



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Agreement No.: A-12261

Upon motion of Supervisor Parker, seconded by Supervisor Armenta and carried by those members present, the Board of Supervisors hereby:

- a. Authorized the Deputy Purchasing Agent for Natividad Medical Center (NMC) to execute Amendment No. 4 to the Agreement (A-12261) with Karl Storz Endoscopy-America for Equipment Repair and Services at NMC, extending the Agreement an additional two year period for a revised term of May 5, 2011 through June 30, 2017 and adding \$208,800 for a revised total Agreement amount not to exceed \$602,878; and
- b. Authorized the Deputy Purchasing Agent for NMC to execute up to three (3) future Amendments to the Agreement which do not significantly alter the scope of work and do not cause an increase of more than ten percent (10%) of the original cost of the Agreement.

PASSED AND ADOPTED on this 9th day of June 2015, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas, Parker and Potter
NOES: None
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 78 for the meeting on June 9, 2015.

Dated: June 11, 2015
File ID: A 15-106

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

**AMENDMENT NO. 4
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN KARL STORZ ENDOSCOPY-AMERICA, AND
NATIVIDAD MEDICAL CENTER
FOR
EQUIPMENT REPAIR AND MAINTENANCE SERVICES**

This Amendment No. 4 to the Professional Services Agreement ("Agreement"), dated May 5, 2011 is entered into by and between the County of Monterey, on behalf of Natividad Medical Center (hereinafter "NMC"), and Karl Storz Endoscopy-America, (hereinafter "CONTRACTOR"), with respect to the following:

RECITALS

WHEREAS, the Agreement was executed for Equipment Repair and Maintenance Services with a one year term and a total Agreement amount not to exceed \$35,712.50; and

WHEREAS, NMC and CONTRACTOR amended the Agreement on November 1, 2011 via Amendment No. 1 to add an additional \$42,405.00, thereby increasing the total agreement amount to \$78,117.50; and

WHEREAS, NMC and CONTRACTOR amended the Agreement on July 1, 2012 via Amendment No. 2 to extend the term for an additional one year period through June 30, 2013 and to add an additional \$80,290.00, thereby increasing the total agreement amount to \$158,407.50; and

WHEREAS, NMC and CONTRACTOR amended the Agreement on July 1, 2013 via Renewal and Amendment No. 3 to extend the term for an additional two year period through June 30, 2015 and to add an additional \$235,670.00 thereby increasing the total agreement amount to \$394,077.50; and

WHEREAS, NMC and CONTRACTOR currently wish to amend the Agreement to extend it for an additional two year period through June 30, 2017 to allow for services to continue with replacement of the original scope of work attached hereto as "Exhibit A-4 per Amendment No. 4" with a \$208,800 increase for the added services for a total Agreement amount of \$602,877.50.

AGREEMENT

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

The Agreement is hereby renewed on the terms and conditions as set forth in Original Agreement and in Renewal and Amendment No 1, Amendment No. 2, and Renewal and Amendment No. 3 incorporated herein by this reference, except as specifically set forth below.

1. Section 1, "PAYMENTS BY NMC" shall be amended to the following; *"NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in EXHIBIT A-4 as per Amendment No. 4 attached hereto this Amendment No. 4. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of \$602,877.50. "*
2. The first sentence of Section 2 "TERM OF AGREEMENT" shall be amended to the following; *"The term of this Agreement is May 5, 2011 to June 30, 2017 unless sooner terminated pursuant to this Agreement"*

3. Section 3, "ADDITIONAL PROVISIONS/EXHIBITS" shall be amended to the following:
"The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:
Exhibit A-4: Revised Scope of Services/Payment Provisions as per Amendment No. 4".
4. Except as provided herein, all remaining terms, conditions and provisions of the Agreement are unchanged and unaffected by this Amendment No. 4 and shall continue in full force and effect as set forth in the Agreement and in Amendment No. 1, Amendment No. 2 and Renewal and Amendment No. 3.
5. A copy of this Amendment No. 4 shall be attached to the Original Agreement.

