

**RENEWAL AND AMENDMENT NO. 3
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN Karl Storz Endoscopy-America AND
THE NATIVIDAD MEDICAL CENTER
FOR
Equipment Repair and Maintenance Services**

This Renewal and Amendment No. 3 to Professional Services Agreement (“Agreement”), dated May 2, 2011 is entered into by and between the County of Monterey, on behalf of Natividad Medical Center (“NMC”), and **Karl Storz Endoscopy-America** (Contractor), with respect to the following:

RECITALS

WHEREAS, the County and Contractor amended the Agreement previously on November 1 2011 via Amendment No. 1, on July 1, 2012 via Amendment No. 2; and

WHEREAS, that Agreement expired on June 30, 2013; and

WHEREAS, the Agreement is attached hereto as Attachment 1; and

WHEREAS, the County and Contractor wish to renew and amend the Agreement to extend the term end date to allow for existing services to continue and to add additional services requested by County; and

WHEREAS, the County and Contractor wish to renew and amend the Agreement to increase the amount payable by \$235,670 because of the term extension and the amount payable for services rendered.

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 Attachment 1 incorporated herein by this reference, except as specifically set forth below.

1. Exhibit A to the Agreement is replaced with Renewal and Amendment-3 to Exhibit A, attached to this Renewal and Amendment. All references in the Agreement to Exhibit A shall be construed to refer to Renewal and Amendment-3 to Exhibit A.
2. Section 1. “PAYMENTS BY NMC” shall be amended by removing, “*The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of \$35,712.50.*” and replacing it with “*The total amount payable by County to CONTRACTOR under Agreement No. (A-12261/MYA166) shall not exceed the total sum of \$394,077.50 for the full term of the Agreement*”.
3. Section 2. “TERM OF AGREEMENT” shall be amended by removing, “*The term of this Agreement is from May 5, 2011 to June 30, 2012 unless sooner terminated pursuant to this Agreement*” and replacing it with “*The term of this Agreement is May 5, 2011 to June 30, 2015 unless sooner terminated pursuant to this Agreement*”.

4. Except as provided herein, all remaining terms, conditions and provisions of the Agreement and Renewal and Amendment Nos. 1 and 2 are unchanged and unaffected by this Renewal and Amendment and shall continue in full force and effect as set forth in the Agreement.
5. A copy of this Renewal and Amendment and all previous Renewal and Amendments shall be attached to the original Agreement (A-12261/MYA166).
6. The effective date of this Renewal for items appearing on the New Equipment list of the Renewal and Amendment-3 to Exhibit A, is April 22, 2013. For items on the Products and No-Fault Pricing Schedule of the Renewal and Amendment-3 to Exhibit A, the effective date is July 1, 2013.

Signature Page to follow

IN WITNESS WHEREOF, the parties hereto are in agreement with this Renewal and Amendment on the basis set forth in this document and have executed this Renewal and Amendment on the day and year set forth herein.

Natividad Medical Center

By: _____
Sid Cato, Management Analyst / Contracts

Date: _____

By: [Signature]
Harry Weis, NMC Chief Executive Officer

Date: 6/6/13

APPROVED AS TO LEGAL PROVISIONS

By: [Signature]
Anne Brauer
Monterey County, Deputy County Counsel

Date: June 17, 2013

APPROVED AS TO FISCAL PROVISIONS

By: [Signature]
Gary Giboney
Monterey County Auditor/Controller's Office

Date: 6-18-13

Contractor

KARL STORZ
Contractor's Business Name
*** (see instructions)

[Signature]
Signature of Chair, President, or Vice-President

DIRECTOR, PROTECTA
Name and Title

Date: 5/22/2013

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 and individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required)



Subject: Renewal No-Fault Service Agreement

Date: May 21, 2013

Attached is a **Renewal No-Fault Service Agreement** for your Endoscopy equipment purchased on PO#DO9600000003111. The warranty period for these products is about to expire and to make sure you have full coverage; we have also added the cameras whose warranty has previously expired.

This No-fault agreement will extend coverage of the products for another two years and since video products are a major investment and are costly to repair, our No-Faults are priced to save you money in your repair budget.

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,
- ✓ 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 purchase the No-Fault Service Agreement, sign the attached document and fax it back to my Service Specialist, Kevin Van Dolah at 877-565-9340, 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 206-579-4661.

