advice of legal counsel, provided that recipient gives the discloser advance written notice of the Confidential Information to be disclosed as far in advance of its disclosure as is reasonably possible, practicable and legally permissible, and recipient cooperates with discloser, if discloser seeks to obtain a protective order concerning such Confidential Information. Agiliti is aware that Customer is a government entity and is subject to the California Public Records Act, *Cal.Govt.Code §6250 et seq.*, the Brown Act, *Cal.Govt.Code §54950 et seq.*, and other laws pertaining to government entities. Information required by law to be disclosed will not be considered Proprietary and Confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation.

- 3. Termination and Effect of Termination.** At any time while this Agreement is in effect, either party may terminate the Agreement for cause, including insolvency and material breach, provided the non-defaulting party gives the other party written notice detailing the nature of its material breach of the Agreement. If the material breach remains uncured 30 days after notice to the breaching party, or if the breach is of a nature that cannot reasonably be cured in such 30-day period and the breaching party has failed to diligently commence and pursue actions necessary to cure the breach, then the non-defaulting party may terminate this Agreement at any time by providing written notice of the date of termination to the other party.

The terms of this Agreement that, by their nature must survive the termination of this Agreement to protect the party in whose favor they run, survive the termination of this Agreement.

- 4. Compliance.** Each party will comply with applicable laws, rules and regulations in connection with this Agreement. Agiliti has not been debarred, suspended or declared ineligible to market or sell items or services for which reimbursement may be made by Federal health care programs and is not included on the General Service Administration or HHS/OIG Exclusion List. To the extent required by law, Agiliti will make available to the Secretary of the U.S. Department of Health and Human Services, the

Comptroller General or any of their duly authorized representatives this Agreement and Agiliti's books, documents and records that are necessary to verify the nature and extent of the cost of Services performed pursuant to this Agreement for a period of up to four years after such Services are furnished.

5. **Insurance.** While this Agreement is in effect, each party will maintain workers' compensation insurance in amounts required by law and will maintain commercial general liability insurance in an amount of not less than \$1,000,000 per occurrence and \$3,000,000 in aggregate. Agiliti will provide Customer with Agiliti's Evidence of Insurance on Customer's request.
6. **Disclaimer of Warranties and Liability Limitation.** Agiliti is not a manufacturer of Equipment and disclaims all warranties. Customer's sole remedy for breach of a manufacturer's warranty is against the manufacturer..

**AGILITI MAKES ABSOLUTELY NO WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY, CONDITION OR PERFORMANCE OF EQUIPMENT OR PATENT INFRINGEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, LAW, USAGE OR TRADE PRACTICE. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE SUBJECT TO ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONTINGENT DAMAGES WHATSOEVER WITH RESPECT TO CLAIMS MADE UNDER THIS AGREEMENT OR BY ANY CONSUMER OR OTHER USER OF EQUIPMENT OR SUPPLIES. EQUIPMENT AND SUPPLIES, INCLUDING WITHOUT LIMITATION ANY PROGRAMMED SOFTWARE, ARE RENTED OR SOLD "AS IS." AGILITI'S LIABILITY, AT AGILITI'S OPTION, IS LIMITED TO REPERFORMANCE OF THE SERVICES OR A REFUND OF THE SERVICE FEE PAID BY CUSTOMER TO AGILITI. THIS DISCLAIMER OF LIABILITY FOR ALL DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN SHALL FAIL OF ITS ESSENTIAL PURPOSE.**

**Liability of Customer.** Save as set forth in this Agreement, the liabilities or obligations of Customer with respect to the Services 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. California Health and Safety Code Section 101853(g)

7. **Excusable Delays/Non-Performance.** Any delay or failure in performance other than non-payment will be excused to the extent caused by an extraordinary event or occurrence beyond the reasonable control of the non-performing party, including without limitation, fires, floods, windstorms, explosions, strikes, walk outs, riots, natural disasters, mechanical breakdowns, power outages, interruptions in telecommunications, material shortages, acts of terrorism, wars and changes in law, policy or inflationary pressure that render performance of Services by Agiliti commercially impracticable. The affected party will give the other party prompt notice of the delay or failure and the reason thereof and will exert commercially reasonable efforts to remove the causes or circumstances of non-performance with reasonable dispatch.
8. **Assignment.** Neither party may assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party, except that with at least ninety (90) days' prior written notice to Customer, Agiliti may assign this Agreement to a wholly-owned subsidiary or to a successor in interest to which the business relates.
9. **Independent Contractor; Benefit.** The relationship between the parties is solely that of independent contractors. This Agreement is for the benefit of the parties. There are no intended third party beneficiaries to this Agreement.

- 10. Governing Law; Jurisdiction.** This Agreement is governed by the laws of the State of California, notwithstanding its conflict of laws rule.
- 11. Waiver; Severability; Entire Agreement; Amendment.** Waiver by either party of any breach of this Agreement will not be deemed nor constitute a continuing waiver or waiver of any other breach of this Agreement. A finding by a court of competent jurisdiction that any provision of this Agreement is invalid or unenforceable under law will not affect the validity or enforceability of any other provision of this Agreement, unless a party's rights or obligations are materially and adversely affected by such ruling. This Agreement contains all agreements and understandings between the parties relating to its subject matter. Except as described in the Equipment and Fees Exhibit, any amendment to this Agreement must be in writing and will not be effective until it is executed and approved by an authorized representative of each party.
- 12. Notices.** All required notices will be in writing and will be deemed to have been given as indicated:

  - (a) If delivered in person or by Federal Express or similar nationally recognized express mail or courier service, which provides evidence of delivery, on the date of delivery;
  - (b) If sent by facsimile transmission, on the date the transmission is received by an employee of the recipient in legible form;
  - (c) If sent by certified or registered mail or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
  - (d) If sent by electronic messaging system, on the date the electronic message is received,

unless the date of delivery (or attempted delivery) or receipt, as applicable, is not a business day or is after the close of business on a business day, in which case the communication will be deemed given and effective on the first following day that is a business day and provided that in each case the notice is properly addressed to the address provided in the appropriate signature block above or such other address as has been given by proper notice and directed to the attention of the Contracts Department in the case of Agiliti and to the attention of the title of the person signing this Agreement in the case of Customer.
- 13. Relationship with Agiliti Staff.** If Customer were to hire a member of the Agiliti team, Agiliti would incur significant expense in hiring and training a replacement. Accordingly, while this Agreement is in effect and for one year after it ends, Customer will not, with respect to any Agiliti employee or contractor providing Services on behalf of Agiliti in connection with this Agreement, knowingly solicit or entice, directly or indirectly, such person to become employed or retained by Customer or any affiliate of Customer or any competitor of Agiliti, without the express written consent of Agiliti. For clarity, the Customer's obligations under this Section do not apply if an employee or contractor of Agiliti responds to a public job posting issued by Customer.
- 14. Equal Opportunity Employer.** Agiliti is an Equal Opportunity Employer and complies with Executive Order 11246 and hereby provides notice of its compliance with FAR 52-222-26, 41 C.F.R. 60-1.4, 41 C.F.R. 60-250.5 and 41 C.F.R. 60-741.5, which are hereby incorporated by reference.



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

June 16, 2021

**Subject:** Proposed Engagement Letter from Moss-Adams, LLP

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

**Summary:**

Kern Medical requests your Board approve the proposed Engagement Letter from Moss-Adams, LLP, an independent contractor, for financial auditing services for fiscal year ending June 30, 2021.

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

Therefore, it is recommended that your Board approve the Engagement Letter from Moss-Adams, LLP, and authorize the Chairman to sign.



T (818) 577-1900  
F (818) 577-1899

21700 Oxnard Street  
Suite 300  
Woodland Hills, CA 91367

January 14, 2021

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

Re: Audit and Nonattest Services Engagement Letter Fiscal Year Ending June 30, 2021

Dear Chairman Bigler:

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

### **Scope of Services – Audit**

You have requested that we audit the Company's financial statements, which comprise the statement of net position as of June 30, 2021, and the related statements of revenue, expenses, and changes in net position, and cash flows for the year then ended, and the related notes to the financial statements.

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

- 1) Management's Discussion and Analysis
- 2) Schedule of the proportionate share of OPEB liability for Kern Medical
- 3) Schedule of the proportionate share of net pension liability for Kern Medical
- 4) Schedule of Contributions for Kern Medical

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

### **Scope of Services and Limitations – Nonattest**

We will provide the Company with the following nonattest services:

- Assist you in drafting the financial statements and related footnotes as of and for the year ended June 30, 2021. Although we will assist in drafting the financial statements and related footnotes, our fee estimate included in this engagement letter is based on management providing a substantially complete working draft of the financial statements and required footnotes. Should you request additional assistance, we can discuss the additional fees that may be required prior to commencing additional work.
- Assist you in drafting the auditee section of the OMB Data Collection Form for the year ended June 30, 2021, if a Single Audit is required.

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

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

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

### **Timing**

Kimberly Sokoloff is responsible for supervising the engagement and authorizing the signing of the report. We expect to be on-site or virtual the weeks of August 16, 2021 and August 23, 2021 for planning, interim, and the start of final test work, and again starting the week of October 25, 2021 to continue our final fieldwork. We expect to issue our report no later than December 31, 2021. As we reach the conclusion of the audit, we will coordinate with you the date the audited financial statements will be available for issuance. You understand that (1) you will be required to consider subsequent events through the date the financial statements are available for issuance, (2) you will disclose in the notes to the financial statements the date through which subsequent events have been considered, and (3) the subsequent event date disclosed in the footnotes will not be earlier than the date of the management representation letter and the date of the report of independent auditors.

Our scheduling depends on your completion of the year-end closing and adjusting process prior to our arrival to begin the fieldwork. We may experience delays in completing our services due to your staff's unavailability or

delays in your closing and adjusting process. You understand our fees are subject to adjustment if we experience these delays in completing our services.

### Fees

We have agreed to the following payment schedule for the services based on a total fee estimate of \$144,000 - \$154,000.

Month Due	Amount
July 2021	\$ 40,000
September 2021	40,000
October 2021	40,000
November 2021	24,000 – 34,000
<b>Total</b>	<b>\$144,000 – \$154,000</b>

Additionally, there will be an incremental audit fee, estimated as \$15,000 - \$25,000, for the June 30, 2021 audit, related to the required Single Audit associated with the receipt of and expenditure of federal awards, in the event a Single Audit is required.

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

Our ability to provide services in accordance with our estimated fees depends on the quality, timeliness, and accuracy of the Company's records, and, for example, the number of general ledger adjustments required as a result of our work. To assist you in this process, we will provide you with a Client Audit Preparation Schedule that identifies the key work you will need to perform in preparation for the audit. We will also need your accounting staff to be readily available during the engagement to respond in a timely manner to our requests. Lack of preparation, poor records, general ledger adjustments, and/or untimely assistance will result in an increase of our fees.

### Reporting

We will issue a written report upon completion of our audit of the Company's financial statements. Our report will be addressed to the Board of Governors of the Company. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement. Our services will be concluded upon delivery to you of our report on your financial statements for the year ended June 30, 2021.

At the conclusion of the engagement, if a Single Audit is required, we will complete the auditor section of the Data Collection Form and electronically sign the Data Collection Form that summarizes our findings. We will provide electronic copies of our reports to you; however, it is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan, as applicable) along with the Data Collection Form to the Federal Audit Clearinghouse. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period. At the conclusion of the engagement, we will make arrangements with management regarding Data Collection Form submission procedures.

## **Objectives of the Audit**

The objective of our audit is the expression of an opinion on the financial statements. The objective also includes reporting on the following:

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

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

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS) and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the audit provisions of the OMB Uniform Guidance. It will include tests of your accounting records, a determination of major program(s) in accordance with the OMB Uniform Guidance, and other procedures we consider necessary to enable us to express an opinion on the financial statements and to render the required reports. If our opinion on the financial statements or the Single Audit compliance opinion is other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or to issue a report as a result of this engagement.

## **Procedures and Limitations**

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

An audit includes examining evidence, on a test basis, supporting the amounts and disclosures in the financial statements. Therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. Also, we will plan and perform the audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free from material misstatement. Such material misstatements may

include errors, fraudulent financial reporting, misappropriation of assets, or noncompliance with the provisions of laws, regulations, contracts, and grant agreements that are attributable to the entity or to acts by management or employees acting on behalf of the entity that may have a direct financial statement impact. Pursuant to *Government Auditing Standards*, we will not provide reasonable assurance of detecting abuse. As required by the Single Audit Act Amendments of 1996 and the audit provisions of the OMB Uniform Guidance, our audit will include tests of transactions related to major federal award programs for compliance with applicable federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program.

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

### **Procedures and Limitations—Internal Control**

In planning and performing our audit, we will consider the internal control sufficient to plan the audit in order to determine the nature, timing, and extent of our auditing procedures for the purpose of expressing our opinions on the Company's financial statements and on its compliance with requirements applicable to major federal programs.

We will obtain an understanding of the design of the relevant controls and whether they have been placed in operation, and we will assess control risk. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from noncompliance with the provisions of laws, regulations, contract and grant agreements and other noncompliance matters that have a direct and material effect on the financial statements.

An audit is not designed to provide assurance on internal control or to identify deficiencies in the design or operation of internal control and accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*. However, if, during the audit, we become aware of any matters involving internal control or its operation that we consider to be significant deficiencies under standards established by the American Institute of Certified Public Accountants, we will communicate them in writing to management and those charged with governance. We will also identify if we consider any significant deficiency, or combination of significant deficiencies, to be a material weakness.

As required by the audit provisions of the OMB Uniform Guidance, we will perform tests of controls to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the OMB Uniform Guidance.

## **Procedures and Limitations—Compliance**

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

The audit provisions of the OMB Uniform Guidance require that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major federal program. Our procedures will consist of the applicable procedures described in the OMB Compliance Supplement for the types of compliance requirements that could have a direct and material effect on each of your major federal programs. The purpose of those procedures will be to express an opinion on the Company’s compliance with requirements applicable to each of its major federal programs in our report on compliance issued pursuant to the OMB Uniform Guidance.

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

## **Management’s Responsibility for Financial Statements, Internal Control, and Federal Award Compliance**

As a condition of our engagement, management acknowledges and understands that management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America. We may advise management about appropriate accounting principles and their application and may assist in the preparation of your financial statements, including the schedule of expenditures of federal awards, but management remains responsible for the financial statements and the schedule of expenditures of federal awards. Management also acknowledges and understands that management is responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error or fraud. This responsibility includes the maintenance of adequate records, the selection and application of accounting principles, and the safeguarding of assets. You are responsible for informing us about all known or suspected fraud affecting the Company involving: (a) management, (b) employees who have significant roles in internal control, and (c) others where the fraud could have a material effect on the financial statements. You are responsible for informing us of your knowledge of any allegations of fraud or suspected fraud affecting the Company received in communications from employees, former employees, grantors, regulators or others. In addition, management is responsible for identifying and ensuring that the Company complies with applicable laws and regulations and for taking timely and appropriate steps to remedy any fraud or noncompliance with the provisions of laws, regulations, contract, and grant agreements, that we may report.

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

Management is responsible for establishing and maintaining internal control over compliance with the provisions of laws, regulations, contracts, grant agreements, and the terms and conditions of federal awards, and for identifying and ensuring that you comply with such provisions. Management is also responsible for informing us of any significant contractor relationships in which the contractor is responsible for program compliance. Management is also responsible for addressing the audit findings and recommendations, establishing and maintaining a process to track the status of such findings and recommendations, and taking timely and appropriate steps to remedy any fraud and noncompliance with the provisions of laws, regulations, contracts, grant agreements, and the terms and conditions of federal awards or abuse that we may report. Additionally, as required by the OMB Uniform Guidance, it is your responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan.

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

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

### **Management's Responsibility for Supplementary Information**

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

### **Dissemination of Financial Statements**

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

### **Offering of Securities**

This Engagement Letter does not contemplate Moss Adams providing any services in connection with the offering of securities, whether registered or exempt from registration, and Moss Adams will charge additional fees to provide any such services. You agree not to incorporate or reference our report in a private placement or other offering of

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

### **Changes in Professional or Accounting Standards**

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

### **Representations of Management**

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

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

### **Use of Electronic Communication**

In the interest of facilitating our services to you, we may communicate by facsimile transmission or send electronic mail over the Internet. Such communications may include information that is confidential. We employ measures in the use of electronic communications designed to provide reasonable assurance that data security is maintained.

While we will use our best efforts to keep such communications secure in accordance with our obligations under applicable laws and professional standards, you recognize and accept we have no control over the unauthorized interception of these communications once they have been sent. Unless you issue specific instructions to do otherwise, we will assume you consent to our use of electronic communications to your representatives and other use of these electronic devices during the term of this Engagement Letter as we deem appropriate.

### **Use of Moss Adams' Name**

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

### **Use of Nonlicensed Personnel**

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

### **Hiring of Employees**

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

### **Mutual Waiver of COVID-19 Claims**

The parties acknowledge their respective understanding of the hazards of the novel coronavirus and resulting disease, COVID-19, including, but not limited to, its highly contagious nature and the corresponding health risks associated with being exposed to or infected by COVID-19. Each party agrees to waive, release, and discharge, and covenants not to sue the other party or its affiliates and its and their respective officers, directors, partners, principals, employees, agents, or subcontractors from any and all claims, damages, expense, liability, illness or losses that may occur from exposure to or infection by COVID-19 arising out of, related to, or in any way connected with the auditing services provided by Moss Adams under this Engagement Letter.

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

Very truly yours,



Stelian Damu, for  
Moss Adams LLP

Enclosures  
SD/ep

**Accepted and Agreed:**

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

Signature: \_\_\_\_\_

Print Name: Russell E. Bigler

Title: Chairman, Board of Governors

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

Client: #636216  
v. 6/18/2020



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

June 16, 2021

**Subject:** Request to employ retired Kern County Hospital Authority employee Tina Anderson

**Recommended Action:** Approve

**Summary:**

Kern Medical is requesting approval to employ retired Kern County Hospital Authority employee Tina Anderson, as Extra Help Senior Paralegal, for the period ending June 30, 2022, or 960 hours, whichever occurs first, effective July 1, 2021.

The Public Employee Pension Reform Act (PEPRA) sets forth post-retirement employment requirements for all retirees receiving a pension benefit from a public retirement system who returns to work for a public employer. The Authority is a designated public employer for purposes of KCERA. Under PEPRA service requirements, a retiree may be reemployed up to a maximum of 960 hours per fiscal year, subject to approval by your Board.

Ms. Anderson retired effective February 2, 2019. Ms. Anderson has worked at Kern Medical for 10 years, as a senior paralegal, supporting the attorneys who advise Kern Medical and the Authority and has the requisite experience and skill set needed to perform the work for which she is being reemployed. Ms. Anderson was the only paralegal employed by Kern Medical and her position has not been filled. Due to Ms. Anderson's intimate acquaintance with the functions of the Legal Services Department, she will be able to provide services immediately without any training. Ms. Anderson will be reemployed for a limited duration to draft and process over 100 resident physician contracts prior to the new academic year.

Therefore, it is recommended that your Board approve the reemployment of Tina Anderson, as Extra Help Senior Paralegal, effective July 1, 2021.



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

June 16, 2021

**Subject:** Request to employ retired Kern County Hospital Authority employee Manuel Acosta

**Recommended Action:** Approve

**Summary:**

Kern Medical is requesting approval to employ retired Kern County Hospital Authority employee Manuel Acosta, as Extra Help PACS Administrator, for the period ending June 30, 2022, or 960 hours, whichever occurs first, effective July 1, 2021.

The Public Employee Pension Reform Act (PEPRA) sets forth post-retirement service and employment requirements for all KCERA retirees returning to work for a KCERA employer. The Authority is a designated KCERA employer. Under PEPRA service requirements, a retiree may be reemployed up to a maximum of 960 hours per fiscal year, subject to approval by your Board.