IN WITNESS WHEREOF, the parties hereto are in agreement with this Amendment No. 4 on the basis set forth in this document and have executed this Amendment on the day and year set forth herein.

Natividad Medical Center

By: 
Gary R. Gray, D.O., Interim CEO

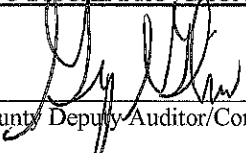
Date: 6/12/15

APPROVED AS TO LEGAL PROVISIONS

By: 
Monterey County Deputy County Counsel

Date: May 5, 2015


APPROVED AS TO FISCAL PROVISIONS

By: 
Monterey County Deputy Auditor/Controller

Date: 5-5-15

CONTRACTOR

Karl Storz Endoscopy - America, Inc.
CONTRACTOR's Business Name*** (see instructions)


Signature of Chair, President, or Vice-President

SARA THOMAS, DIRECTOR OF CONTRACTS
Name and Title

Date: 4/13/15

By: _____
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Name and Title

Date: _____

***Instructions
If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required).
If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required).
If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required)

RE: Protection1® Custom Service Solution Agreement

April 13, 2015

To: Sue Rodgers, Periop and ER Director

Natividad Medical Center

Email: rodgerss@natividad.com

Phone: 831.772.7789

Dear Sue,

Attached is a **Renewal Custom Service Solution Agreement**. Your previous agreement was purchased last year on PO# DO9600000005352 and the warranty period for these devices will expire on 6/30/2015. This No-fault agreement will extend and supply full coverage of the products listed. Since these products are a major investment and are costly to repair, our No-Faults are priced to save you money in your repair budget.

Our Custom Service Solution agreement includes the following:

Benefits of our No-Fault service plan are:

- ✓ **Unlimited Repairs** for covered KARL STORZ products,
- ✓ **No unpleasant surprises** or unbudgeted repair costs, just simple fixed monthly charges,
- ✓ **Coverage is Transferable** when upgrading your Camera heads, Rigid scopes and all other electromechanical devices.
- ✓ **Priority repair turn-around** which allows maximum inventory availability and minimizes OR delays,
- ✓ **Free return shipping** from our facilities, including free shipping supplies,
- ✓ **24/7/365 Technical Service Support.**

To Renew the No-Fault Service Agreement, sign the attached document and send it back to my Service Specialist, Kevin Van Dolah at 877-565-9340 (fax) or kevin.vandolah@karlstorz.com, along with a copy of your purchase order. The No-Fault will be billed in equal monthly installments for the length of the agreement. Should you have any questions or need additional information, I can be reached at (516) 662-4358.

Best Regards,

Steven Forrest
Surgical Sales Executive
San Jose/East Bay
KARL STORZ Endoscopy-America, Inc
steven.forrest@karlstorz.com
Cell: 650-867-3953

Craig Lingel
Area Sales Manager, West
Protection 1® Services
KARL STORZ Endoscopy-America, Inc
Craig.Lingel@karlstorz.com
Cell: 925.588.1617

Kevin Van Dolah
Sr. Service Specialist,
Protection 1® Services
KARL STORZ Endoscopy-America, Inc
kevin.vandolah@karlstorz.com
Office: 800.421.0837 Ext 8779
Toll-Free Fax: (877) 565-9340



KARL STORZ PROTECTION 1® CUSTOM SERVICE SOLUTIONS

| | | | |
|---------------------------------|--------------------------|------------------------|-----------------------|
| CUSTOMER NAME: | Natividad Medical Center | | |
| CUSTOMER ADDRESS: | 1441 Constitution Blvd | | |
| CITY, STATE, ZIP CODE: | Salinas CA 93906-3100 | | |
| CUSTOMER ACCOUNT #: | 109331 | SHIP TO: | 310263 |
| SERVICE TERM: | 2 YEARS | EFFECTIVE DATE: | 7/1/2015 to 6/30/2017 |
| PROPOSAL EXPIRATION DATE | 7/28/2015 | MONTHLY CHARGE: | \$8700 |

KARL STORZ Endoscopy-America, Inc. ("KSEA") and Customer (Identified above) hereby enter into this PROTECTION 1® NO-FAULT SERVICE AGREEMENT ("Agreement") for the exchange and repair needs of Customer's KSEA branded products listed on Exhibit A ("Products and No-Fault Price Schedule"). The following terms and conditions apply to all transactions covered under this Agreement.