Best Regards,

Homero Brum
Territory Manager
KARL STORZ Endoscopy-America, Inc.
Cell Phone: 206-579-4661
Homero.Brum@karlstorz.com

Kevin Van Dolah
Sr. Service Specialist, Protection 1® Services
KARL STORZ Endoscopy-America, Inc.
2151 E. Grand Avenue El Segundo, CA 90245
kevin.vandolah@karlstorz.com
Office: 800.421.0837 Ext 8779
Toll-Free Fax: (877) 565-9340



RENEWAL NO-FAULT SERVICE AGREEMENT

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:	7/1/2013 to 6/30/2015
PROPOSAL EXPIRATION DATE		P.O. #:	

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"). The following terms and conditions apply to all transactions covered under this Agreement.

1. KSEA Obligations.

- 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.
- Provide Field Service Technician visits at no charge, where coverage is available*.
- Provide automatic free technology upgrades, as designated by KSEA, at the time of exchange or repair.
- Upon request provide Damage Evaluation Report for each Product submitted and Transaction Summary Reports.
- Pay shipping costs from and to Customer using KSEA preferred carrier.

- 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.

- 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.
 - Utilize KSEA as its provider of the services for all Products.
 - Submit all Products to KSEA in a high-level disinfected or sterilized condition only.
 - Obtain a Return Material Authorization (RMA) number from KSEA prior to submitting any Products to KSEA for exchange or repair.
 - 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.
- Billing: Direct Debit Authorization. The Customer will be invoiced on a monthly basis or may elect to have the monthly fees directly debited from the Customer's bank account by placing its signature on the Direct Debit (ACH DEBIT) Authorization Form (Exhibit C). Invoices will be sent or ACH DEBITS made on a monthly basis, in advance, commencing on the Effective Date of this Agreement. If at any time during the Agreement, the payments for invoices are delinquent, the ACH DEBIT auto pay is cancelled or there are insufficient funds in the Customer's account, Customer will be considered in default, and KSEA reserves the right to take the appropriate legal action per the Terms and Conditions of this Agreement.
 - Term; Termination.
 - 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.
 - 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 30 days of termination all the amounts due under the remaining term of the Agreement.



- 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.

* 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: Gregory Agoston	Authorized Agent:
Title: Associate Director, Protection1® Services	Title: E-mail address:
Signature: 	Signature:
Date: 	Date:

<p>To receive an original counter-signed copy from KARL STORZ, please mail 2 original Customer signed copies to the following address:</p> <p>KARL STORZ Endoscopy- America, Inc. ATTN: Sales Support Department 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:</p> <ul style="list-style-type: none"> • ATTN - Kevin Van Dolah: Facsimile # (877) 565-9340 <p>OR</p> <ul style="list-style-type: none"> • Email a scanned signed copy to: Kvandolah@ksea.com <p>Please include a return Fax #, or Email address, for the return of a KSEA counter-signed copy</p>
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Amendment-3 to Exhibit A

PRODUCTS AND NO-FAULT PRICING SCHEDULE

Products subject to this Renewal Agreement;

Quantity	Model #	Serial #	No-Fault #	Description	Selling Price	Extended Price
2	R13801NKS	3877 20115	CAM-GASTRO	2 YEAR AGREEMENT VIDEO GASTROSCOPE COLOR SYSTEM NTSC	\$19,990 per unit	\$39,980
1	R11278AU1	2129326	CAM-UROLOGY	2 YEAR AGREEMENT FLEX-X ² URETERO-RENO FIBERSCOPE,FLEXIBLE	\$19,990 per unit	\$19,990
6	R26046AA R26046BA R26003AA R26003BA	SN# TBD	CAM-LAPAROSCOPY	2 YEAR AGREEMENT HOPKINS II TELESCOPES	\$2975 per unit	\$17,850
3	R26003AE	1599501 1768188 1810141	CAM-LAPAROSCOPY	2 YEAR AGREEMENT ENDOCAMELEON HOPKINS TELESCOPE, 0- 120°	\$17,990 per unit	\$53,970
5	495NE 495ND 495NA	N/A	CAM-VIDEOIMAGING	2 YEAR AGREEMENT LIGHT CABLE	\$600 per unit	\$7,200 3,150
7	22220055-3	SY780459-H SY780425-H SY780422-H SY780421-H QZ762293-H QZ762234-H QZ762233-H QZ762230-H	CAM-VIDEOIMAGING	2 YEAR AGREEMENT IMAGE 1,H3-Z HEAD,ZOOM,50/60HZ,CE	\$3,710 per unit	\$29,680 25,970