Mr. Acosta retired effective March 27, 2020. He worked at Kern Medical for over 30 years as a Picture Archiving & Communication Systems (PACS) Administrator supporting the radiology department in the operation of PACS equipment and capturing of digital images for patient records. His requisite experience and skill set are critical to our hospital. Kern Medical has a need to reemploy Mr. Acosta, to ensure continuity in PACS administration duties. Mr. Acosta has extensive experience in this area, which is a highly specialized skill set that is not readily available in our labor market. Due to Mr. Acosta's specialized training and experience with PACS, he will be able to provide services immediately without any training.

Therefore, it is recommended that your Board approve the reemployment of Manuel Acosta, as Extra Help PACS Administrator, effective July 1, 2021.



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

June 16, 2021

**Subject:** Proposed renewal and binding of insurance coverages from July 1, 2021 through June 30, 2022, in an amount not to exceed \$1,305,900

**Recommended Action:** Approve; Authorize Chief Executive Officer to sign the Premium Finance Agreement and Certificate of Incumbency with IPFS Corporation of California

**Summary:**

Kern Medical requests your Board's approval to renew and bind the following insurance coverages for the period July 1, 2021 through June 30, 2022:

- Hospital Professional Liability, General Liability and Umbrella/Excess Liability
- Workers' Compensation and Employers Liability
- Automobile Liability
- Heliport & Non-Owned Aircraft Liability
- Directors & Officers Liability
- Employment Practices Liability
- Crime
- Privacy and Security (Cyber) Liability
- Premises Pollution Liability
- Underground Storage Tanks (UST) Liability
- Employed Lawyers Professional Liability
- Fiduciary Liability

**Hospital Professional Liability, General Liability and Umbrella/Excess Liability \***

Kern Medical recommends binding coverage for the Hospital Professional Liability, General Liability and Umbrella/Excess Liability with MagMutual/Professional Security Insurance Company and National Fire & Marine Insurance Company (MedPro).

- Insurance Carriers: MagMutual/Professional Security Insurance Company and National Fire & Marine Insurance Company (MedPro)
- A.M. Best Rating: MagMutual (A [Excellent] XI); MedPro (A++ [Superior] XV)
- Term: July 1, 2021 – July 1, 2022
- Coverage: Hospital Professional Liability insurance protects the organization, physicians and other licensed health care professionals from liability associated with wrongful practices resulting in bodily injury, medical expenses, and the cost of defending lawsuits related to such claims. General Liability insures against losses from bodily injury, personal injury and property damage related to non-medical practices. Umbrella/Excess Liability provides additional limits in excess of self-insured retentions and underlying coverages
- Limit per Medical Incident or per Occurrence and Aggregate: \$25,000,000

Owned and Operated by the Kern County Hospital Authority  
A Designated Public Hospital

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- Self-insured Retention (SIR):
  - \$2,000,000 per Professional Liability Claim / \$6,000,000 Aggregate
  - \$1,000,000 per General Liability Occurrence
- Underlying Coverages: Automobile Liability, Employers Liability and Heliport Liability
- Combined Annual Premium: \$754,108

#### **Workers' Compensation and Employers Liability \***

Kern Medical recommends renewing coverage for Workers' Compensation and Employers Liability with Safety National Casualty Corporation.

- Insurance Carrier: Safety National Casualty Corporation
- A.M. Best Rating: A++ (Superior) XV
- Term: July 1, 2021 – July 1, 2022
- Coverage: This policy insures against losses from work-related bodily injury or disease and the common law liability of an employer for injuries sustained by employees
- Limit per Occurrence:
  - Workers' Compensation - Statutory
  - Employers Liability - \$5,000,000 and Aggregate
- SIR: \$1,000,000
- Annual Premium: \$162,138

#### **Automobile Liability \***

Kern Medical recommends renewing coverage for Automobile Liability with Philadelphia Indemnity Insurance Company to cover 11 vehicles, two (2) RVs and three (3) trailers with specific coverages as expiring.

- Insurance Carrier: Philadelphia Indemnity Insurance Company
- A.M. Best Rating: A++ (Superior) XV
- Term: July 1, 2021 – July 1, 2022
- Coverage: This policy insures against losses from automobile accident-related injuries and property damage, including Owned, Non-Owned and Hired Automobiles
- Limit per Occurrence: \$1,000,000
- Deductible: \$1,000 for both comprehensive and collision (where coverage applies); \$5,000 for liability
- Annual Premium: \$20,819

#### **Heliport Liability \***

Kern Medical recommends renewing Heliport Liability coverage through ACE Property & Casualty Insurance Company (Chubb).

- Insurance Carrier: ACE Property & Casualty Insurance Co. (Chubb)
- A.M. Best Rating: A++ (Superior) XV
- Term: July 1, 2021 – July 1, 2022
- Coverage: This policy insures against losses for injury to a third party or their property arising from the operation and maintenance of the hospital's helipad (e.g., damage caused to a vehicle from debris). The policy also protects the hospital against losses associated with non-owned aircraft (e.g., patient transport by helicopter)
- Limit per Occurrence and Aggregate: \$10,000,000
- Deductible: \$0
- Annual Premium: \$8,143

#### **Directors and Officers Liability \***

Kern Medical recommends renewing coverage for Directors and Officers Liability through Lloyd's of London (Beazley Syndicate).

- Insurance Carrier: Lloyd's Syndicate 2623/623 (Beazley)
- A.M. Best Rating: A (Excellent) XV
- Term: July 1, 2021 – July 1, 2022
- Coverage: This policy provides financial protection for managers against the consequences of actual or "wrongful acts" when acting within the scope of their managerial duties
- Limit Each Wrongful Act Claim and Aggregate: \$5,000,000
- SIR: \$200,000 / \$0 Non-Indemnifiable Claims
- Annual Premium: \$46,405

#### **Employment Practices Liability \***

Kern Medical recommends renewing Employment Practices Liability coverage through Lloyd's of London (Beazley Syndicate).

- Insurance Carrier: Lloyd's Syndicate 2623/623 (Beazley)
- A.M. Best Rating: A (Excellent) XV
- Term: July 1, 2021 – July 1, 2022
- Coverage: This policy insures against losses for wrongful acts, including wrongful termination, sexual harassment, discrimination, invasion of privacy, false imprisonment, breach of contract, and emotional distress
- Limit Each Wrongful Act Claim and Aggregate: \$5,000,000
- SIR: \$500,000; \$750,000 for High Wage Earner (>\$150K) & Mass/Class Action
- Annual Premium: \$88,109

#### **Crime**

Kern Medical recommends continued participation in the Crime insurance program offered by Public Risk Innovation, Solution, and Management (PRISM; formerly known California State Association of Counties Excess Insurance Authority (CSAC-EIA)).

- Insurance Carrier: National Union Fire Insurance of Pittsburgh, PA (AIG) and Berkley Insurance Company
- A.M. Best Rating: National Union (A [Excellent] XV); Berkley (A+ [Excellent] XV)
- Term: June 30, 2021 – June 30, 2022
- Coverage: This policy insures against employee theft, robbery, forgery, extortion, and computer fraud
- Limit per Occurrence: \$15,000,000
- Deductible: \$25,000
- Annual Premium: \$15,629

#### **Privacy and Security (Cyber) Liability**

Kern Medical recommends continued participation in the Cyber Liability program offered by PRISM.

- Insurance Carrier: Primary program layer and breach notification through Lloyd's Syndicate 2623/623 (Beazley) and excess program layers through Greenwich Insurance Company (AXA XL), Crum & Forster Specialty Insurance Company, Liberty Surplus Insurance Corporation (Ironshore), Houston Casualty Company (Tokio Marine), and Zurich Insurance Plc (Zurich )
- A.M. Best Rating: Lloyd's/Beazley (A [Excellent] XV); AXA XL (A+ [Superior] XV); Crum & Forster (A [Excellent] XIV); Ironshore (A [Excellent] XV); Tokio Marine (A++ [Superior] XV); Zurich (A+ [Superior] XV)
- Term: July 1, 2021 – July 1, 2022

- Coverage: This policy insures against website media content liability (including cyber extortion, first party data protection and first party network business interruption) and privacy notification costs from data breaches in which patient and employee personal information, such as names, dates of birth, Social Security Numbers, credit card information, etc., is exposed and/or misappropriated
- Limit per Incident and Aggregate: \$12,000,000; \$750,000 for Business Interruption for Security Breach, Cyber Extortion and Data Recovery Costs
- SIR: \$100,000 and/or 100,000 Notified Individuals
- Annual Premium: \$171,625 (Not to exceed as program premiums have not yet been finalized)

#### **Premises Pollution Liability \***

Kern Medical recommends binding Premises Pollution Liability coverage through Ascot Specialty Insurance Company (Ascot).

- Insurance Carrier: Ascot Specialty Insurance Company
- A.M. Best Rating: A (Superior) XIV
- Term: July 1, 2021 – July 1, 2022
- Coverage: Coverage for first-party claims arising from a pollution condition from premises, including clean-up, emergency response and business interruption; coverage for third-party bodily injury and property damage; coverage for transport of hazardous materials and non-owned disposal sites
- Limit per Pollution or Indoor Environmental Condition and Aggregate: \$1,000,000
- Deductible: \$25,000; \$100,000 for mold
- Annual Premium: \$13,932

#### **Underground Storage Tank Liability \***

Kern Medical recommends renewing Underground Storage Tank Liability insurance through Great American Alliance Insurance Company for one underground storage tank containing 10,000 gallons of diesel fuel and the associated aboveground day tanks.

- Insurance Carrier: Great American Alliance Insurance Company
- A.M. Best Rating: A+ (Superior) XV
- Term: July 1, 2021 – July 1, 2022
- Coverage: Bodily Injury or Property Damage caused by a storage tank incident, including Corrective Action Costs and Legal Defense Expenses; meets requirements for Financial Responsibility
- Limit per Occurrence and Aggregate: \$1,000,000
- Deductible: \$25,000
- Annual Premium: \$2,453

#### **Employed Lawyers \***

Kern Medical recommends renewing Employed Lawyers Professional Liability coverage through Federal Insurance Company (Chubb).

- Insurance Carrier: Federal Insurance Company (Chubb)
- A.M. Best Rating: A++ (Superior) XV
- Term: 7/1/2021 – 7/1/2022
- Coverage: This policy provides professional liability coverage for three (3) employed lawyers and support staff from claims arising from their professional legal services
- Limit per Occurrence/Aggregate: \$1,000,000
- SIR: \$0 Non-Indemnified Person; \$5,000 Organization; \$25,000 Regulatory Defense Costs
- Annual Premium: \$2,597

**Fiduciary Liability \***

Kern Medical recommends renewing Fiduciary Liability coverage through Hudson Insurance Company

- Insurance Carrier: Hudson Insurance Company
- A.M. Best Rating: A (Excellent) XV
- Term: 7/1/2021 – 7/1/2022
- Coverage: This policy provides coverage for the Defined Contribution Plan fiduciaries, as they can be held personally liable for losses to a benefit plan incurred because of their alleged errors or omissions or breach of their fiduciary duties
- Limit per Occurrence/Aggregate: \$3,000,000
- SIR: \$0 Non-Indemnifiable Losses of Covered Penalties; \$250,000 Class Action or Derivative Claim; \$50,000 All other Losses
- Annual Premium: \$7,921

**Total Annual Premiums:** \$1,293,879 (as recommended)

**Premium Financing**

Kern Medical recommends financing the premiums as follows:

1. **PRISM** will provide in-house financing of Crime and Privacy and Security (Cyber) coverages for an additional fee of up to \$1,209 with the cost of coverage and financing split between 12 equal payments; and
2. **IPFS Corporation of California** will finance those coverages identified with an \* symbol. Financing will require a 15% cash down payment (\$165,994), plus finance charges at a rate of 2.50%<sup>1</sup> (up to \$10,812), for total payments not to exceed \$1,117,437, as set forth below:

Total Premium	\$1,106,625
Cash down payment	\$165,994
Amount financed	\$940,631
Finance charges (2.50%)	\$10,812
<b>Total payments</b>	<b>\$1,117,437</b>

Financing through IPFS Corporation requires the signing of a separate Premium Finance Agreement and Certificate of Incumbency.

Attached for your ease of reference are a Proposed Program Summary and a Summary of Changes Per Policy Year from July 1, 2017 to the present.

Therefore, it is recommended that your Board approve the renewal and binding of insurance coverages from July 1, 2021 through June 30, 2022, with the option to finance selected premiums through PRISM and IPFS Corporation of California, in an amount not to exceed \$1,305,900; and authorize the Chief Executive Officer to sign the Premium Finance Agreement with IPFS Corporation and Certificate of Incumbency.

---

<sup>1</sup> We were able to negotiate a decrease in the financing interest rate from last year's 4.05% to 2.5%.

49 STEVENSON STREET  
 SUITE 1275  
 SAN FRANCISCO, CA 94105  
 (877)687-9826 FAX: (415)796-6156  
 CUSTOMER SERVICE: (800)774-8282

**PREMIUM FINANCE AGREEMENT**  
**License # 973 9750**

**IPFS CORPORATION**  
**OF CALIFORNIA**

<b>A</b>	<b>CASH PRICE (TOTAL PREMIUMS)</b>	<b>\$1,106,624.35</b>
<b>B</b>	<b>CASH DOWN PAYMENT</b>	<b>\$165,993.65</b>
<b>C</b>	<b>PRINCIPAL BALANCE (A MINUS B)</b>	<b>\$940,630.70</b>

<b>AGENT</b> (Name & Place of business) ALLIANT INSURANCE SERVICES INC  100 PINE ST STE 1100  SAN FRANCISCO, CA 94111-5113 (415)403-1400 FAX: (415)403-0773	<b>INSURED</b> (Name & Residence or business) KERN COUNTY HOSPITAL AUTHORITY 1700 MOUNT VERNON AVE  BAKERSFIELD, CA 93306-4018 (661)326-2868 steven.chandler@kernmedical.com
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Commercial

Account #: \_\_\_\_\_

**LOAN DISCLOSURE**  
 Additional Policies Scheduled on Page 3

Quote Number: 15966217

<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate.  2.500%	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you.  \$10,811.70	<b>AMOUNT FINANCED</b> The amount of credit provided to you or on your behalf.  \$940,630.70	<b>TOTAL OF PAYMENTS</b> The amount you will have paid after you have made all payments as scheduled  \$951,442.40
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**YOUR PAYMENT SCHEDULE WILL BE**

<b>Number Of Payments</b>  10	<b>Amount Of Payments</b>  \$95,144.24	<b>When Payments Are Due</b>  <b>Beginning:</b> MONTHLY 08/01/2021
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ITEMIZATION OF THE AMOUNT FINANCED: THE AMOUNT FINANCED IS FOR APPLICATION TO THE PREMIUMS SET FORTH IN THE SCHEDULE OF POLICIES UNLESS OTHERWISE NOTED.

**Security:** Refer to paragraph 1 below for a description of the collateral assigned to Lender to secure this loan.

**Late Charges:** A late charge will be imposed on any installment in default 10 days or more. This late charge will be 5.00% of the installment due.

**Prepayment:** If you pay your account off early, you may be entitled to a refund of a portion of the finance charge computed as provided in Sec. 18635, California Statute or as otherwise allowed by law. The finance charge includes a predetermined interest rate plus a non-refundable service/origination fee of \$25.00. See the terms below and on the next page for additional information about nonpayment, default and penalties.

POLICY PREFIX AND NUMBER	EFFECTIVE DATE OF POLICY	SCHEDULE OF POLICIES INSURANCE COMPANY AND GENERAL AGENT	COVERAGE	MINIMUM EARNED PERCENT	POL TERM	PREMIUM
PENDING	07/01/2021	PROFESSIONAL SECURITY INS CO	EXCESS PROF LIABILITY	25.00%	12	607,902.00 Fee: 1,000.00 Tax: 19,756.82
Broker Fee:						\$0.00
<b>TOTAL:</b>						<b>\$1,106,624.35</b>

The undersigned insured directs IPFS Corporation of California (herein, "Lender") to pay the premiums on the policies described on the Schedule of Policies. In consideration of such premium payments, subject to the provisions set forth herein, the insured agrees to pay Lender at the branch office address shown above, or as otherwise directed by Lender, the amount stated as Total of Payments in accordance with the Payment Schedule, in each case as shown in the above Loan Disclosure. The named insured(s), on a joint and several basis if more than one, hereby agree to the following provisions set forth on pages 1 and 2 of this Agreement: **1. SECURITY:** To secure payment of all amounts due under this Agreement, insured assigns Lender a security interest in all right, title and interest to the scheduled policies, including (but only to the extent permitted by applicable law): (a) all money that is or may be due insured because of a loss under any such policy that reduces the unearned premiums (subject to the interest of any applicable mortgagee or loss payee), (b) any unearned premium under each such policy, (c) dividends which may become due insured in connection with any such policy and (d) interests arising under a state guarantee fund. **2. POWER OF ATTORNEY:** Insured irrevocably appoints Lender attorney-in-fact with full power of substitution and full authority upon default to cancel all policies above identified, receive all sums assigned to its Lender or in which it has granted Lender a security interest and to execute and deliver on behalf of the insured documents, instruments, forms and notices relating to the listed insurance policies in furtherance of this Agreement. **3. POLICY EFFECTIVE DATES:** The finance charge begins to accrue as of the earliest policy effective date.

**NOTICE: A. Do not sign this agreement before you read it or if it contains any blank space. B. You are entitled to a completely filled in copy of this agreement. C. Under the law, you have the right to pay in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. D. Keep your copy of this agreement to protect your legal rights.**

**FOR INFORMATION CONTACT THE  
 DEPARTMENT OF FINANCIAL INSTITUTIONS,  
 STATE OF CALIFORNIA**

The undersigned hereby warrants and agrees to Agent's Representations set forth herein.