1. **KSEA Obligations.**

- (a) Provide labor and replacement parts, as necessary, to return the Products to normal operating condition, provided that such service is necessitated by device failure during normal usage for its intended purpose and such failure is not otherwise excluded from coverage. The number of repairs or exchanges that may be performed on the Products covered by this Agreement is unlimited. All replaced parts shall become the property of KSEA.
- (b) Provide Field Service Technician visits at no charge, where coverage is available*.
- (c) Provide automatic free technology upgrades, as designated by KSEA, at the time of exchange or repair.
- (d) Upon request provide Damage Evaluation Report for each Product submitted and Transaction Summary Reports.
- (e) Pay shipping costs from and to Customer using KSEA preferred carrier.

2. **Exclusions.** The following items are excluded from coverage under this Agreement: Cosmetic damage; Products that have been altered other than by KSEA; Consumable or disposable supplies (light bulbs, lamps, tubing, fuses, filters, electrodes, batteries, print packs, etc.); Damage resulting from Customer's failure to follow manufacturers recommendations for care and handling; Gross abuse and neglect.

3. **Customer Obligations.**

- (a) **Concurrent with the execution and delivery of this Agreement, customer shall also provide a "hard copy" Purchase Order (P.O.) for the services to be provided during the full term of this Agreement.**
- (b) Utilize KSEA as its provider of the services for all Products.
- (c) Submit all Products to KSEA in a high-level disinfected or sterilized condition only.
- (d) Obtain a Return Material Authorization (RMA) number from KSEA prior to submitting any Products to KSEA for exchange or repair.
- (e) Submit all Products to be exchanged to KSEA within ten (10) business days after issuance of a RMA number. If the damaged product is not returned within thirty (30) days of receipt of the replacement product, Customer will be invoiced for the List Price of the replacement less any applicable discounts.

4. **Billing.** KSEA shall invoice Customer for the total monthly Service Fee as set forth above on a monthly basis, in advance, commencing on the Effective Date. If applicable, the Service Fee shall be prorated for any partial periods during the Term. KSEA shall reference this P.O. on all invoices.

5. **Term; Termination.**

- (a) **Term.** The term ("Service Term") of this Agreement will commence on the date this Agreement is executed on behalf of KSEA ("Effective Date") and will continue for the period set forth above.
- (b) **Termination.** Either party may terminate this Agreement prior to the scheduled End Date without cause upon ninety (90) days prior written notice to the other party. Either party may terminate this Agreement with cause if the terminating party notifies the other party in writing of the basis for cause and such other party does not cure same within thirty (30) days after receipt of such written notice. In the event of termination for cause by KARL STORZ, or in the event of termination without cause by Customer; Customer agrees to pay within thirty (30) days of termination all the amounts due under the remaining term of the Agreement.

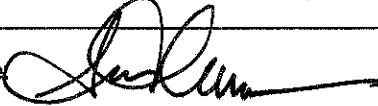
6. **Limited Repair Warranty.** All repairs shall be performed in a good and workmanlike manner and all replaced parts shall be free from defects in materials and workmanship for the remainder of the original product warranty period (if any) or ninety (90) days from the date of such repair, whichever is longer, when used by qualified medical personnel who are trained in their use. This limited repair warranty is in lieu of all other repair warranties, express, implied and/or statutory, including, but not limited to, warranties of merchantability, fitness and/or of suitability for a particular purpose, with respect to all KSEA repair services. Any and all other repair warranties, representations and/or guarantees, of any type, nature or extent, implied or

express, and/or whether arising under or as a result of any statute, law, commercial usage, custom, trade or otherwise, are hereby expressly excluded and disclaimed.

7. **Entire Agreement.** This Agreement, Exhibit A (Products and No-Fault Price Schedule) and Exhibit B (General Standard Terms and Conditions) attached hereto constitute the entire agreement between KSEA and Customer with respect to the transactions contemplated herein and supersede all prior oral or written agreements, commitments or undertakings with respect thereto.