New Equipment

Quantity	Model #	Serial #	No-Fault #	Description	Selling Price	Extended Price
1	R13801NKS	New (TBD)	CAM-GASTRO	2 YEAR AGREEMENT VIDEO GASTROSCOPE COLOR SYSTEM NTSC	\$19,990 per unit	\$19,990
3	22220055-3	New (TBD)	CAM-VIDEOIMAGING	2 YEAR AGREEMENT IMAGE 1,H3-Z HEAD,ZOOM,50/60HZ,CE	\$3,710 per unit	\$11,130
1	27020AA	New (TBD)	CAM-ENT	2 YEAR AGREEMENT TELESCOPE,HOPKINS FORWARD OBLQ	\$2975 per unit	\$2975
1	10023ABA	New (TBD)	CAM-ENT	2 YEAR AGREEMENT TELESCOPE HOPKINS STRGHT	\$2975 per unit	\$2975
2	10328AA 10328BA	New (TBD) New (TBD)	CAM-ENT	2 YEAR AGREEMENT TELESCOPE,HOPKINS AUTOCLAV	\$2975 per unit	\$5,950
4	R26046AA R26046BA	New (TBD) New (TBD)	CAM-LAPAROSCOPY	2 YEAR AGREEMENT HOPKINS II TELESCOPES	\$2975 per unit	\$11,900
1	R27010LA	New (TBD)	CAM-UROLOGY	2 YEAR AGREEMENT URETERO-RENOSCOPE, 7FR X 43CM,	\$19,990 per unit	\$19,990

All the products Marked New (TBD) will have an effective date of 4/22/2013 to 6/30/2015.

TWO YEAR AGREEMENT	
TOTAL CONTRACT PRICE	\$243,580
MONTHLY PAYMENT	\$10,149.16
TOTAL NUMBER OF MONTHS OF PAYMENTS	24



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, the within Terms and Conditions will supersede and prevail and such conflicting, inconsistent and/or additional provisions shall be of no force or effect. 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, 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 are subject to change without notice. Nevertheless, prices in effect at the time that an order is accepted will prevail. Written quotations are valid for 60 days unless otherwise specified. All applicable taxes, as well as shipping and/or handling charges, will be added to the invoice. KSEA reports all discounts in accordance with 42 CFR §1001.952(h).
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; net 30 days. A finance charge may be assessed on all unpaid balances over 30 days equal to one and one-half percent (1-1/2%) per month, or the maximum amount allowed by law, whichever is less. 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 Los Angeles, State of California or the United States District Court, Central 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. 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) and Customer authorizes KSEA to prepare, execute, deliver, file and/or record, on behalf of Customer, any and all documents that are required, necessary and/or appropriate to protect, preserve and/or enforce KSEA's security interest(s) in the products sold, shipped and delivered to Customer pursuant to such order.
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. 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 returned within 30 days of invoice date and so long as such items are unused, in resalable condition and in their original product container. All products returned after 30 days from the date of invoice are subject to a 15% restocking fee. Shipping charges will be reimbursed, restocking 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 invoice date; (2) sterile packaged products where the package is opened and/or damaged; (3) discontinued products; (4) instruments that are etched or engraved by 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. **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 8 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. 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. KSEA reserves the right to refuse or return any product sent back without prior authorization of KSEA's Customer Support Department.

8. **WARRANTY POLICY.** Except as otherwise provided herein and/or by the applicable warranty information for a specific product or type of product, all KARL STORZ-branded 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. **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.

9. **LIMITATION OF LIABILITY.** KSEA is not liable, directly or by way of indemnity, either expressly or impliedly, 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 or, (d) use in any manner other than those for which such products are designed and are otherwise intended to be used; 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 such KARL STORZ products, even if Customer 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.**

10. **SOFTWARE OWNERSHIP AND LICENSING.** With respect to products provided by 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 of 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.