\_\_\_\_\_  
 Signature of Insured or Authorized Agent

\_\_\_\_\_  
 DATE

\_\_\_\_\_  
 Signature of Agent

\_\_\_\_\_  
 DATE

Russell V. Judd, Chief Executive Officer

Insured and Lender further agree that: **4. AGREEMENT EFFECTIVE DATE:** This Agreement shall be effective when written acceptance is mailed to the insured by Lender. **5. DEFAULT AND DELINQUENT PAYMENTS** If any of the following happens insured will be in default: (a) a payment is not made when it is due, (b) a proceeding in bankruptcy, receivership, insolvency or similar proceeding is instituted by or against insured, or (c) insured fails to keep any promise the insured makes in this Agreement; provided, however, that, to the extent required by applicable law, insured may be held to be in default only upon the occurrence of an event described in clause (a) above. The acceptance by Lender of one or more late payments from the insured shall not estop Lender or be a waiver of the rights of Lender to exercise all of its rights hereunder or under applicable law in the event of any subsequent late payment. **6. CANCELLATION:** Lender may cancel the scheduled policies after providing at least 10 days notice of its intent to cancel or any other required statutory notice if the insured does not pay any installment according to the terms of this Agreement or transfers any of the scheduled policies to a third party and the unpaid balance due to Lender shall be immediately due and payable by the insured. Lender at its option may enforce payment of this debt without recourse to the security given to Lender. **7. CANCELLATION CHARGES:** If Lender cancels any insurance policy in accordance with the terms of this Agreement and applicable law, then the insured shall pay Lender a cancellation charge equal to \$15.00 or the maximum amount permitted by law. If cancellation occurs, the insured agrees to pay a finance charge on the outstanding indebtedness at the maximum rate authorized by applicable state law in effect on the date of cancellation until the outstanding indebtedness is paid in full or until such other date as required by law. **8. INSUFFICIENT FUNDS (NSF) CHARGES:** If insured's check or electronic funding is dishonored for any reason, the insured will pay to Lender a fee of \$15.00 or the maximum amount permitted by law. **9. MONEY RECEIVED AFTER CANCELLATION:** Any payments made to Lender after Lender's Notice of Cancellation of the insurance policy(ies) has been mailed may be credited to the insured's account without any obligation on the part of Lender to request reinstatement of any policy. Any money Lender receives from an insurance company shall be credited to the balance due Lender with any surplus refunded to whomever is entitled to the money. In the event that Lender does request a reinstatement of the policy(ies) on behalf of the insured, such a request does not guarantee that coverage under the policy(ies) will be reinstated or continued. Only the insurance company has authority to reinstate the policy(ies). The insured agrees that Lender has no liability to the insured if the policy(ies) is not reinstated and Lender may charge a reinstatement fee where permitted up to the maximum amount allowed by law. **10. ASSIGNMENT:** The insured agrees not to assign this Agreement or any policy listed hereon or any interest therein (except for the interest of mortgagees or loss payees), without the written consent of Lender, and that Lender may sell, transfer and assign its rights hereunder or under any policy without the consent of the insured, and that all agreements made by the insured hereunder and all rights and benefits conferred upon Lender shall inure to the benefit of Lender's successors and assigns (and any assignees thereof). **11. INSURANCE AGENT OR BROKER:** The insured agrees that the insurance agent or broker soliciting the policies or through whom the policies were issued is not the agent of Lender; and the agent or broker named on the front of this Agreement is neither authorized by Lender to receive installment payments under this Agreement nor to make representations, orally or in writing, to the insured on Lender's behalf (except to the extent expressly required by applicable law). As and where permissible by law, Lender may compensate your agent/broker for assisting in arranging the financing of your insurance premiums. If you have any questions about this compensation you should contact your agent/broker. **12. FINANCING NOT A CONDITION:** The law does not require a person to enter into a premium finance agreement as a condition of the purchase of insurance. **13. COLLECTION COSTS:** Insured agrees to pay attorney fees and other collection costs to Lender to the extent permitted by law if this Agreement is referred to an attorney or collection agency who is not a salaried employee of Lender, to collect any money insured owes under this Agreement. **14. LIMITATION OF LIABILITY:** The insured agrees that Lender's liability to the insured, any other person or entity for breach of any of the terms of this Agreement for the wrongful or improper exercise of any of its powers under this Agreement shall be limited to the amount of the principal balance outstanding, except in the event of Lender's gross negligence or willful misconduct. Insured recognizes and agrees that Lender is a lender only and not an insurance company and that in no event does Lender assume any liability as an insurer hereunder or otherwise. **15. CLASSIFICATION AND FORMATION OF AGREEMENT:** This Agreement is and will be a general intangible and not an instrument (as those terms are used in the Uniform Commercial Code) for all purposes. Any electronic signature or electronic record may be used in the formation of this Agreement, and the signatures of the insured and agent and the record of this Agreement may be in electronic form (as those terms are used in the Uniform Electronic Transactions Act). A photocopy, a facsimile or other paper or electronic record of this Agreement shall have the same legal effect as a manually signed copy. **16. REPRESENTATIONS AND WARRANTIES** The insured represents that (a) the insured is not insolvent or presently the subject of any insolvency proceeding (or if the insured is a debtor of bankruptcy, the bankruptcy court has authorized this transaction), (b) if the insured is not an individual, that the signatory is authorized to sign this Agreement on behalf of the insured, (c) all parties responsible for payment of the premium are named and have signed this Agreement, and (d) there is no term or provision in any of the scheduled policies that would require Lender to notify or get the consent of any third party to effect cancellation of any such policy. **17. ADDITIONAL PREMIUM FINANCING:** Insured authorizes Lender to make additional advances under this premium finance agreement at the request of either the Insured or the Insured's agent with the Insured's express authorization, and subject to the approval of Lender, for any additional premium on any policy listed in the Schedule of Policies due to changes in the insurable risk. If Lender consents to the request for an additional advance, Lender will send Insured a revised payment amount ("Revised Payment Amount"). Insured agrees to pay the Revised Payment Amount, which may include additional finance charges on the newly advanced amount, and acknowledges that Lender will maintain its security interest in the Policy with full authority to cancel all policies and receive all unearned premium if Insured fails to pay the Revised Payment Amount. **18. PRIVACY:** Our privacy policy may be found at <https://ipfs.com/Privacy>. **19. ENTIRE DOCUMENT / GOVERNING LAW:** This document is the entire Agreement between Lender and the insured and can only be changed in writing and signed by both parties except that the insured authorizes Lender to insert or correct on this Agreement, if omitted or incorrect, the insurer's name and the policy number(s). Lender is also authorized to correct patent errors and omissions in this Agreement. In the event that any provision of this Agreement is found to be illegal or unenforceable, it shall be deemed severed from the remaining provisions, which shall remain in full force and effect. The laws of the State of California will govern this Agreement. **20. AUTHORIZATION:** The insurance company(ies) and their agents, any intermediaries and the agent / broker named in this Agreement and their successors and assigns are hereby authorized and directed by insured to provide Lender with full and complete information regarding all financed insurance policy(ies), including without limitation the status and calculation of unearned premiums, and Lender is authorized and directed to provide such parties with full and complete information and documentation regarding the financing of such insurance policy(ies), including a copy of this Agreement and any related notices. **21. WAIVER OF SOVERIGN IMMUNITY:** The insured expressly waives any sovereign immunity available to the insured, and agrees to be subject to the laws as set forth in this Agreement (and the jurisdiction of federal and/or state courts) for all matters relating to the collection and enforcement of amounts owed under this Agreement and the security interest in the scheduled policies granted hereby.

#### AGENT/BROKER REPRESENTATIONS

The agent/broker executing this, and any future, agreements represents, warrants and agrees: (1) installment payments totaling \$0.00 and all applicable down payment(s) have been received from the insured in immediately available funds, (2) the insured has received a copy of this Agreement; if the agent/broker has signed this Agreement on the insured's behalf, the insured has expressly authorized the agent/broker to sign this Agreement on its behalf or, if the insured has signed, to the best of the undersigned's knowledge and belief such signature is genuine, (3) the policies are in full force and effect and the information in the Schedule of Policies including the premium amounts is correct, (4) no direct company bill, audit, or reporting form policies or policies subject to retrospective rating or to minimum earned premium are included, except as indicated, and the deposit of provisional premiums is not less than anticipated premiums to be earned for the full term of the policies, (5) the policies can be cancelled by the insured or Lender (or its successors and assigns) on 10 days notice and the unearned premiums will be computed on the standard short rate or pro rata table except as indicated, (6) there are no bankruptcy, receivership, or insolvency proceedings affecting the insured, (7) to hold Lender, its successors and assigns harmless against any loss or expense (including attorney fees) resulting from these representations or from errors, omissions or inaccuracies of agent/broker in preparing this Agreement, (8) to pay the down payment and any funding amounts received from Lender under this Agreement to the insurance company or general agent (less any commissions where applicable), (9) to hold in trust for Lender or its assigns any payments made or credited to the insured through or to agent/broker directly or indirectly, actually or constructively by the insurance companies and to pay the monies, as well as the unearned commissions to Lender or its assigns upon demand to satisfy the outstanding indebtedness of the insured, (10) all material information concerning the insured and the financed policies necessary for Lender to cancel such policies and receive the unearned premium has been disclosed to Lender, (11) no term or provision of any financed policy requires Lender to notify or get the consent of any third party to effect cancellation of such policy, and (12) to promptly notify Lender in writing if any information on this Agreement becomes inaccurate.

**AGENT**  
 (Name & Place of business)  
 ALLIANT INSURANCE SERVICES INC  
 100 PINE ST STE 1100  
 SAN FRANCISCO, CA 94111-5113  
 (415)403-1400 FAX: (415)403-0773

**INSURED**  
 (Name & Residence or business)  
 KERN COUNTY HOSPITAL AUTHORITY  
 1700 MOUNT VERNON AVE  
 BAKERSFIELD, CA 93306-4018  
 (661)326-2868  
 steven.chandler@kernmedical.com

Account #: \_\_\_\_\_

**SCHEDULE OF POLICIES  
 (continued)**

Quote Number: 15966217

POLICY PREFIX AND NUMBER	EFFECTIVE DATE OF POLICY	INSURANCE COMPANY AND GENERAL AGENT	COVERAGE	MINIMUM EARNED PERCENT	POL TERM	PREMIUM
PENDING	07/01/2021	NATIONAL FIRE & MARINE INS CO MED PRO	EXCESS PROF LIABILITY	25.00%	12	121,500.00 Tax: 3,948.75
PENDING	07/01/2021	ACE PROPERTY & CASUALTY INSURANCE C	LIABILITY	0.000%	12	8,143.00
PENDING	07/01/2021	LLOYD'S LONDON - CERTAIN UNDERWRITE AMWINS INS. BROKERAGE OF CA, LLC	DIRECTORS & OFFICERS	0.000%	12	130,280.00 Tax: 4,234.10
PENDING	07/01/2021	ASCOT SPECIALTY INSURANCE COMPANY	POLLUTION	25.00%	12	13,493.00 Tax: 438.52
PENDING	07/01/2021	GREAT AMERICAN ALLIANCE INSURANCE C	LIABILITY	0.000%	12	2,303.00 Fee: 150.00
PENDING	07/01/2021	SAFETY NATIONAL CASUALTY CORPORATIO	WORKMENS COMP	0.000%	12	162,138.00
PENDING	07/01/2021	FEDERAL INSURANCE CO	LAW PROF LIABILITY	0.000%	12	2,597.00
PENDING	07/01/2021	HUDSON INSURANCE CO AMWINS INS. BROKERAGE OF CA, LLC	FIDUCIARY	0.000%	12	7,921.00
PENDING	07/01/2021	PHILADELPHIA INDEMNITY INS CO	AUTO LIABILITY	0.000%	12	20,791.00 Fee: 28.16

**TOTAL: \$1,106,624.35**

**CERTIFICATE OF INCUMBENCY**

I, MONA A. ALLEN, do hereby certify that I am the duly elected or appointed and acting Secretary or Clerk of the Kern County Hospital Authority (Insured), that I have custody of the records of such entity, and that each individual named below is, and was as of the date each individual affixed his or her signature to the Premium Finance Agreement, between the Insured and IPFS Corporation of California (IPFS) (the Agreement), a duly elected or appointed officer of such entity holding the title or office set forth opposite his or her name below. I further certify that: (i) the signature set opposite each individual's name is true and authentic signature of that individual and (ii) each such individual has (and had on the date each such individual affixed his or her signature to the Agreement) the authority on behalf of the Insured to enter into the Agreement.

\_\_\_\_\_  
Signature

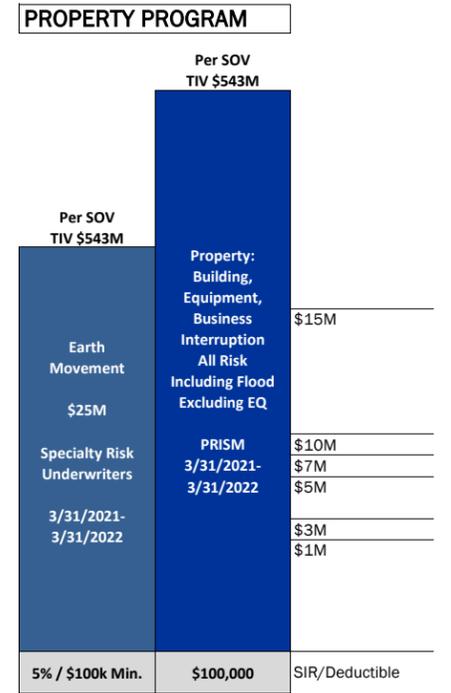
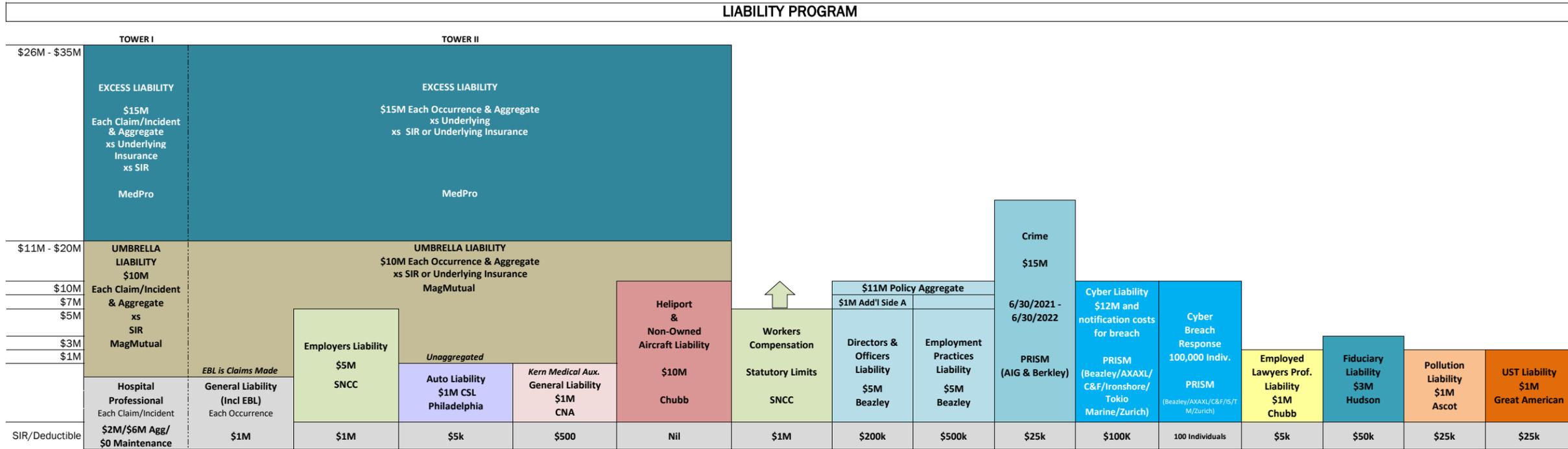
Russell V. Judd  
Chief Executive Officer  
Kern County Hospital Authority

IN WITNESS WHEREOF, I have duly executed this Incumbency Certificate and affixed the Insured's seal hereto this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mona A. Allen, Authority Board Coordinator

# Kern County Hospital Authority

Proposed Program Summary  
7/1/2021 to 7/1/2022



Graph is not to scale

**21-22 PROGRAM COST (INCLUDING SURPLUS LINES TAXES & FEES OF 3.025% AND OTHER FEES)**

															LIABILITY TOTAL			PROGRAM TOTAL
Pay: \$187,855,617																		
\$754,108	Incl w/WC	\$20,819		\$8,143	\$162,138	\$46,405	\$88,109	\$15,629	\$120,000	\$51,625	\$2,597	\$7,921	\$13,932	\$2,453	\$1,293,879	\$329,368	\$238,551	\$1,861,797
4.07%		-3.85%		10.00%	21.92%	18.60%	-0.39%	450.26%	0.12%	21.53%	9.80%	2.38%	20.80%	20.80%	\$567,919	22.02%		
MagMutual	\$627,659																	
CAP Membership	\$1,000																	
Total MagMutual	\$628,659																	
	0.51%																	
MedPro	\$125,449																	
	26.56%																	

**20-21 PROGRAM COST (INCLUDING SURPLUS LINES TAXES & FEES OF 3.025% AND OTHER FEES)**

															LIABILITY TOTAL			PROGRAM TOTAL
w/Mobile Clinics Annualized Pay: \$160,226,642																		
\$724,584	Incl w/WC	\$21,652		\$7,403	\$132,988	\$39,197	\$74,219	\$15,690	\$15,000	\$16,190	\$2,594	\$6,518	\$12,688	\$2,396	\$1,071,119	\$294,970	\$170,448	\$1,536,537
															\$465,418			
C.N.A.	\$625,464																	
MedPro	\$99,120																	
															\$222,760		\$325,261	
															20.80%		21.17%	

Line of Coverage	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	% Change from 20/21 to 21/22
1 HPL/GL/UMB/Excess	\$ 643,246	\$ 671,110	\$ 692,447	\$ 726,649	\$ 754,108	3.78%
2 Auto	\$ 13,425	\$ 14,509	\$ 15,983	\$ 18,362	\$ 20,819	13.38%
3 Heliport	\$ 6,019	\$ 6,019	\$ 6,441	\$ 7,403	\$ 8,143	10.00%
4 Pollution	\$ 12,130	\$ 12,252	\$ 12,548	\$ 12,688	\$ 13,932	9.80%
5 UST	\$ 529	\$ 579	\$ 841	\$ 1,375	\$ 2,453	78.40%
6 D&O	\$ 20,023	\$ 21,243	\$ 29,408	\$ 39,197	\$ 46,405	18.39%
7 EPL	\$ 77,810	\$ 83,855	\$ 63,886	\$ 74,219	\$ 88,109	18.71%
8 EWC	\$ 389,000	\$ 130,463	\$ 126,533	\$ 132,988	\$ 162,138	21.92%
9 Crime	\$ 11,183	\$ 12,003	\$ 13,203	\$ 15,690	\$ 15,629	-0.39%
10 Cyber/Excess/CEO	\$ 21,987	\$ 20,282	\$ 19,993	\$ 31,190	\$ 171,625	450.26%
12 Employed Lawyers	\$ 1,764	\$ 1,764	\$ 1,764	\$ 2,594	\$ 2,597	0.12%
13 Fiduciary Liability	N/C	\$ 6,018	\$ 6,518	\$ 6,518	\$ 7,921	21.53%
<b>Total</b>	<b>\$ 1,197,116</b>	<b>\$ 980,097</b>	<b>\$ 989,565</b>	<b>\$ 1,068,873</b>	<b>\$ 1,293,879</b>	<b>Total % Change 21.05%</b>

#### Summary of Significant Changes Per Policy Year

**1 HPL/GL/UMB/Excess** For **FY 17/18**, coverage limits remained the same though the SIR for HPL changed to \$2M while GL remained at \$1M  
For **FY 18/19**, coverages and SIR's remain the same for both HPL and GL  
For **FY 19/20**, coverages and SIR's remain the same for both HPL and GL  
For **FY 20/21**, coverages and SIR's remain essentially the same for both HPL and GL with the exception that an aggregate (per policy term) SIR of \$6M has been included.  
For **FY 21/22**, KCHA's longtime incumbent carrier exited the CA hospital market and coverage is to be placed with a new carrier and substantially the same terms and limits.

**2 Auto** No changes had been made to this coverage through **FY 17/18**.  
For **FY 18/19**, both changes in coverage and the addition of the four previously uninsured trailers were recommended. Coverage changes included the deletion of Collision coverage from two 2001 Dodge Cargo Vans as the deductible is equitable to half the vehicle value. Other coverage changes included the deletion of Med Pay, UM and UIM coverages as these are essentially duplicative of other available coverages such as workers compensation. In addition, passengers were prohibited from being transported in a KCHA vehicle by policy.  
In **FY 19/20**, coverages and deductibles remain the same with the exception that a liability deductible of \$5k per claim was added and discovered after policy renewal.  
For **FY 20/21**, coverages and deductibles remain essentially the same.  
For **FY 21/22**, coverages and deductibles remain essentially the same; however, two (2) mobile vaccination units were added mid-term of FY 20/21 and continuing.

**3 Heliport** No changes have been made to this coverage since **FY 16/17**.

**4 Pollution** No changes had been made to this coverage through **FY 18/19**.  
For **FY 19/20**, incumbent offered renewal terms with unfavorable coverage limitations and exclusions resulting in an action to place coverage with a competing carrier offering coverage and pricing similar to expiring.  
For **FY 20/21**, coverages and deductibles remain essentially the same.  
For **FY 21/22**, incumbent carrier offered renewal terms but at a 55% increase; secured

alternative with a smaller increase and similar terms and conditions but with a \$100k mold deductible.