* Please check with your KSEA representative for availability of FST Services.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the Effective Date.

| | |
|---|--------------------------|
| KARL STORZ Endoscopy-America, Inc. | Customer: |
| Authorized Agent: Sara Thomas | Authorized Agent: |
| Title: Director of Contracts & Revenue Management | Title: |
| Signature:  | E-mail address: |
| Date: 4/13/15 | Signature: |
| | Date: |

| | |
|--|--|
| <p>If you would like to receive an original counter-signed copy from KARL STORZ, please mail 2 original Customer signed copies, along with a copy of your purchase order to the following address:</p> <p>KARL STORZ Endoscopy-America, Inc. ATTN: Kevin Van Dolah 2151 E. Grand Avenue El Segundo, CA 90245-5017</p> | <p><u>For electronic submittal:</u> Please FAX a signed copy of this Agreement, along with a copy of your purchase order to: ATTN - Kevin Van Dolah: Facsimile # (877) 565-9340 OR Email a scanned signed copy to: Kevin.vandolah@karlstorz.com</p> <p>Please include a return Fax #, or Email address, for the return of a KSEA counter-signed copy</p> |
|--|--|

EXHIBIT A
PRODUCTS AND NO-FAULT PRICING SCHEDULE

Products subject to this Agreement;

| Quantity | Model # | Serial # | CSS # | Description |
|----------|--|----------|------------------|--|
| 3 | R13801NKS | * | CAM-GASTRO | VIDEO GASTROSCOPE COLOR SYSTEM NTSC |
| 1 | R11278AU1 | * | CAM-UROLOGY | FLEX-X ² URETERO-RENO FIBERSCOPE,FLEXIBLE |
| 2 | R27010LA | * | CAM-UROLOGY | URETERO-RENOSCOPE, 7FR X 43CM, |
| 14 | R26046AA R26046BA R26003AA R26003BA | * | CAM-LAPAROSCOPY | HOPKINS II TELESCOPES |
| 3 | R26003AE | * | CAM-LAPAROSCOPY | ENDOCAMELEON HOPKINS TELESCOPE, 0-120° |
| 22 | 495NE 495ND 495NA | * | CAM-VIDEOIMAGING | LIGHT CABLE |
| 11 | 22220055-3 | * | CAM-VIDEOIMAGING | IMAGE 1,H3-Z HEAD,ZOOM,50/60HZ,CE |
| 1 | 27020AA | * | CAM-ENT | TELESCOPE,HOPKINS FORWARD OBLQ |
| 1 | 10023ABA | * | CAM-ENT | TELESCOPE HOPKINS STRGHT |
| 2 | 10328AA 10328BA | * | CAM-ENT | TELESCOPE,HOPKINS AUTOCLAV |
| 1 | 11302BDX | * | CAM-ANESTHESIA | FLEX. INTUBATION VIDEO SCOPE, 4.0 X 65CM |
| 1 | 11301BNX | * | CAM-ANESTHESIA | FLEX. INTUBATION VIDEO SCOPE |

| | | | | |
|---|---------|---|----------------|---|
| 1 | 8401AX | * | CAM-ANESTHESIA | C-MAC-VIDEOLARYNGOSCOPE, MAC #3 |
| 2 | 8401AXC | * | CAM-ANESTHESIA | C-MAC VIDEO LARYNGOSCOPE # 3 |
| 1 | 8401BX | * | CAM-ANESTHESIA | C-MAC VIDEO LARYNGOSCOPE # 4, W/SUCTION |
| 2 | 8401BXC | * | CAM-ANESTHESIA | C-MAC VIDEO LARYNGOSCOPE # 4, |
| 2 | 8401HX | * | CAM-ANESTHESIA | DOERGES DIFFICULT AIRWAY BLADE F/C-MAC |
| | | | | |

*Serial numbers will be inserted upon booking of the agreement.

| | 2 Year Option | |
|----------------------------|-----------------------|--|
| Annual Charge | \$104,400 Per year | |
| Monthly Charge | \$8,700 | |
| Number of monthly payments | 24 | |

Choose your yearly option and lock in the price; the longer the term, the more savings!

**EXHIBIT B
General Standard Terms and Conditions**

1. **ORDERS.** Orders are to be placed with the Customer Support Department of KARL STORZ Endoscopy-America, Inc. ("KSEA") or with its sales force. However, orders will only be accepted by KSEA's Customer Support Department in El Segundo, California and only on the condition that in the event of any conflicting, inconsistent and/or additional provisions in a Customer purchase order or other document, the within Terms and Conditions will supersede and prevail and such conflicting, inconsistent and/or additional provisions shall be of no force or effect; KSEA hereby objects to such other provisions or terms proposed by Customer. By accepting delivery of products, and/or the performance of services, from KSEA, and/or by paying for same, Customer agrees that notwithstanding anything to the contrary in Customer's own purchase order or other document, Customer accepts and agrees to the within Terms and Conditions, all of which constitute the sole and entire Agreement of KSEA and Customer, unless and to the extent modified and/or superseded by an agreement in writing signed by both Customer and an authorized representative of KSEA.
2. **PRICES.** *Prices, as set forth in Exhibit A of this Agreement, are not subject to change during the initial Service Term. However, should Customer modify Exhibit A by adding or deleting products to be covered under this Agreement, prices may change.*
3. **TERMS.** Shipments are F.O.B. shipping point, freight prepaid by KSEA and added to the invoice. Unless modified in writing, invoices are due and payable upon receipt by Monterey County Auditor-Controller; net 30 days. Any and all collection expenses, including reasonable attorneys' fees, which are incurred by KSEA to secure payment of any sums due from Customer and/or to effectuate repossession of products purchased from KSEA, but not paid for, will be borne by Customer. All controversies, disputes and claims, shall be adjudicated by a court of competent jurisdiction within the County of Monterey, State of California or the United States District Court, Northern District of California, which courts shall have exclusive jurisdiction of such matters. All transactions by and between Customer and KSEA shall be governed by and construed in accordance with the laws of the State of California without regard to its conflict of laws principles. The invalidity or unenforceability of any of the within Terms and Conditions will not affect the validity or enforceability of any other or remaining Term or Condition hereof. The within Terms and Conditions apply to products that are supplied to Customer as samples or loans from KSEA. Amounts payable to KSEA for the purchase, lease, or rent of products and/or services are not subject to withholding, set-off, or counter-claim under any circumstances without prior written consent of KSEA.
4. **SECURITY INTEREST.** Until Customer has paid KSEA in full for all products purchased pursuant to an order, KSEA shall have, and Customer hereby grants to KSEA, a security interest in all products purchased, pursuant to such order, and in all proceeds therefrom (including that which Customer receives as payment from an insurer or third party for or as a result of any damage to or loss of said products), to secure payment of the entire purchase price for all products sold, shipped and delivered to Customer pursuant to such order, and to secure all costs, expenses or other charges relating thereto which are payable by Customer to KSEA. Customer is required to execute and deliver such documents, as required and requested by KSEA, to perfect KSEA's security interest(s).
5. **SHIPPING.** Although KARL STORZ products are carefully packed to minimize in-transit damage, all shipments should be carefully examined upon receipt and if a product is damaged, Customer must document the nature and extent of the damage and immediately contact KSEA. If concealed loss or damage is discovered, Customer must retain all packing materials and immediately notify KSEA, requesting an inspection. If shipments are received short, Customer must contact KSEA's Customer Support Department at once. KSEA reserves the right to make partial shipments on any Order. Invoices for partial shipments are payable upon receipt, net 30 days upon receipt by Monterey County Auditor-Controller. KSEA is not liable for any damages caused by or attributable to delays and/or non-delivery due to any cause whatsoever.