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**5 UST**

No changes have been made to this coverage through **FY 18/19**.  
For **FY 19/20**, an audit of storage tanks revealed an additional two not previously disclosed to the carrier and needed to be added.  
For **FY 20/21**, the addition of a temporary above-ground storage tank resulted in a premium increase.  
For **FY 21/22**, the prior policy is being cancelled/rewritten to align with policy periods similar to the majority of all other liability policies.

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**6 D&O**

No changes have been made to this coverage through **FY 18/19**.  
For **FY 19/20**, the incumbent carrier offered unfavorable renewal terms resulting in a change of carrier including coverage and terms.  
For **FY 20/21**, coverages and deductibles remain essentially the same; however, an increase in claim frequency has resulted in an unfavorable increase in premium.  
For **FY 21/22**, continued claims frequency and market conditions has resulted in both an unfavorable increase in premiums and terms. Specifically, the primary retention has increased from \$100k to \$200k, the retention for anti-trust increased from \$250k to \$350k and KCHA must consult with carrier's counsel before a layoff of 100 or more individuals within a 60 day period.

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**7 EPL**

No changes have been made to this coverage through **FY 18/19**.  
For **FY 19/20**, the incumbent carrier offered unfavorable renewal terms resulting in a change of carrier including coverage and terms.  
For **FY 20/21**, coverages and deductibles remain essentially the same; however, an increase in claim frequency has resulted in an unfavorable increase in premium.  
For **FY 21/22**, continued claims frequency and market conditions has resulted in both an unfavorable increase in premiums and terms. Specifically, a higher retention of \$750k (vs. \$500k) for high wayer earners (>\$150K) and a retention of \$750k (vs. \$500k) now applies to any mass/class action. Additionally, KCHA must consult with carrier's counsel before a layoff of 100 or more individuals within a 60 day period.

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**8 EWC**

In **FY 17/18**, a recommendation was made and approved to increase the SIR to \$1M as a result of favorable claims history and management resulting in a net premium decrease. In **FY 18/19**, the incumbent carrier presented an unfavorable renewal premium despite a favorable loss history. A change in carrier resulted in a substantially lower premium with no material difference in coverage or a change from the \$1M SIR.  
For **FY 19/20**, coverages and SIR remained the same with the incumbent carrier.  
For **FY 20/21**, coverages and SIR remain essentially the same.  
For **FY 21/22**, a modest base rate increase of 4% occurred; however, the majority of the premium increase was a direct result of the additional payroll added by the transfer of many Cantu employees to KCHA.

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**9 Crime**

No significant changes have been made to this coverage since **FY 16/17**.

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**10 Cyber/Excess/CEO**

No changes have been made to this coverage through **FY 18/19**.  
For **FY 19/20**, higher limits and multiple broadening of coverages have occurred with the incumbent carriers.  
For **FY 20/21**, overall limits have increased with additional excess layers of coverage

resulting in a premium increase also due to the presentation of a claim in FY 19/20 For **FY 21/22**, a significant premium increase occurred as a result of both KCHA's cyber claim as well as the claims of other program members, market conditions, and claims within the public sector. Additionally, while total limits remained the same, many changes to sublimits now apply including \$750k for cyber extortion, business interruption for security breach, and data recovery costs. Bricking sublimit has increased from \$75k to \$100k. The primary retention has increased from \$50k to \$100k. Extensive efforts were made to find a comparable program with more competitive pricing; however, both claims activity and market hardening provided no viable options as competing quotes would not provide even half the level of coverage available through the incumbent carrier and the retention would be \$500k

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**11 Employed Lawyers** No changes had been made to this coverage since **FY 16/17**. For **FY 20/21**, the addition of an employed lawyer resulted in a modest increase in premium. For **FY 21/22**, there were no significant changes in terms or coverages with the exception of an increase in retention from \$5k to \$25k for regulatory defense costs.

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**12 Fiduciary Liability** No significant changes have been made to this coverage through **FY 18/19**. For **FY 18/19**, added 401(A) Plan though there was no charge until next term. For **FY 19/20**, Post Employment Health Plan added which increased premium along with 401(A) by \$500. For **FY 20/21**, coverages and deductibles remain essentially the same. For **FY 21/22**, the carrier instituted a new sublimit of \$3M for class action and derivative which did not previously exist and a new separate retention of \$250k for class action or derivative claims.

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*Beginning FY 20/21, property, including earthquake, is not illustrated within this matrix as coverage for these policies require renewal in March of each respective year. Effective March 2020 and continuing annually, the Board was presented with specifics and recommendations for these coverages separately.*



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

June 16, 2021

**Subject:** Proposed Statement of Institutional Commitment to Graduate Medical Education

**Recommended Action:** Approve

**Summary:**

Kern Medical requests your Board approve the attached Statement of Institutional Commitment to Graduate Medical Education. The Accreditation Council for Graduate Medical Education (ACGME) requires a current statement of Board commitment as part of the program and institutional requirements imposed by ACGME. The current statement expires June 30, 2021.

Hospital teaching programs are accredited by the ACGME. This accreditation means that the overall program structure is in conformance with general standards and is the means by which national oversight agencies are assured that an excellent teaching environment is maintained. Each physician specialty training program is then accredited by another review agency called Resident Review Committee or RRC. The RRC is responsible to ensure that the specific content of the specialty training program meets national standards.

Kern Medical has four specialty training programs, including medicine, obstetrics/gynecology, emergency medicine, and psychiatry, and three fellowship programs, two in psychiatry (child and adolescent psychiatry and addiction psychiatry) and one in medicine (infectious disease). ACGME accreditation and RRC certification are required for the graduates to receive a valid certification of completion for physician licensing. Accreditation and certification also are required for Kern Medical to be eligible to receive graduate medical education money from the Medicare/Medicaid programs either through direct reimbursement as it relates to patient care or through the disproportionate share hospital program.

The ACGME commitment statement is an expression of interest by your Board in graduate medical education. It is also a statement of commitment that as long as the teaching programs exist at Kern Medical, they will be supported through an investment of people, facilities, and appropriate systems, but it does not commit your Board to any specific allocation of resources. This statement has been revised to recognize our commitment to diversity, equity and inclusion in the learning environment (#6 on page 1) and our ongoing mission to eliminate health disparities and transform health care to improve the lives of those we serve (#14 on page 2).

Therefore, IT IS RECOMMENDED that your Board approve the attached Statement of Institutional Commitment to Graduate Medical Education, effective July 1, 2021, and authorize the Chairman to sign.



**KERN COUNTY HOSPITAL AUTHORITY  
KERN MEDICAL CENTER  
STATEMENT OF INSTITUTIONAL COMMITMENT TO GRADUATE MEDICAL EDUCATION**

KERN MEDICAL CENTER (KMC) is owned and operated by the Kern County Hospital Authority. The Board of Governors of the Kern County Hospital Authority is held ultimately accountable for all aspects of KMC's operations and has adopted the stated mission. The Board of Governors has delegated to the Medical Staff the responsibility for the quality of medical care and education at KMC. KMC, in conjunction with its Medical Staff, is committed to excellence in residency education within an environment of quality patient care. The Board, through the KMC Administration, provides resources dedicated to maintaining the necessary teaching staff and other financial aspects of sustaining the accredited residency programs. To accomplish this objective, the Kern County Hospital Authority and its Sponsoring Institution through KMC are committed to the following:

1. To provide the leadership and financial and educational resources needed to enable the institution to achieve substantial compliance with the Accreditation Council for Graduate Medical Education (ACGME) Institutional Requirements and Common Program Requirements, and to enable the residency and fellowship programs to achieve substantial compliance with specific program requirements.
2. To provide an organized administrative system to oversee all residency and fellowship programs through the Graduate Medical Education Committee (GMEC) and the Designated Institution Official having authority and responsibility for central administration of the graduate medical education programs.
3. To provide an ethical, professional, and scholarly environment in which to conduct graduate medical education and to promote scholarly activity.
4. To provide an Institutional Review Board as the administrative structure for oversight of all research activities and maintenance of state and federal regulatory compliance.
5. To ensure that each sponsored residency and fellowship program provides an organized educational program with guidance and supervision of the residents/fellows, facilitating their professional and personal development while ensuring safe and appropriate care for patients.
6. To ensure the regular assessment of the educational quality of ACGME-accredited programs and to ensure that these programs are in substantial compliance with the Institutional, Common and specialty-specific Program Requirements and the ACGME Policies and Procedures.
7. To foster a diverse, equitable and inclusive learning environment.

8. To ensure that when resident/fellow education occurs in a participating institution, that KMC continues to have responsibility for the quality of that educational experience and retains authority over the activities of residents/fellows, and that appropriate letters of agreements exist between KMC and all participating institutions.
9. To maintain KMC's accreditation by The Joint Commission.
10. To provide and maintain facilities to meet the needs of its educational programs and patient care services and to acquire and maintain appropriate medical equipment and technology to support the hospital staff.
11. To develop and maintain a hospital staff with the appropriate range of skills and specialties capable of providing quality patient care, service, and education.
12. To continuously evaluate and improve patient care from a clinical and service perspective and to conduct formal quality assurance programs by reviewing complications and deaths, and to ensure that residents/fellows participate in KMC's performance improvement program and uphold the Clinical Learning Environment Review (CLER) program.
13. To ensure a healthy and safe learning and working environment that promotes resident/fellow wellbeing.
14. To embrace the challenge of eliminating health disparities and transforming health care to enrich and improve the lives of those we serve.

The governing authority, the administration and the teaching faculty and staff support this Statement of Institutional Commitment.

By \_\_\_\_\_  
Amir Berjis, M.D.  
Designated Institutional Official

By \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

By \_\_\_\_\_  
Russell E. Bigler  
Chairman, Board of Governors



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

June 16, 2021

**Subject:** Kern County Hospital Authority Financial Report – April 2021

**Recommended Action:** Receive and File

**Summary:**

COVID-19 Impact on Kern Medical Operations:

The COVID-19 pandemic has impacted Kern Medical's key performance indicators as follows:

- Average Daily Census of 142 for April is 8 more than the April budget of 134 and 3 less than the 145 average over the last three months
- Admissions of 794 for April are 26 less than the April budget of 820 and are 35 less than the 829 average over the last three months
- Total Surgeries of 534 for April are 63 more than the April budget of 471 and 121 more than the 413 average over the last three months
- Clinic Visits of 23,172 for April are 9,700 more than the April budget of 13,472 and 2,430 more than the 20,742 average over the last three months mainly due to 5,944 of COVID-19 vaccinations provided during April

Kern Medical has maintained the staffing levels necessary to adequately provide coverage for a surge in pandemic activity if necessary. In addition, Kern Medical is participating in all emergency funding programs available at the county, state, and federal levels to offset lost revenue and increased expenses that may be realized due to the COVID-19 issue.

The following items have budget variances for the month of April 2021:

**Patient Revenue:**

Gross patient revenue has a favorable budget variance for April, and on a year-to-date basis, mainly because of strong average daily census levels. In addition, there has been an overall increase in revenue cycle efficiency due to the implementation of the Cerner electronic health record. Gross patient revenue has increased 10% year-to-date compared to prior year.

**Indigent Funding Revenue:**

Indigent funding has a favorable budget variance for the month of April due to the receipt and recognition of additional funding from various programs that exceeded estimates. A total of \$15.2 million was received and consists of \$7.6 million of QIP revenue, \$2.7 million of PRIME revenue, and a \$4.9 million settlement payment from the FY14 Medi-Cal cost report. One-third of the \$15.2 million has been recognized for April 2021 and the remaining two-thirds of the revenue will be recognized in May 2021 and June 2021, respectively. In addition, on a year-to-date basis, there is a favorable budget variance for indigent funding because of the receipt and recognition of \$3.570 million from the Low-Income Health Plan (LIHP) from prior years' program settlements.

**Other Operating Revenue:**

Other operating revenue has a favorable budget variance for April due to the receipt of funds from the County of Kern for the operation of COVID-19 testing facilities and COVID-19 mobile vaccination units. This revenue is offset by Kern Medical's costs to provide these services for the County of Kern. In addition, an allocation of Proposition 56 funding was received in April. Proposition 56 is a California tax on tobacco products. The tax revenue is used for research, prevention, and treatment of tobacco related health issues.

**Other Non-Operating Revenue:**

Other non-operating revenue has an unfavorable budget variance for the month because a less than average amount of federal and state COVID-19 related funding was received in April. COVID-19 related funding is budgeted evenly throughout FY 2021 as other non-operating revenue; however, COVID-19 funding is not received consistently on a monthly basis. Therefore, the actual dollar amount recorded for this line item may fluctuate vs. budget on a monthly basis but should align with budget on a year-to-date basis by year-end.

**Salaries Expense:**

On a month-to-date and year-to-date basis, salaries are over budget due in large part to higher than average expenses for management and supervision, aides and attendants, and for physicians. Management and supervision and aides and attendant's salaries have both increased 15% over prior year and physician salaries have increased 6% over prior year. There has also been an increase in FTEs for sitters to monitor the influx of behavioral health patients with medical conditions admitted to medical/surgical units.

**Benefits Expense:**

Kern Medical operated at the budgeted dollar amount for benefits expense for the month of April. On a year-to-date basis, there is an unfavorable budget variance due to higher than average costs for paid time off (PTO), unemployment insurance, retirement, and pension obligations. However, these items account for a smaller percentage of total gross salaries this year than they did in prior year.

**Nurse Registry Expense:**

On both a month-to-date and year-to-date basis, Kern Medical is over budget for nurse registry expense. Departments operating over budget include the ICU and the ER. There is also additional contract nurse labor for COVID-19 activity. New vendors Emergency Medical Services Authority and Autumn Enterprise, Inc. have provided additional contract nurse labor services during the pandemic. These vendors were not accounted for in the FY 2021 budget.

**Medical Fees:**

Medical fees are over budget for the month, primarily due to higher than average fees paid to Total Renal Care, Inc. for dialysis related services. On a year-to-date basis, medical fees are over budget due in part to Total Renal expenses and due to true-up entries to account for under accruals for expenses in prior months.

**Other Professional Fees:**

Other professional fees are over budget for April due to an under accrual in the prior month for contract labor services provided for Kern Medical's clinics and surgery center. On a year-to-date basis, there is a favorable budget variance because of the reversal of an expense accrual for Allscripts services. The Information Systems department determined that the expense was over accrued in prior months. In addition, Kern Medical received credits from Change Healthcare for overpayments made to the vendor in prior months.

**Supplies Expense:**

Supplies expense is over budget for the month due in part to higher than average medical supplies expense paid to vendors including Medline Industries, Inc. There was also a large disposable glove purchase from Deprigo, Inc. charged to COVID-19 supplies. Food costs were also higher than average for the month. Food costs can fluctuate month-to-month depending in part on the need to purchase human milk from Prolacta Bioscience Company to provide for infants. The favorable year-to-date variance is due to lower than expected pharmaceutical expense throughout the year.

**Purchased Services:**

Kern Medical operated over budget for the month for purchased services expenses for the month due to under accruals in the prior month for Health Advocates financial counselors and for Signature Performance revenue cycle advisors. Counselors from Health Advocates help qualify patients for Medi-Cal. Consultants from Signature Performance help with coding medical records and with patient billing. On a year-to-date basis, purchased services are under budget because of lower than average expenses for ambulance fees and for out-of-network contracted patient care services provided by other healthcare facilities.

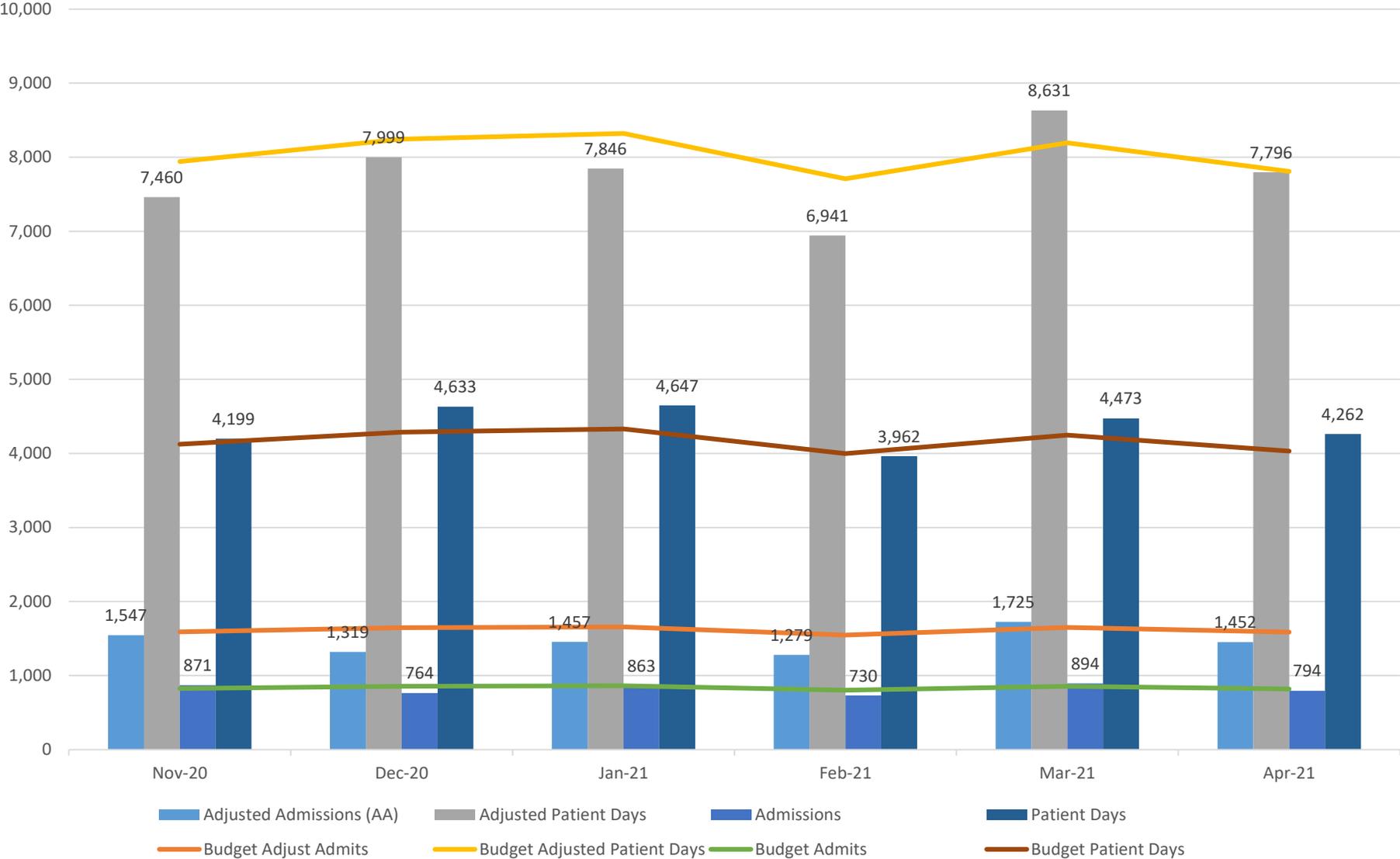
**Other Expenses:**

Other expenses are slightly under budget for the month of April due to lower than average utilities expenses. On a year-to-date basis, higher than average repairs and maintenance expenses and high utility expenses during the early months of the fiscal year cause an unfavorable variance.