6. **RETURN POLICY.** A return merchandise authorization (RMA) must be obtained from KSEA's Customer Support Department prior to returning any products. When phoning or writing KSEA, for an RMA, the Customer Support Representative must be provided with: (1) Customer name and number, as it appears on the invoice; (2) the telephone number and the person to contact; (3) the applicable P.O. number; (4) the KARL STORZ catalog number and, if applicable, the serial number for each product; and, (5) the reason for the return. KSEA reserves the right to refuse or return any products sent back to KSEA without prior authorization of its Customer Support Department. Returns must be carefully packed and shipped pre-paid to KSEA, attn: RMA number. KSEA's Customer Support Department will provide the return address and the RMA number. When returning products, Customer should include a copy of the original invoice or packing slip to ensure prompt issuing of credit. Full credit will only be issued for products that are received within 60 days of date of shipment and so long as such items are unused, in resalable condition and in their original product container. All products received after 60 days, but not more than 90 days, from the date of shipment will be assessed to a 15% inspection fee, which will be deducted from the credit to be issued for the returned product. Shipping charges will be reimbursed, inspection fees will not be charged and full credit will be given if the return was due to an error on the part of KSEA. The following products may not be returned for credit or exchanged: (1) products held longer than 90 days from date of shipment; (2) sterile packaged products where the package is opened and/or damaged; (3) discontinued products; (4) instruments that are etched or engraved by the Customer; (5) products damaged by the Customer; (6) products purchased "as is" or as demo products; and, (7) used products. In order to prevent the transmission of disease to the medical facilities' and/or KSEA's personnel, all products must be cleaned and then sterilized and/or disinfected before sending such products back to KSEA, who reserves the right to return unclean and contaminated products to the Customer. Additionally, if any product becomes damaged and is not immediately returned, KSEA assumes no responsibility or liability for Customer's continued use of that damaged product. KSEA does not guarantee the performance, and may decline to repair or accept for repair/exchange, any product that has been repaired, modified and/or altered by any person or entity other than KSEA or an authorized repair facility of KSEA.
7. **INSTALLATION, PREVENTATIVE MAINTENANCE, AND OTHER SERVICES.** Subject to resource availability, KSEA may, in its sole discretion, (i) install and setup the product, perform preventative maintenance services, provide onsite or remote troubleshooting services and other services, (ii) provide software updates and (iii) provide loaners in case of back orders.
8. **TRAINING.** To the extent reasonable as to the complexity and quantity of products, KSEA will provide training regarding the proper use of products at or near the time of delivery or installation, as applicable. KSEA may also provide additional training regarding the proper use of products upon Customer's request, in KSEA's sole discretion and subject to availability of KSEA personnel.
9. **REPAIR PROGRAM.** If repairs become necessary, for other than damages incurred during initial shipment, the Customer must follow the RMA procedure set forth in the "Return Policy" in Section 6, above. Warranty repairs will be made without charge (see "Warranty Policy," Section 10 below, for covered repairs). All other repairs are subject to KSEA's applicable standard repair or exchange charges. If requested, Customer will be advised of the estimated cost of the repair work or a product exchange before it is undertaken. All repairs carry a 90 day warranty. Exchange products carry the applicable KARL STORZ product warranty as described in Section 10 Warranty Policy below. If the damaged product is not returned within thirty (30) days of receipt of the replacement product, Customer will be invoiced for the full list price of the replacement. Subject to the availability of product, KSEA may, in its sole discretion, provide Customer with loaner product while non-warranty repairs are being made. Subject to resource availability, KSEA may, in its sole discretion, perform minor non-warranty repairs without charge. KSEA reserves the right to refuse or return any product sent back without prior