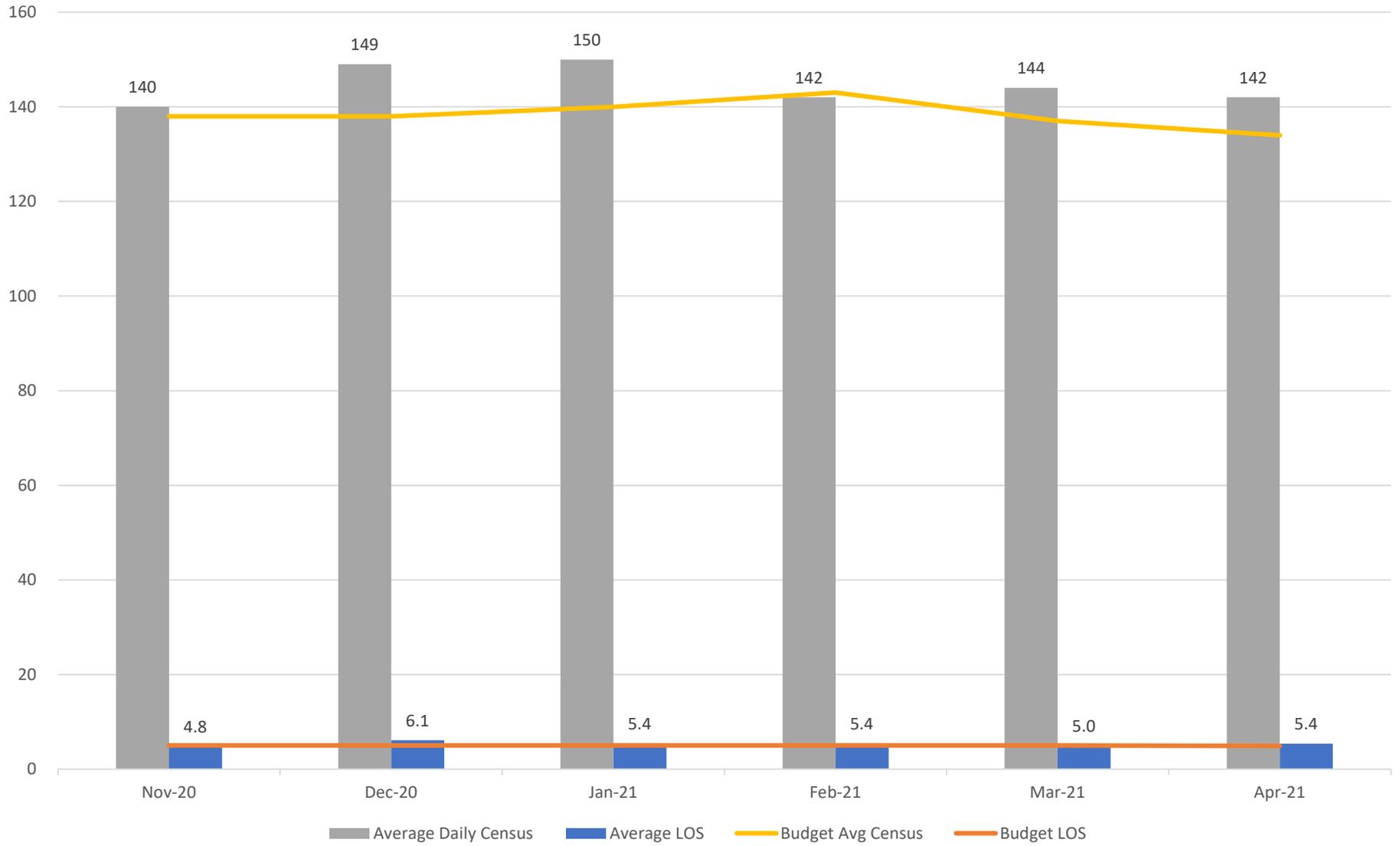


**BOARD OF GOVERNORS' REPORT  
KERN MEDICAL – APRIL 2021**

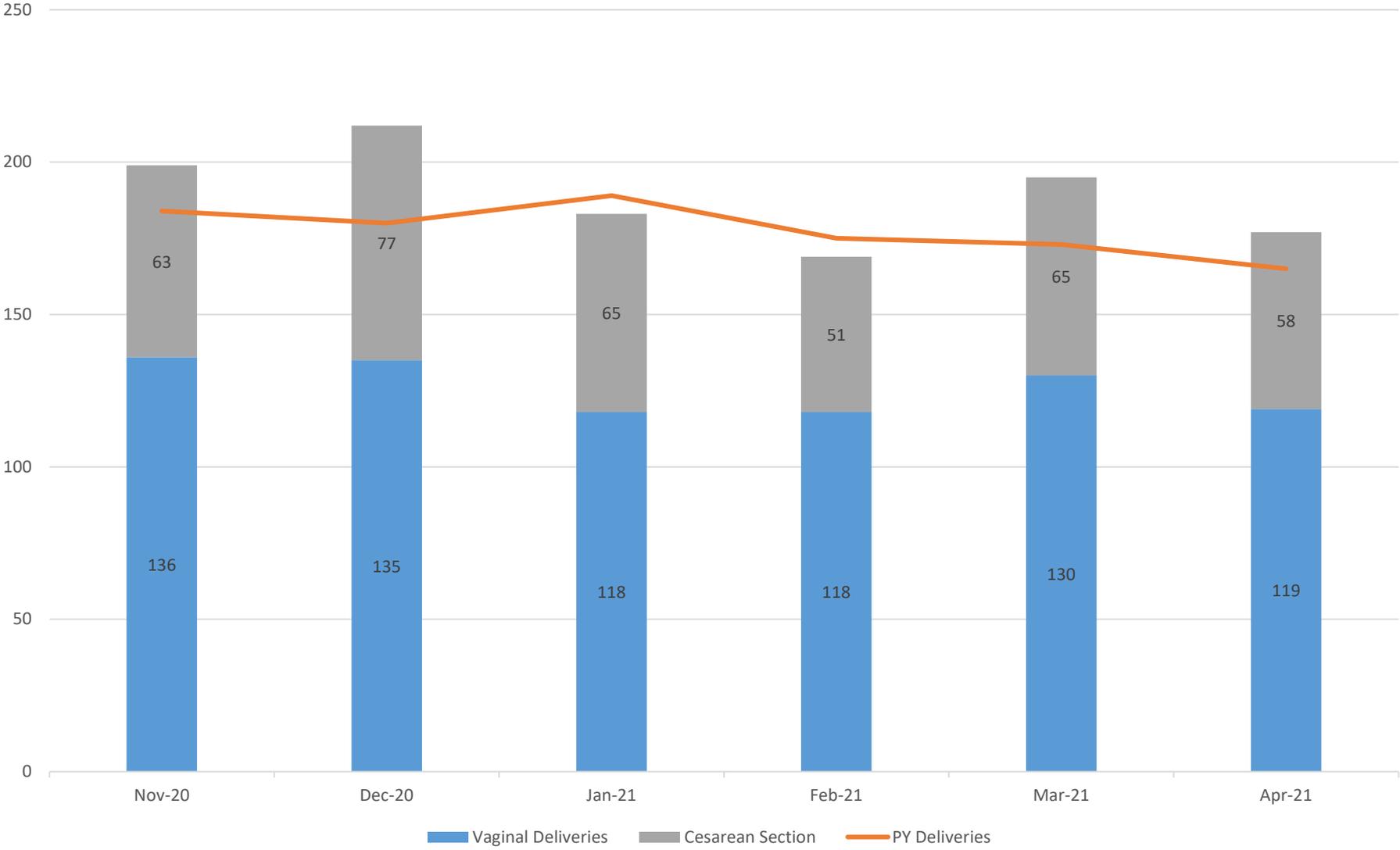
# Hospital Volumes



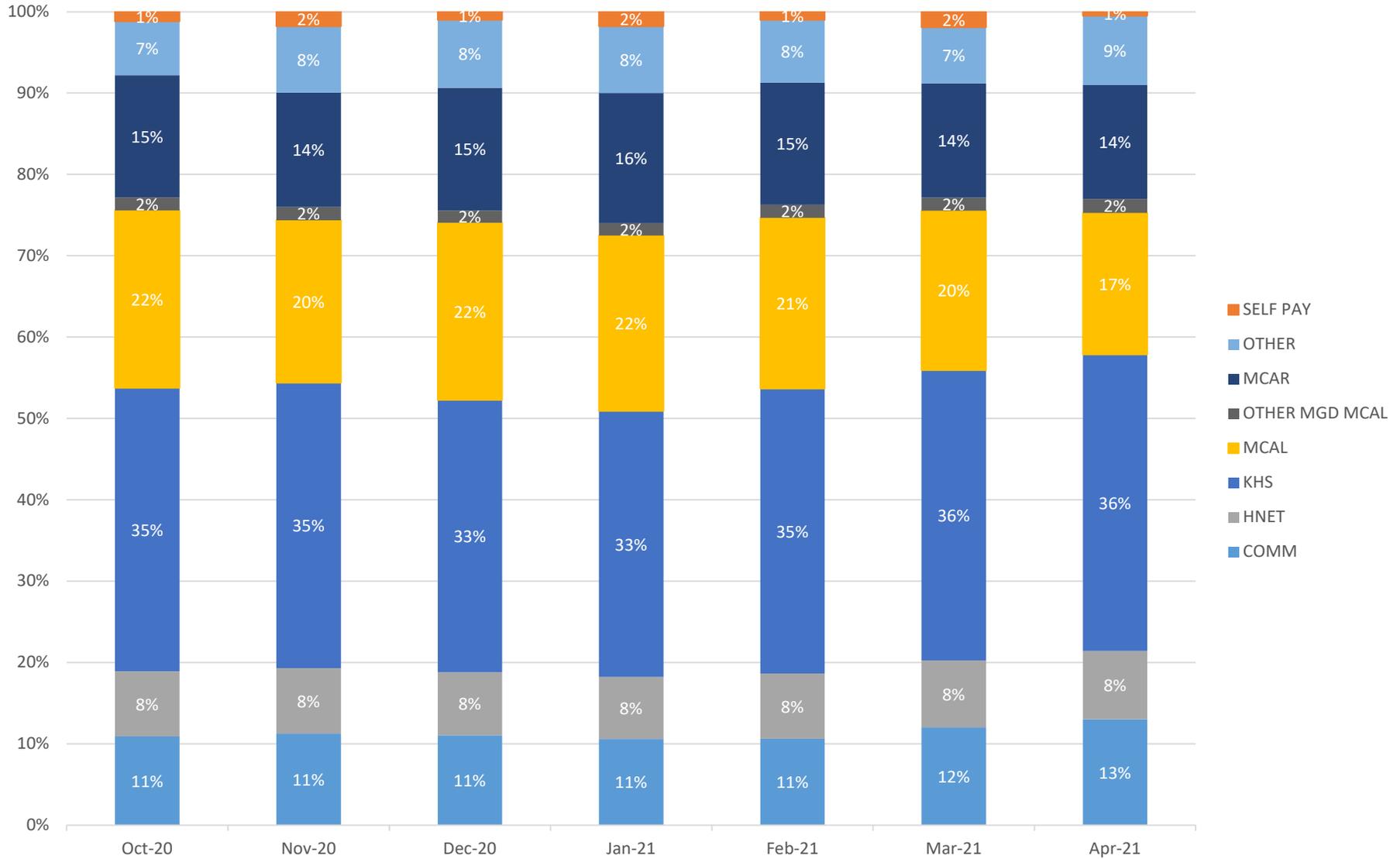
# Census & ALOS



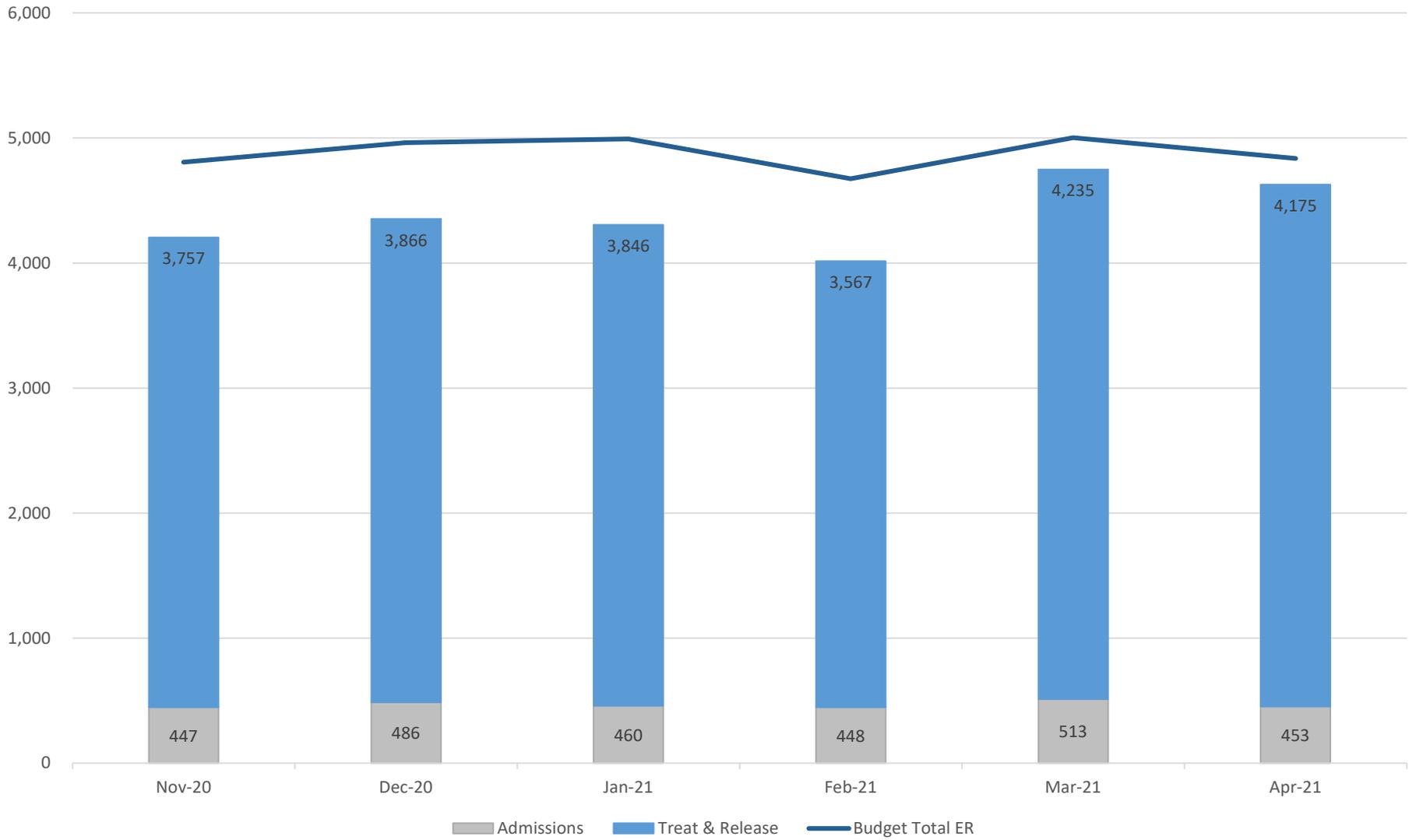
# Deliveries



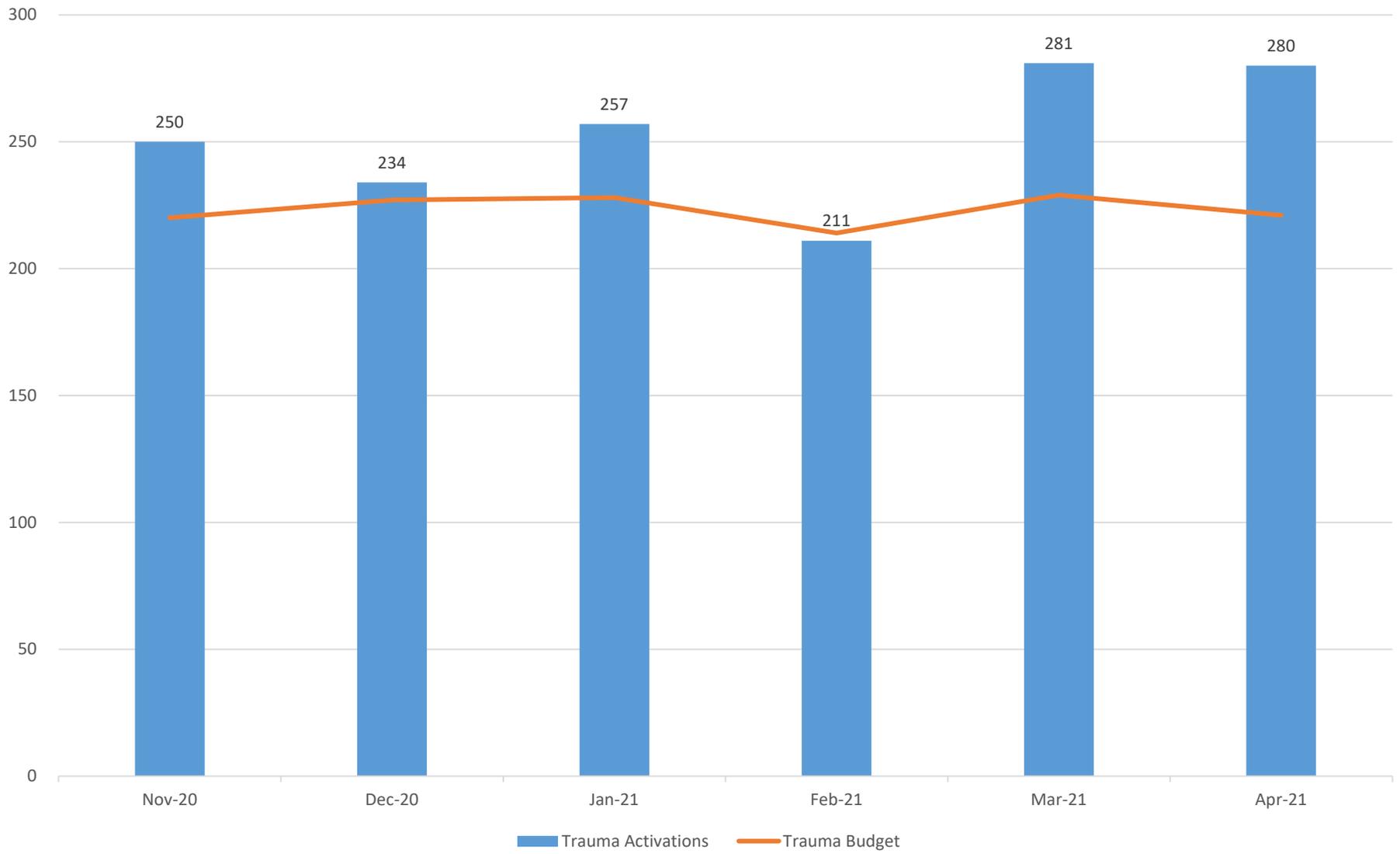
## PAYER MIX



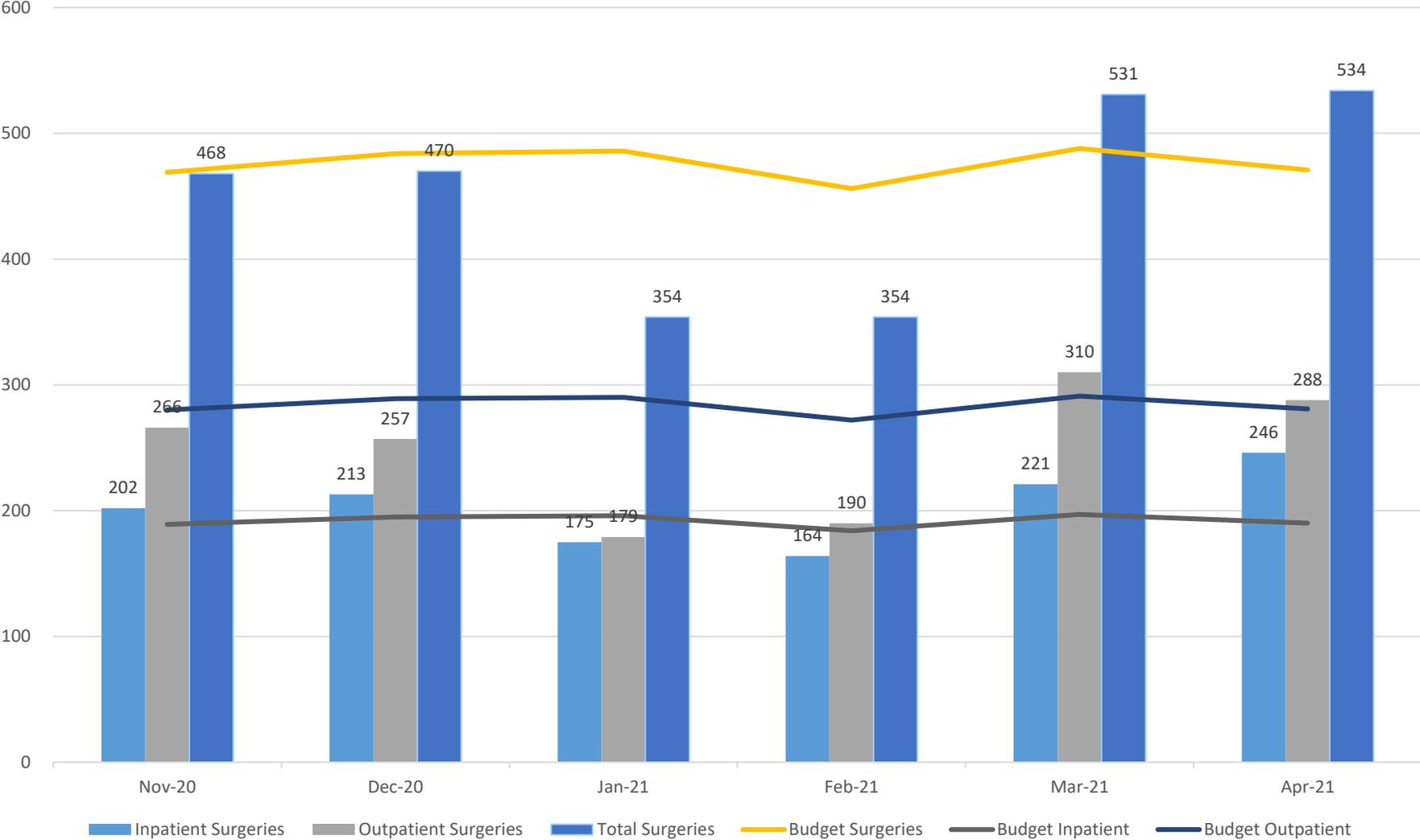