authorization of KSEA's Customer Support Department.

10. **WARRANTY POLICY.** Except as otherwise provided herein and/or by the applicable warranty information for a specific product or type of product, all products are generally warranted to be in good working order at the date of delivery and free from defects in workmanship and materials for one (1) year from date of delivery. However, since some products carry a shorter or a longer warranty period, Customer should check with KSEA's Customer Support Department or product specific literature, instruction manual and/or labeling for the exact warranty period. Any such product(s) with a defect occurring during the applicable warranty period will be promptly replaced or, at the sole discretion of KSEA, repaired at no charge to Customer. All repairs shall be performed in a good and workmanlike manner and all replaced parts or products shall be free from defects in materials and workmanship for the remainder of the original warranty period (if any) or the ninety (90) day period set forth in section 9, Repair Program, above, whichever is longer, when used by qualified personnel who are trained in their use. Subject to availability of product, KSEA may, in its sole discretion, provide Customer with loaner product while the defective product is being replaced or repaired during warranty period. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED AND/OR STATUTORY, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS AND/OR OF SUITABILITY FOR A PARTICULAR PURPOSE, WITH RESPECT TO ALL KARL STORZ PRODUCTS OR SERVICES. ANY AND ALL OTHER WARRANTIES, REPRESENTATIONS AND/OR GUARANTEES, OF ANY TYPE, NATURE OR EXTENT, BE IT IMPLIED, EXPRESS AND/OR WHETHER ARISING UNDER OR AS A RESULT OF ANY STATUTE, LAW, COMMERCIAL USAGE, CUSTOM, TRADE OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.** Any contrary course of performance by and between the parties will not modify any representations and/or warranties set forth herein. KSEA neither assumes nor authorizes any person to assume for it any other liabilities in conjunction with and/or related to the sale and/or use of its products. To ensure proper use, handling and care of KARL STORZ products, Customer should consult the product specific literature, instruction manual, and/or labeling included with the product or otherwise available. Repairs, modifications or alterations of KARL STORZ products, performed by any person or entity, other than by KSEA or an authorized repair facility of KSEA, nullifies and otherwise voids all applicable KARL STORZ warranties. Repair or replacement of a KARL STORZ product shall not extend the term of any applicable warranty. The remedies provided herein are Customer's exclusive remedies under this Warranty Policy.

11. **LIMITATION OF LIABILITY.** KSEA is not liable, either directly or by way of express or implied indemnity, for: (1) any damages which might arise or be caused, whether by the Customer or by any of the users of the products provided by KSEA, as a result of, in connection with, or otherwise attributable to: (a) misuse, abuse, mishandling and/or improper operation and/or storage; (b) repairs, servicing, modifications and/or alterations performed by any person or entity, other than KSEA or an authorized repair facility of KSEA; (c) use in combination with adaptors, accessories and/or equipment from other manufacturers unless authorized or recommended by KSEA, (d) use in any manner other than those for which such products are designed and are otherwise intended to be used, or (e) a failure to comply with power and grounding specifications provided by KSEA and, (2) any special, incidental, consequential, punitive, exemplary or indirect damages, including but not limited to alleged damages for delayed shipment, non-delivery, product failure, product design or production, inability to use such products or services, loss of future business (lost profits), or from any other cause, whatsoever, in connection with or arising from the purchase, sale, lease, rental, installation or use of KARL STORZ products, even if KSEA has been advised of the possibility of such damages. **SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS AND DISCLAIMERS OF CERTAIN WARRANTIES OR LIMITATIONS OF LIABILITY, SO THE LIMITATIONS AND/OR EXCLUSIONS, SET FORTH IN THESE TERMS AND CONDITIONS, MAY NOT APPLY. IN THAT EVENT, KSEA'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW IN THE SUBJECT JURISDICTION.**

12. **DISCOUNTS AND REBATES.** The dollar value of discounts and rebates (if any) provided by KSEA to Customer are intended to be discounts or reductions in price described in and in accordance with 42 U.S.C. Section 1320a-7b(b)(3)(A) and 42 C.F.R. Section 1001.952(h). Customer has an obligation to accurately record and may have an obligation to report all such reductions in purchase price to the Department of Health and Human Services ("DHHS") or other federal agency, state agencies, or other payers, as applicable. Customer acknowledges that this section is sufficient to effectively advise Customer of its obligations under applicable federal and state laws and regulations.