# Emergency Room Volume



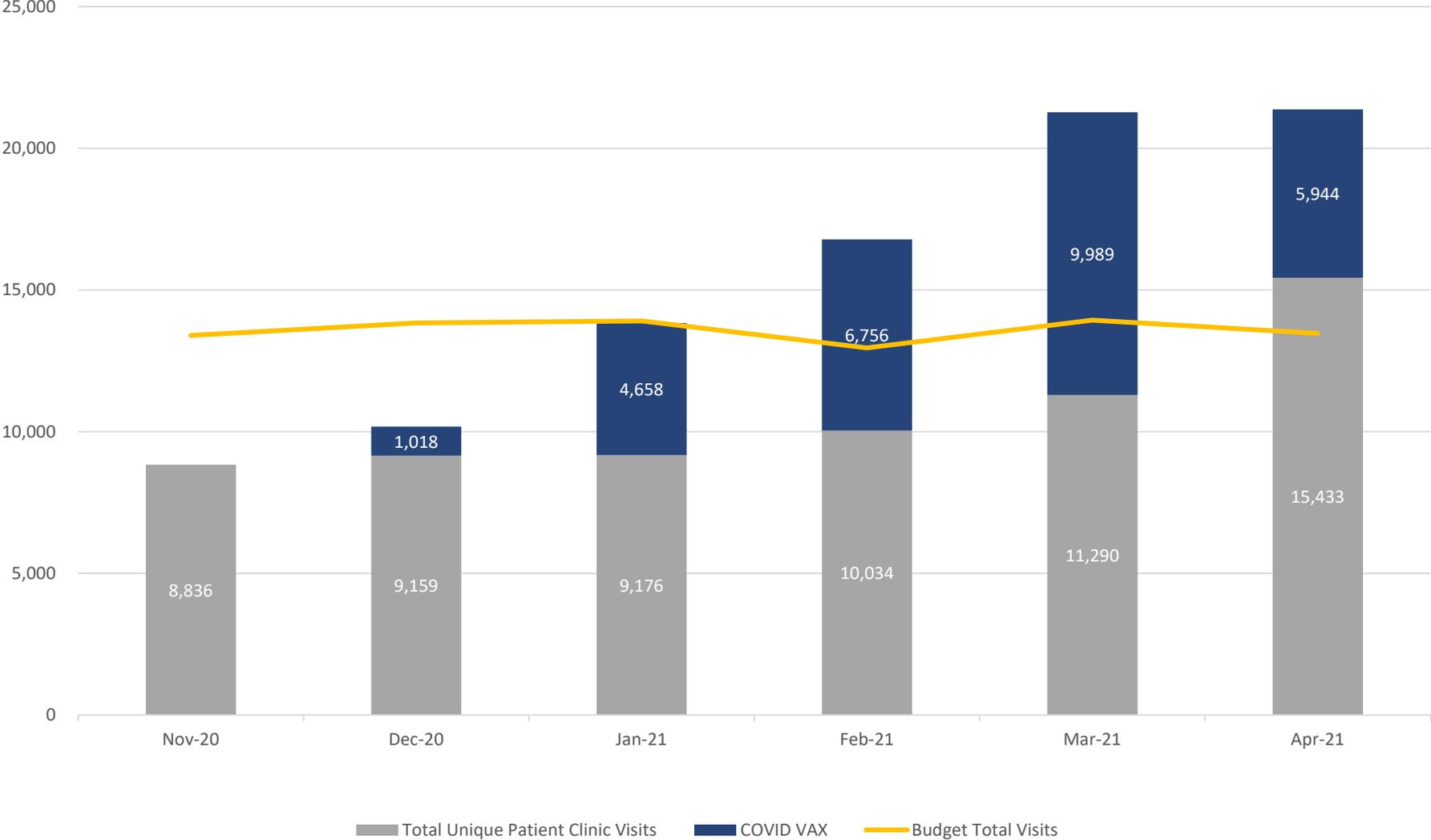
## Trauma Activations



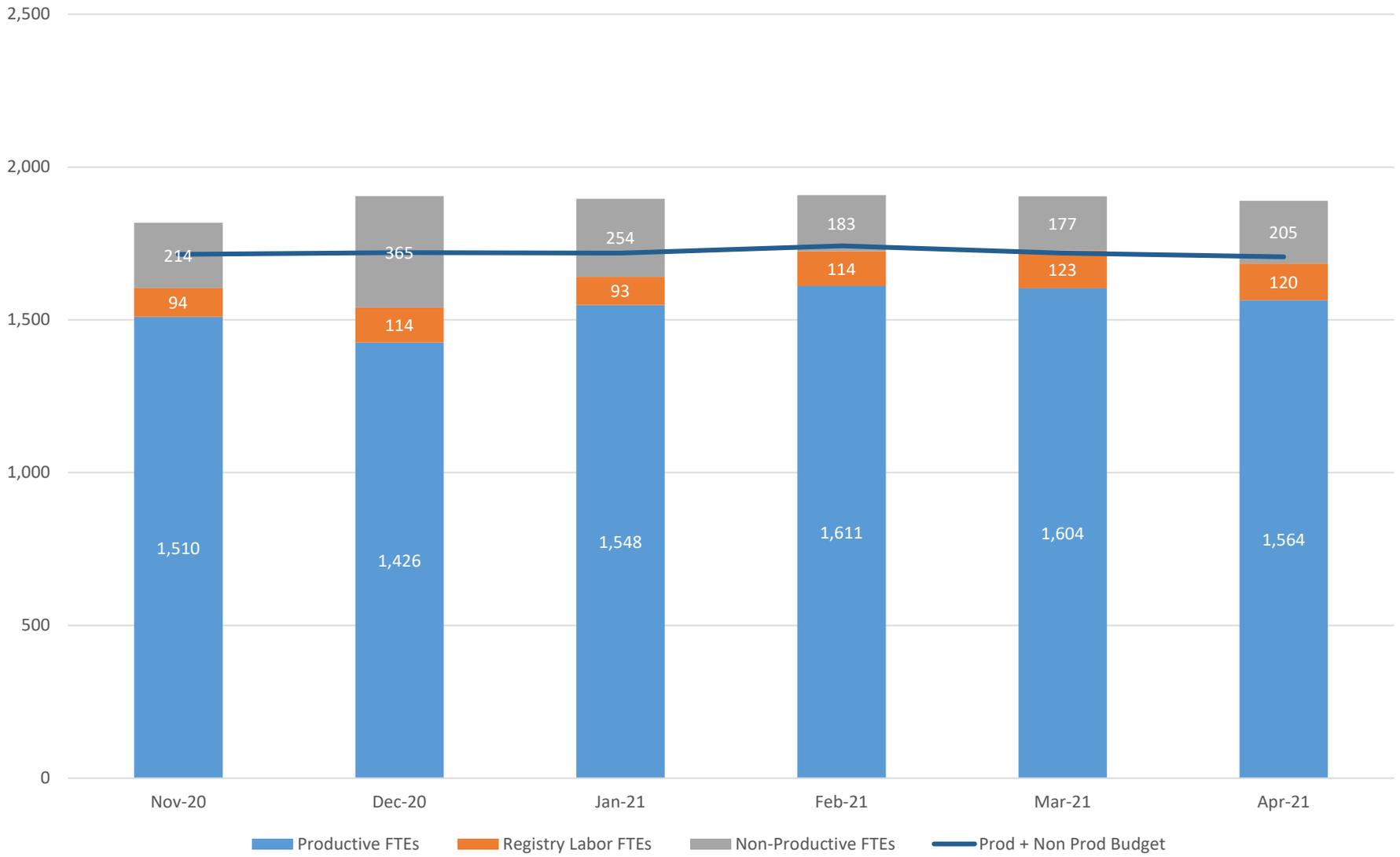
# Surgical Volume



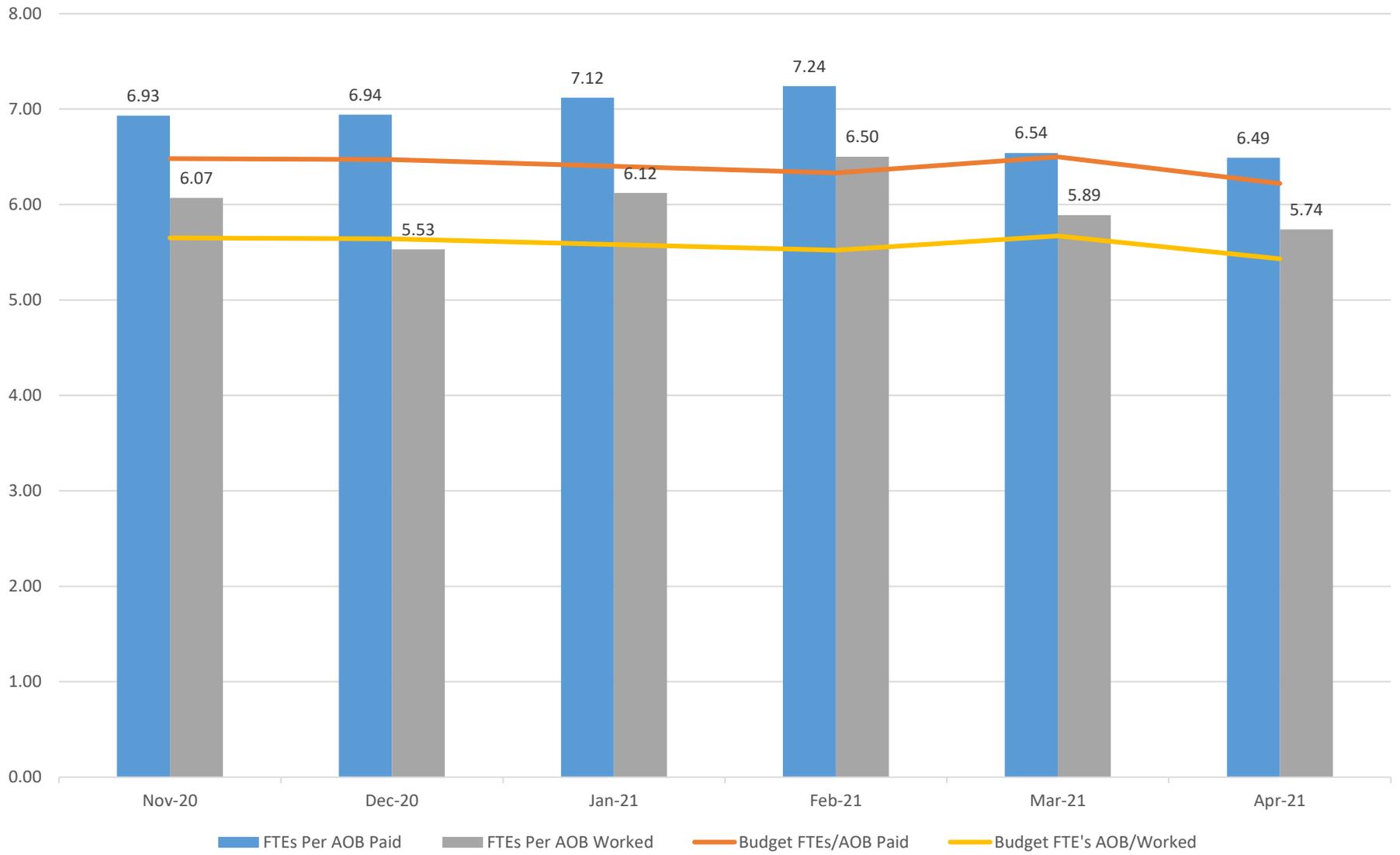
# Clinic Visits



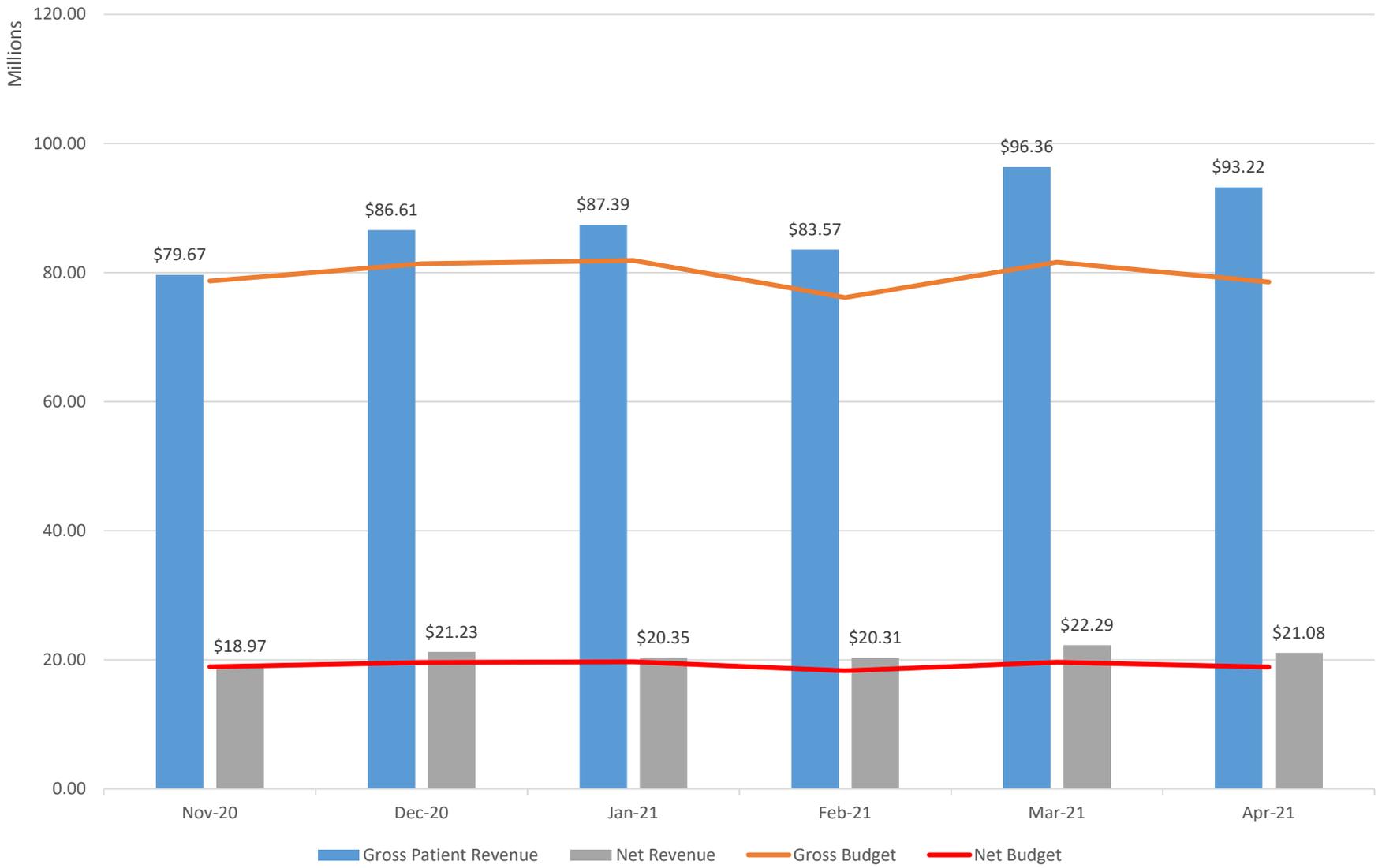
## Productivity



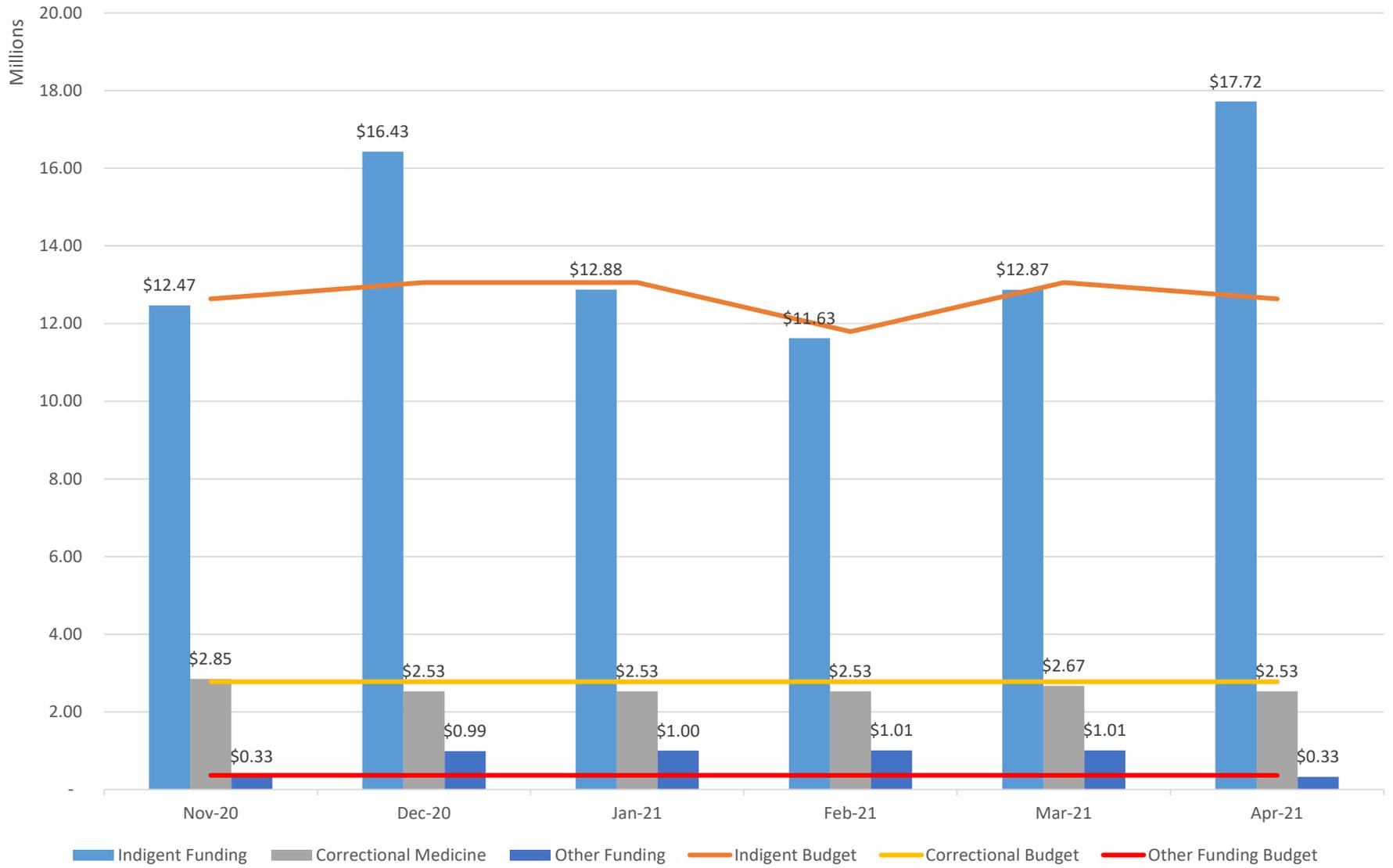
# Labor Metrics



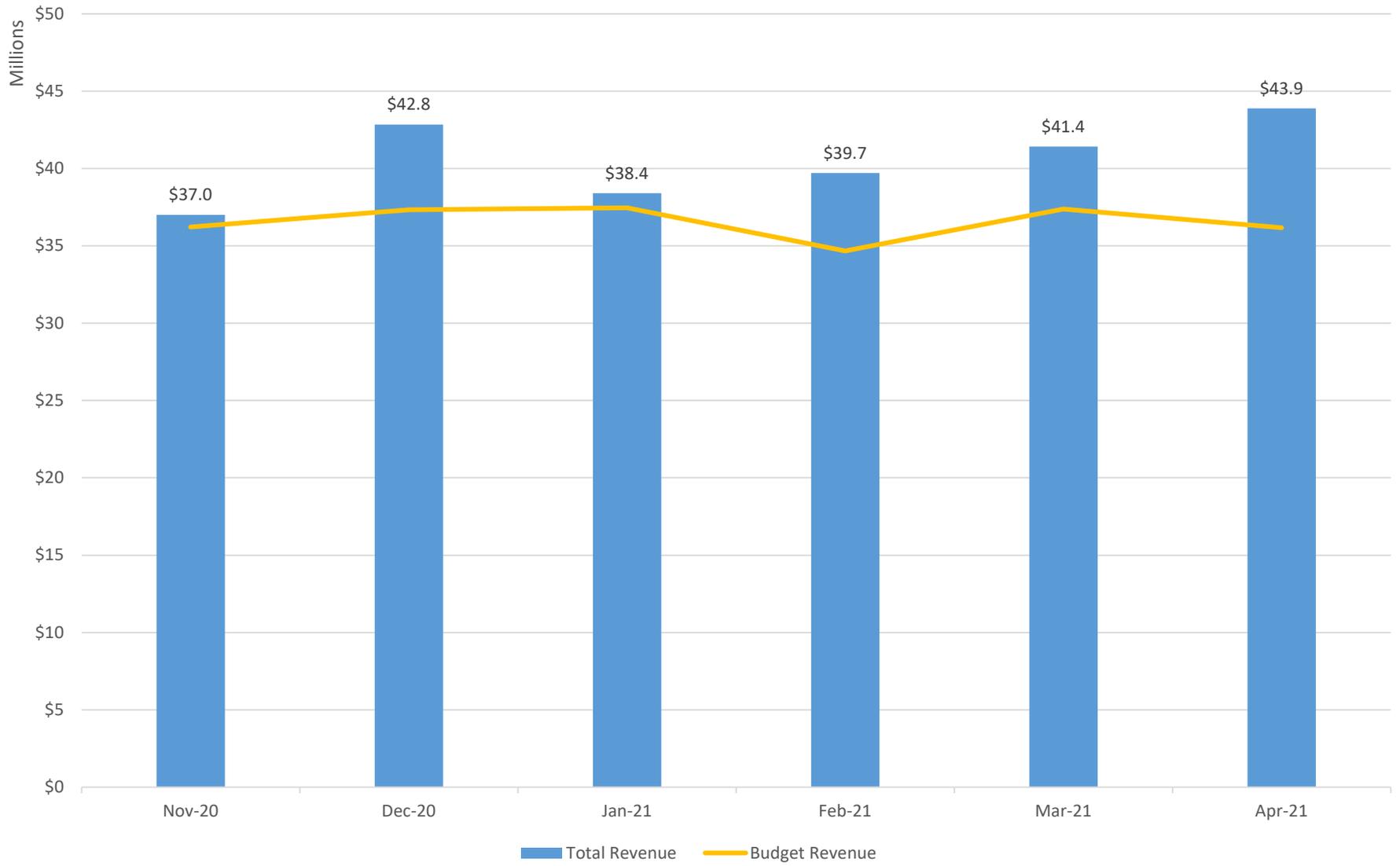