13. **SOFTWARE OWNERSHIP AND LICENSING.** With respect to products provided by KSEA and/or its affiliated/related entities (collectively, "KARL STORZ") and containing software components, Customer is granted a non-exclusive, limited, non-transferable license (the "License") to use the programmed logic, computer programs and/or software, including software developed by or on behalf KARL STORZ ("KARL STORZ Software") and/or software developed by or on behalf of a third party ("Third Party Software") (collectively, "Software") embedded in, or for use in conjunction with, such products, internally, but only in the form in which delivered to Customer and for the sole purpose of operating in accordance with KARL STORZ' written instructions for the products provided to Customer (and for no other product or purpose). The Software, and all modifications, enhancements and upgrades thereto, will, at all times, remain the property of KARL STORZ or the applicable third party. Customer may not duplicate, copy, reverse-engineer, de-compile, or disassemble the Software or in any way modify the Software. Customer has no right to, and may not, create derivatives of the Software, and Customer may not attempt to copy, create or re-create the source code of the Software. Any and all such modifications or enhancements to the Software by Customer, in contravention of this License, will immediately become the sole property of KARL STORZ. Customer hereby acknowledges and agrees that (i) the purchase, lease or other acquisition of products does not constitute a transfer of the Software, (ii) the Software is the property of KARL STORZ or the applicable third party, (iii) Customer neither owns nor acquires any interest in any copyright, patent or other intellectual property right in or to the Software as a result of such purchase, lease or other acquisition of products, (iv) KARL STORZ, or the applicable third party, retains and owns all right, title, and interest in and to the Software and the ownership rights therein, at all times, regardless of the form or media in or on which the original or other copies of the Software may exist, and (v) by using the products, Customer is subject to, and is bound by, the terms of any separate third-party license agreement relating to the Third Party Software. In the event of a failure of Customer or its agents, employees or representatives, to comply with any terms and conditions of the License herein granted, the License will, without any further action by KARL STORZ or any other party, immediately end and terminate.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement"), effective May 1, 2015 ("Effective Date"), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center ("Covered Entity") and Karl Storz Endoscopy - America ("Business Associate") (each a "Party" and collectively the "Parties").

Business Associate provides certain services for Covered Entity ("Services") that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity ("PHI"). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the "Privacy Rule"), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the "Security Rule"), under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations ("HITECH"). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et. seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* ("CMIA"), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. The Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 ("Red Flag Rules"). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information ("EPHI"), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

1. **DEFINITIONS**

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

2. **PERMITTED USES AND DISCLOSURES OF PHI**

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law , or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(f) use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1);

(g) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate shall:

(a) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within two (2) days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents

agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

~~(e) make available all internal practices, records, books, agreements, policies and procedures~~ and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

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(f) document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within two (2) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) subject to Section 4.4 below, return to Covered Entity within twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(h) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) if all or any portion of the PHI is maintained in a Designated Record Set:

(i) upon ten (10) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

(ii) upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

(j) maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(k) notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge;

(l) maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

3.2 Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

(a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

(b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within two (2) days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

3.3 Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

(a) provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

(c) notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;

(d) notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and

(e) notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4. TERMS AND TERMINATION

4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2 Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

5. MISCELLANEOUS

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

Karl Storz Endoscopy-America, Inc.

2151 E. Grand Avenue

El Segundo, CA 90245-5014

Attn: Sara Thomas

Phone: 800-421-0837

Fax: 877-565-9340

If to Covered Entity, to:

Natividad Medical Center

1441 Constitution Blvd.

Salinas, CA 93906

Attn: NMC Contracts Division

Phone: 831-755-4111

Fax: 831-757-2592

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

~~5.7 Indemnification. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA, arising out of, or in connection with, performance of this BAA by Contractor and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this BAA to provide the broadest possible indemnification for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Contractor is obligated to indemnify, defend, and hold harmless the County under this BAA. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.~~

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BAA Approved by County BOS 09/16/14. Revised on 09/30/14.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

KARL STORZ Endoscopy-America, Inc.
[BUSINESS ASSOCIATE]

COUNTY OF MONTEREY, ON BEHALF OF
NATIVIDAD MEDICAL CENTER

By: *Patrick F. Furtaw*

Print Name: Patrick F. Furtaw

Print Title: Executive Director, operations

Date: 4-14-15

By: *[Signature]*

Print Name: Gary R. Gray

Print Title: Interim CEO

Date: 6/17/14