# Patient Revenue



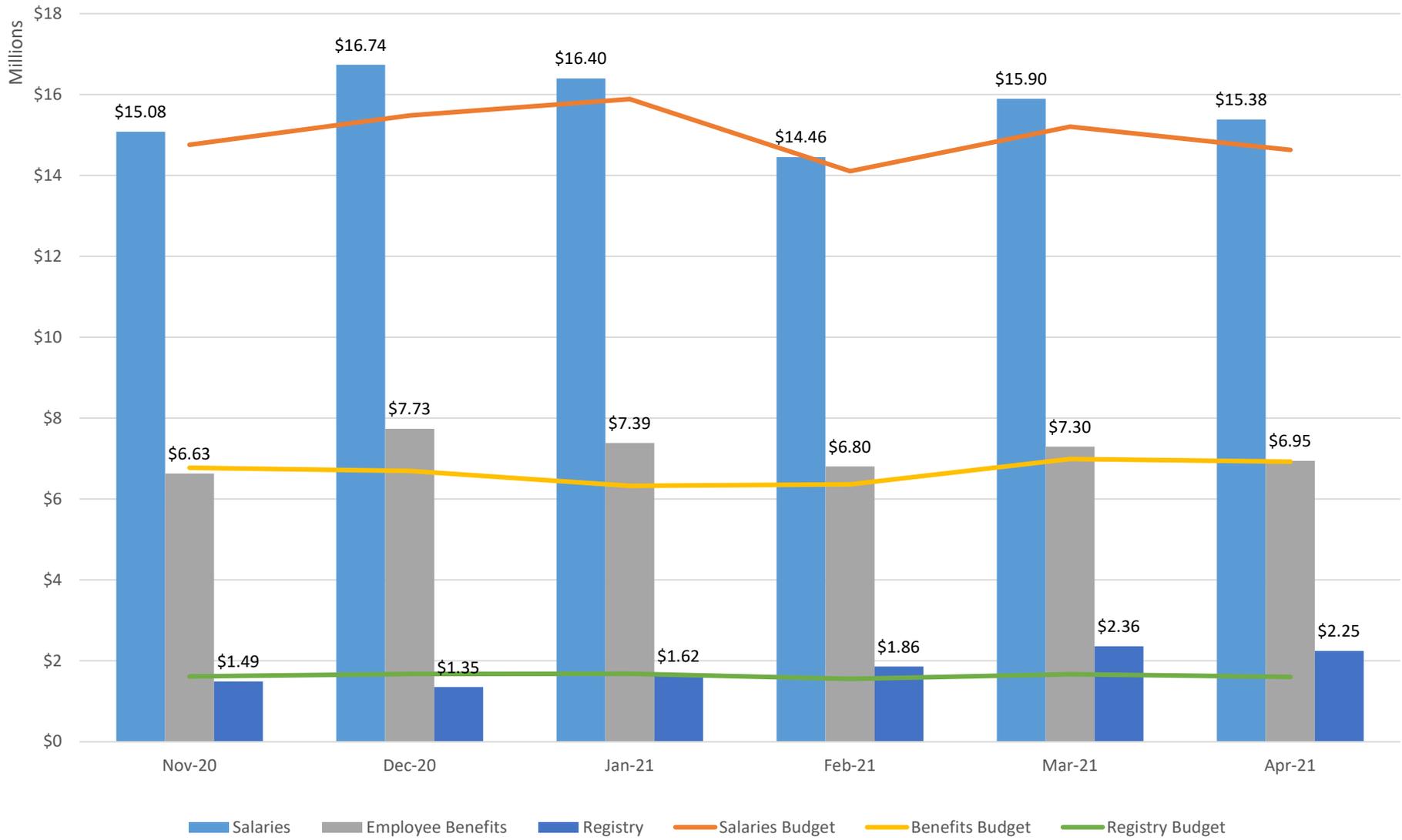
## Indigent & Correctional Revenue



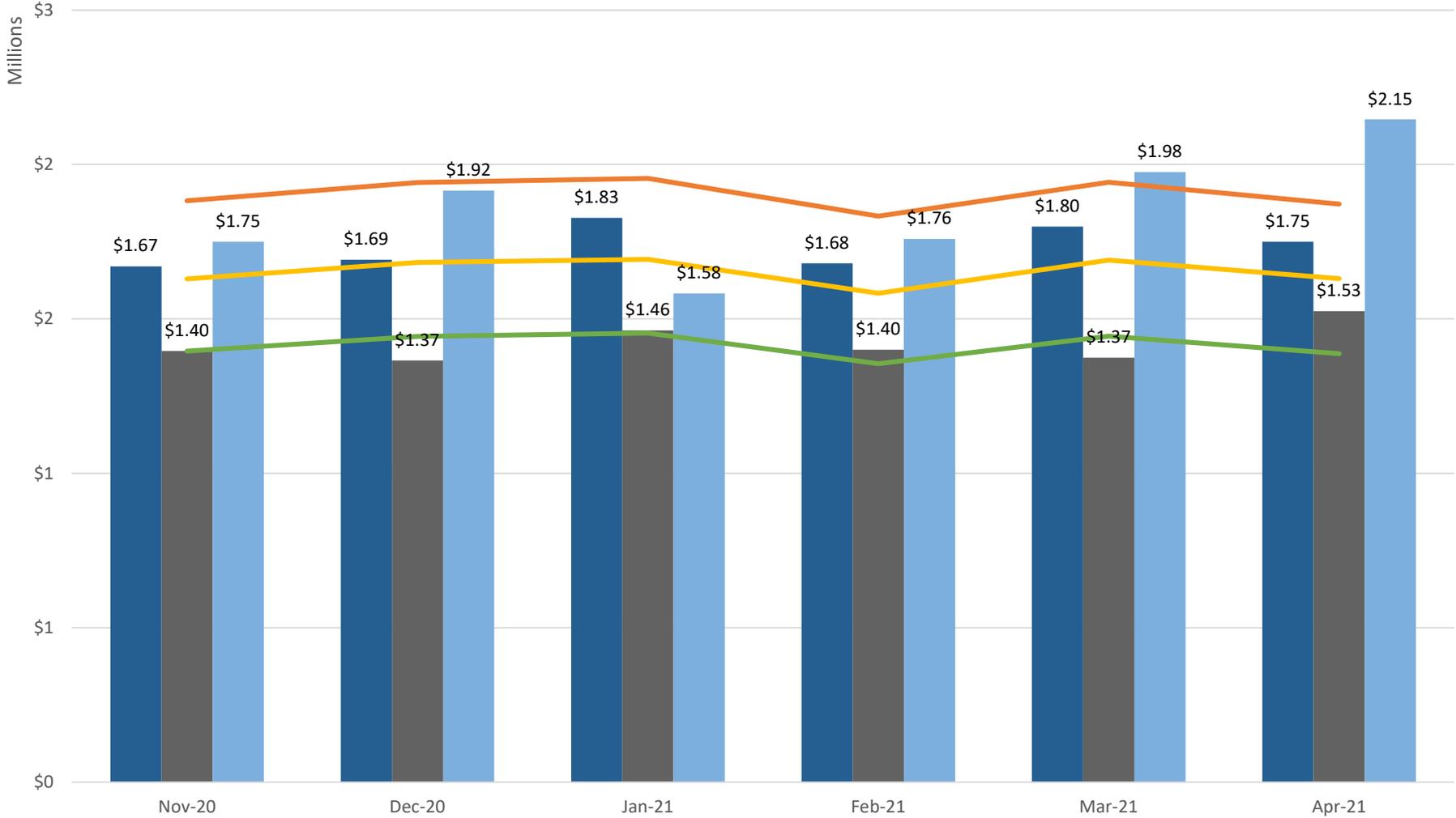
## Total Revenue



## Expenses

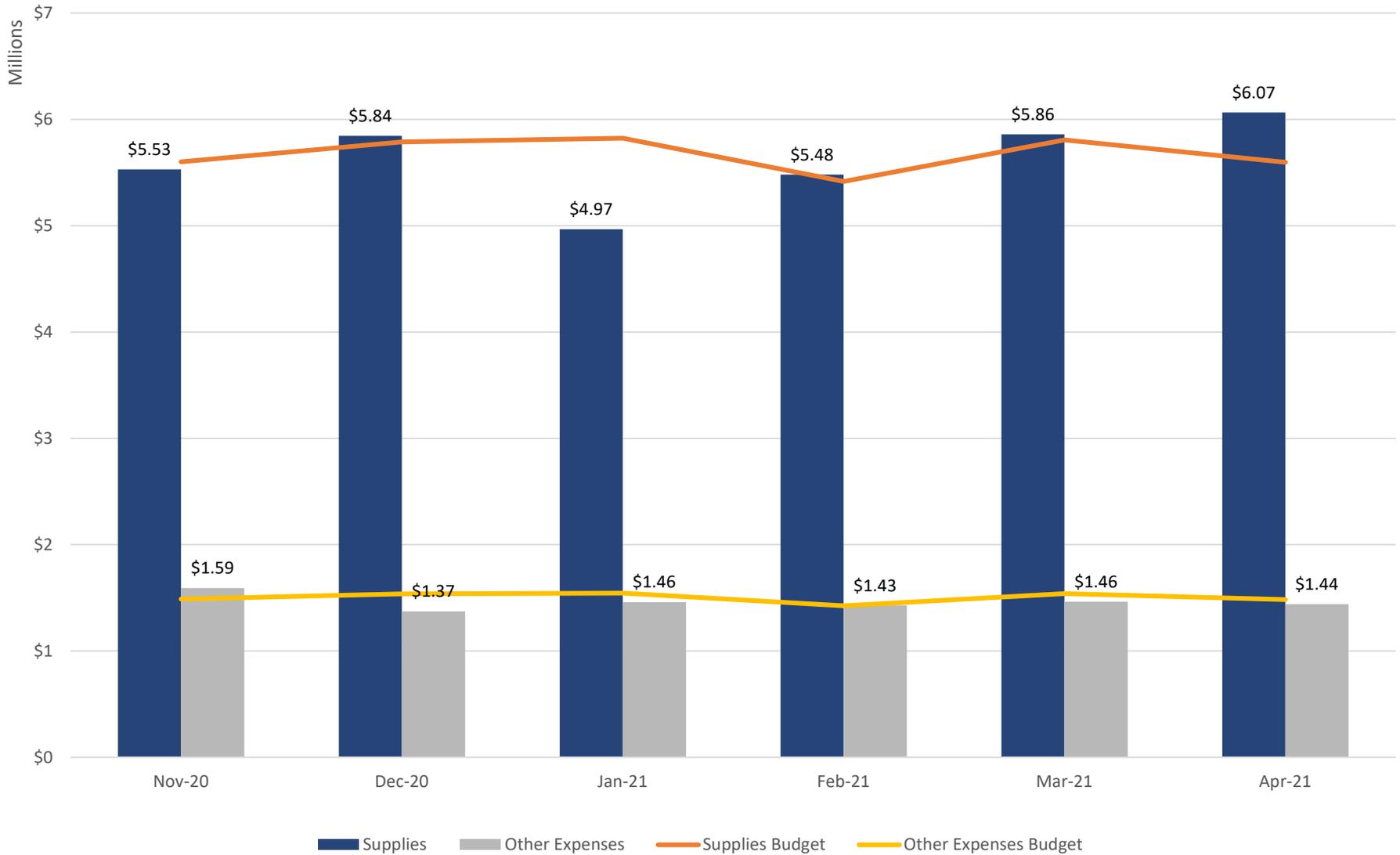


# Expenses

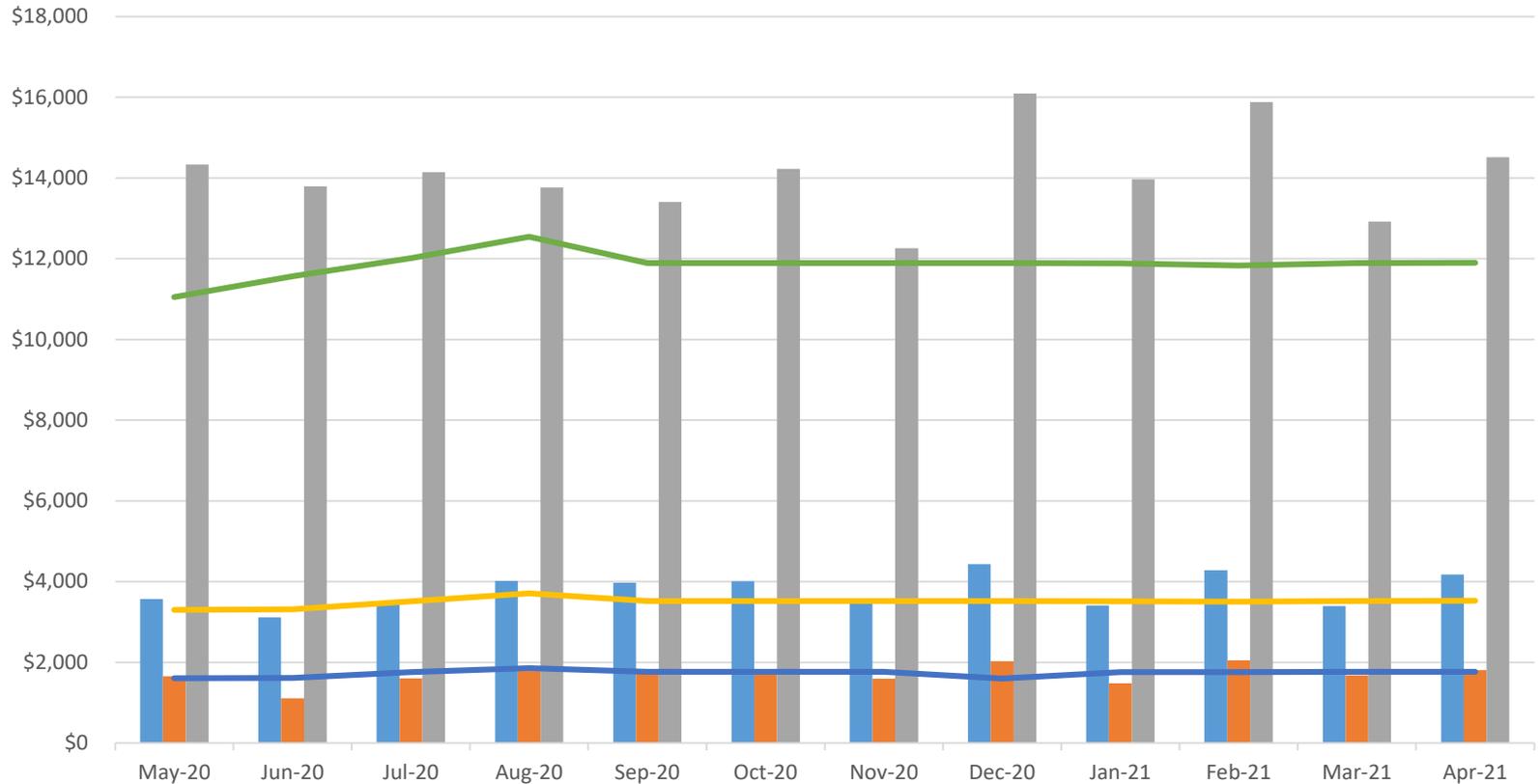


■ Medical Fees 
 ■ Other Professional Fees 
 ■ Purchased Services 
 — Medical Fees Budget 
 — Other Prof Budget 
 — Purchased Serv Budget

# Expenses

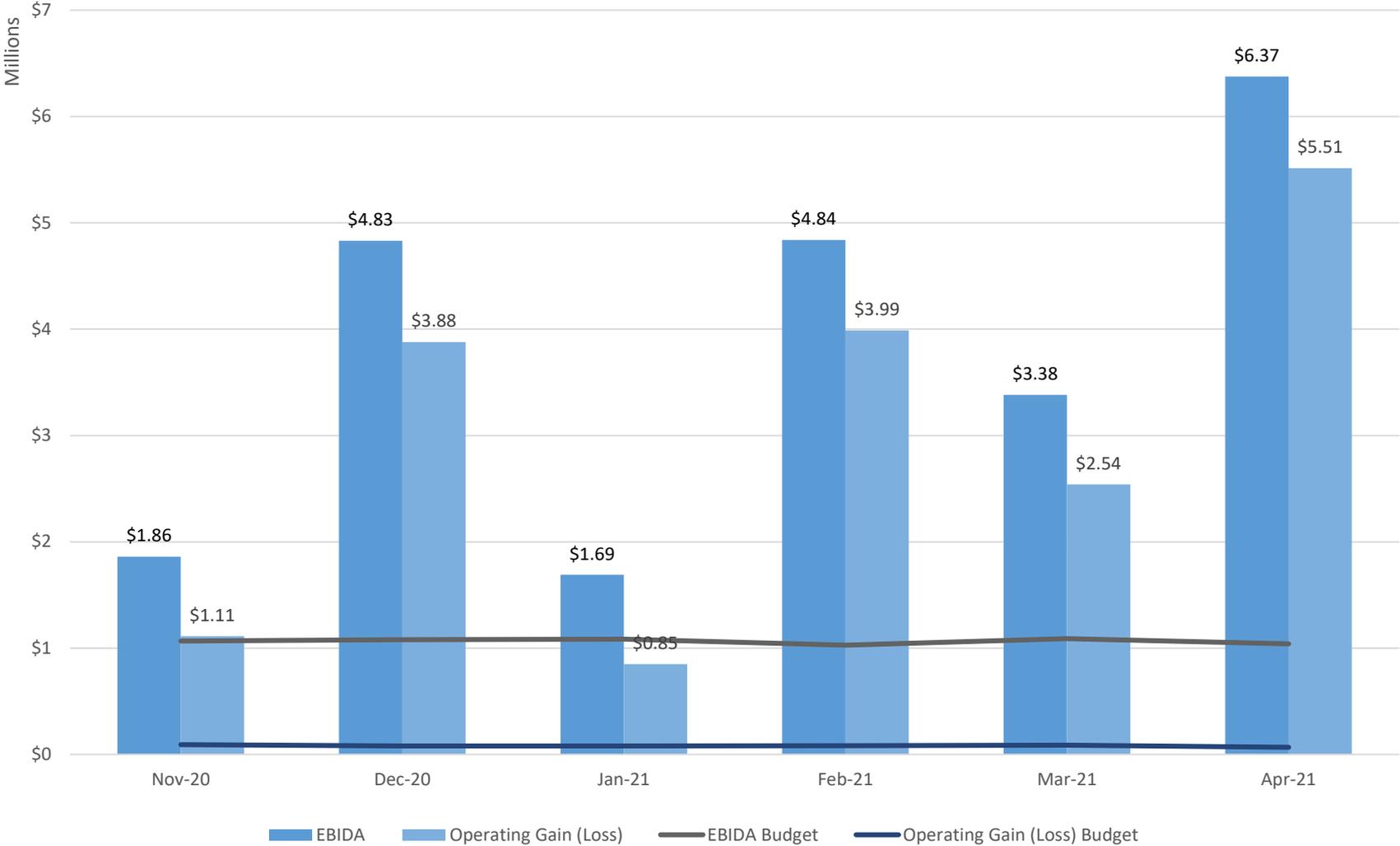


## Operating Metrics

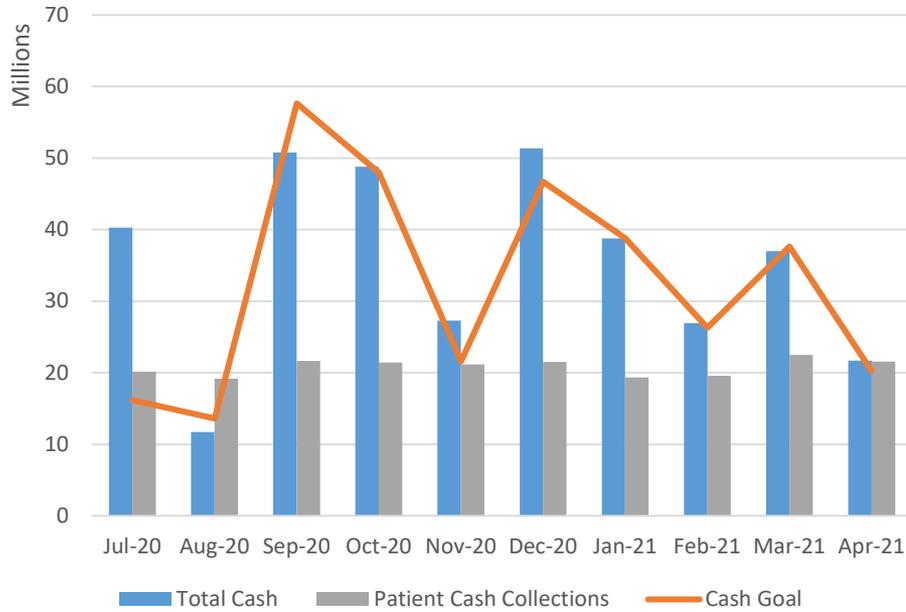


	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21
<span style="color: blue;">■</span> Supply Expense per AA	\$3,568	\$3,114	\$3,436	\$4,014	\$3,973	\$4,011	\$3,574	\$4,431	\$3,408	\$4,285	\$3,396	\$4,176
<span style="color: orange;">■</span> Pharm Cost per AA	\$1,658	\$1,110	\$1,604	\$1,787	\$1,823	\$1,735	\$1,597	\$2,028	\$1,481	\$2,050	\$1,678	\$1,809
<span style="color: grey;">■</span> Net Revenue Per AA	\$14,333	\$13,794	\$14,139	\$13,765	\$13,403	\$14,225	\$12,256	\$16,093	\$13,968	\$15,879	\$12,922	\$14,513
<span style="color: yellow;">—</span> Budget Supp/AA	\$3,298	\$3,314	\$3,513	\$3,711	\$3,520	\$3,517	\$3,519	\$3,516	\$3,511	\$3,501	\$3,518	\$3,526
<span style="color: blue;">—</span> Budget Pharm/AA	\$1,605	\$1,612	\$1,760	\$1,859	\$1,763	\$1,762	\$1,762	\$1,596	\$1,759	\$1,755	\$1,763	\$1,767
<span style="color: green;">—</span> Budget Net Rev/AA	\$11,052	\$11,568	\$12,011	\$12,543	\$11,892	\$11,891	\$11,893	\$11,893	\$11,882	\$11,833	\$11,892	\$11,902

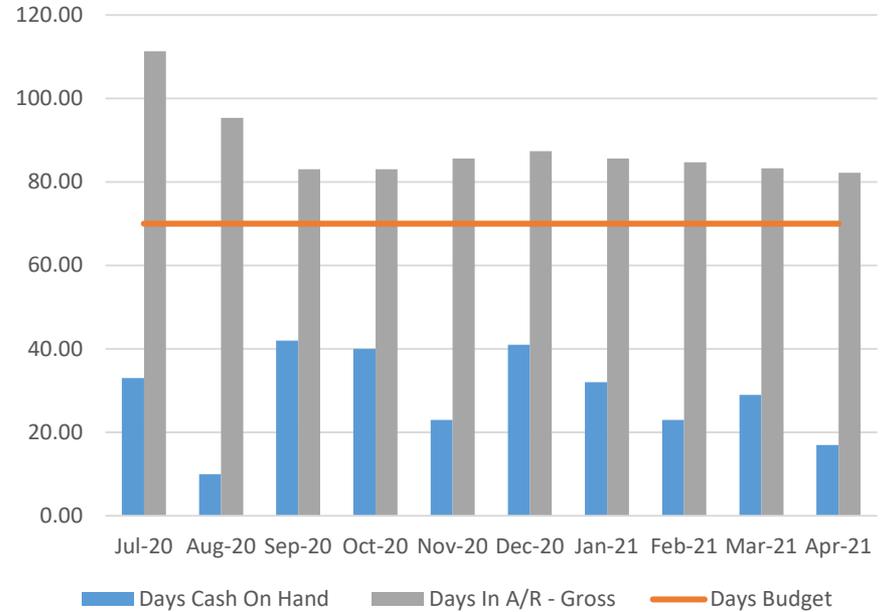
# EBIDA 2021 FYTD



### Cash 2021 FYTD



### AR Days 2021 FYTD



**KERN MEDICAL**  
**3-Month Trend Analysis: Revenue & Expense**  
 April 30, 2021

	FEBRUARY	MARCH	APRIL	BUDGET APRIL	VARIANCE POS (NEG)	PY APRIL
<b>Gross Patient Revenue</b>	\$ 83,568,624	\$ 96,359,640	\$ 93,220,367	\$ 78,547,901	19%	\$ 67,751,569
Contractual Deductions	(63,260,471)	(74,067,866)	(72,142,766)	(59,656,635)	21%	(51,430,544)
<b>Net Revenue</b>	20,308,153	22,291,775	21,077,601	18,891,266	11.6%	16,321,024
Indigent Funding	11,625,831	12,871,456	17,718,307	12,634,647	40%	14,954,448
Correctional Medicine	2,531,665	2,669,615	2,531,665	2,777,068	(9%)	2,527,068
County Contribution	285,211	285,211	285,211	285,211	0%	285,211
Incentive Funding	721,607	725,547	41,667	83,333	(50%)	212,040
<b>Net Patient Revenue</b>	35,472,467	38,843,603	41,654,451	34,671,525	20.1%	34,299,791
Other Operating Revenue	3,874,237	2,475,576	2,206,117	1,227,785	80%	5,038,989
Other Non-Operating Revenue	357,257	90,925	15,489	276,653	(94%)	14,068
<b>Total Revenue</b>	39,703,962	41,410,105	43,876,057	36,175,963	21%	39,352,848
<b>Expenses</b>						
Salaries	14,457,034	15,899,102	15,383,985	14,634,888	5%	14,365,693
Employee Benefits	6,803,427	7,297,247	6,945,695	6,926,432	0%	6,866,418
Registry	1,856,567	2,361,176	2,245,519	1,603,259	40%	1,388,264
Medical Fees	1,680,371	1,798,897	1,749,903	1,630,767	7%	1,762,437
Other Professional Fees	1,399,991	1,374,253	1,525,326	1,387,679	10%	1,377,941
Supplies	5,480,749	5,858,095	6,065,140	5,596,682	8%	4,591,410
Purchased Services	1,759,294	1,975,422	2,145,648	1,872,065	15%	1,825,083
Other Expenses	1,428,590	1,464,221	1,440,073	1,483,652	(2.9%)	1,407,758
Operating Expenses	34,866,023	38,028,413	37,501,288	35,135,425	7%	33,585,005
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 4,837,939	\$ 3,381,692	\$ 6,374,769	\$ 1,040,539	513%	\$ 5,767,843
EBIDA Margin	12%	8%	15%	3%	405%	15%
Interest	122,903	122,822	123,018	226,116	(46%)	220,039
Depreciation	469,548	463,348	481,391	497,123	(3%)	489,161
Amortization	256,257	256,257	256,257	249,350	3%	264,295
Total Expenses	35,714,731	38,870,840	38,361,955	36,108,014	6%	34,558,499
<b>Operating Gain (Loss)</b>	\$ 3,989,230	\$ 2,539,265	\$ 5,514,103	\$ 67,949	8,015%	\$ 4,794,348
<b>Operating Margin</b>	10.0%	6.1%	12.6%	0.19%	6,591%	12.18%

**KERN MEDICAL**  
**Year-to-Date: Revenue & Expense**  
 April 30, 2021

	ACTUAL FYTD	BUDGET FYTD	VARIANCE POS (NEG)	PY FYTD	PY VARIANCE POS (NEG)
<b>Gross Patient Revenue</b>	\$ 874,162,517	\$ 801,432,371	9%	\$ 767,252,632	14%
Contractual Deductions	(669,418,323)	(608,651,190)	10%	(580,389,956)	15%
<b>Net Revenue</b>	204,744,194	192,781,181	6%	186,862,676	
Indigent Funding	135,060,625	128,031,091	5%	140,505,516	(4%)
Correctional Medicine	25,769,781	27,770,680	(7%)	28,534,506	(9.7%)
County Contribution	2,852,148	2,852,109	0%	2,852,109	0.0%
Incentive Funding	4,968,647	833,333	496%	2,120,400	134%
<b>Net Patient Revenue</b>	373,395,394	352,268,394	6%	360,875,207	3%
Other Operating Revenue	18,719,320	12,441,340	50%	16,798,113	11%
Other Non-Operating Revenue	2,750,032	2,776,002	(1%)	106,260	2,488%
<b>Total Revenue</b>	394,864,747	367,485,736	7%	377,779,580	5%
<b>Expenses</b>					
Salaries	156,520,164	150,519,360	4%	147,107,140	6%
Employee Benefits	71,298,339	67,677,450	5%	67,150,827	6%
Registry	17,549,250	16,412,504	7%	16,090,555	9.1%
Medical Fees	17,267,639	16,603,959	4%	17,071,321	1%
Other Professional Fees	13,961,194	14,202,276	(2%)	14,457,749	(3%)
Supplies	56,107,735	57,033,480	(2%)	52,422,709	7.0%
Purchased Services	19,068,927	19,127,434	(0%)	19,456,696	(2%)
Other Expenses	15,547,159	15,117,795	3%	15,096,478	3%
Operating Expenses	367,320,408	356,694,259	3%	348,853,472	5%
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	\$ 27,544,338	\$ 10,791,477	155%	\$ 28,926,108	(5%)
EBIDA Margin	7%	3%	138%	8%	(9%)
Interest	1,322,205	2,291,313	(42%)	2,279,985	(42%)
Depreciation	4,697,869	5,023,081	(6%)	4,934,381	(5%)
Amortization	2,562,575	2,559,020	0.1%	1,857,376	38%
Total Expenses	375,903,057	366,567,672	3%	357,925,214	5%
<b>Operating Gain (Loss)</b>	\$ 18,961,689	\$ 918,063	1965%	\$ 19,854,366	(4%)
<b>Operating Margin</b>	5%	0.2%	1822%	5%	(9%)

**KERN MEDICAL  
BALANCE SHEET**

	APRIL 2021	APRIL 2020
<b>ASSETS:</b>		
<i><b>Total Cash</b></i>	<b>21,701,322</b>	<b>79,347,978</b>
Patient Receivables Subtotal	252,201,473	272,360,389
Contractual Subtotal	(209,592,603)	(209,975,985)
<i><b>Net Patient Receivable</b></i>	<b>42,608,870</b>	<b>62,384,404</b>
Total Indigent Receivable	167,808,561	95,579,215
Total Other Receivable	8,281,957	9,527,428
Total Prepaid Expenses	4,814,160	3,961,887
Total Inventory	6,094,696	5,782,666
<i><b>Total Current Assets</b></i>	<b>251,309,565</b>	<b>256,583,579</b>
Deferred Outflows of Resources	87,863,462	85,573,671
Investments Deposited with Trustee	0	931,830
Total Land, Equipment, Buildings and Intangib	196,125,916	194,204,116
Total Construction in Progress	24,481,080	14,751,102
<i><b>Total Property, Plant &amp; Equipment</b></i>	<b>220,606,995</b>	<b>208,955,218</b>
Total Accumulated Depr & Amortization	(122,941,878)	(114,199,764)
<i><b>Net Property, Plant, and Equipment</b></i>	<b>97,665,117</b>	<b>94,755,453</b>
<i><b>Total Long Term Assets</b></i>	<b>87,863,462</b>	<b>86,505,500</b>
<i><b>Total Assets</b></i>	<b>436,838,144</b>	<b>437,844,532</b>

**KERN MEDICAL  
BALANCE SHEET**

	APRIL 2021	APRIL 2020
<b>LIABILITIES &amp; EQUITY:</b>		
Total Accounts Payable	13,068,233	34,686,147
Total Accrued Compensation	39,839,526	31,848,311
Total Due Government Agencies	34,687,400	37,260,478
Total Other Accrued Liabilities	39,282,573	78,046,109
<b><i>Total Current Liabilities</i></b>	<b>126,877,732</b>	<b>181,841,045</b>
Unfunded Pension Liability	322,103,797	307,234,709
Other Long-Term Liabilities	96,456,658	112,681,492
<b><i>Total Long-Term Liabilities</i></b>	<b>418,560,455</b>	<b>419,916,201</b>
<b><i>Total Liabilities</i></b>	<b>545,438,187</b>	<b>601,757,246</b>
Fund Balance	36,714,022	36,714,021
Retained Earnings	(145,314,064)	(200,626,735)
<b><i>Total Fund Balance</i></b>	<b>(108,600,043)</b>	<b>(163,912,714)</b>
<b><i>Total Liabilities and Fund Balance</i></b>	<b>436,838,144</b>	<b>437,844,532</b>



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

June 16, 2021

**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.

**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Health and Safety Code Section 101855(j)(2)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on June 16, 2021, 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**

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on June 16, 2021, to consider:

- X   CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Russell V. Judd, and designated staff - Employee organizations: Service Employees International Union, Local 521; Committee of Interns and Residents/Service Employees International Union, Local 1957 (Government Code Section 54957.6)

**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 June 16, 2021, 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(d)(2), (e)(2).) Number of cases: Two (2)  
Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs –

**KERN COUNTY HOSPITAL AUTHORITY  
BOARD OF GOVERNORS  
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Health and Safety Code Section 101855(e)(1)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on June 16, 2021, the premature disclosure of which would create a substantial probability of depriving the authority of a substantial economic benefit or opportunity. The closed session involves:

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