

 **Natividad** MEDICAL CENTER
COUNTY OF MONTEREY AGREEMENT FOR SERVICES
(MORE THAN \$100,000)

This Agreement for Services (hereinafter "Agreement") is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter, "the County"), on behalf of Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County, and KARL STORZ Endoscopy-America, Inc. (hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED.** NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of the Agreement. The services are generally described as follows: Providing equipment repair and exchange services

2. **PAYMENTS BY NMC.** NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of \$ 452,136.

3. **TERM OF AGREEMENT.**

3.1. The term of this Agreement is from January 15, 2022 through January 14, 2025 unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and NMC and with NMC signing last and CONTRACTOR may not commence work before NMC signs this Agreement.

3.2. NMC reserves the right to cancel this Agreement, or an extension of this Agreement, without cause, with a thirty (30) day written notice, or with cause immediately.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Addendum No. 1

Exhibit A: Scope of Services/Payment Provisions

Exhibit B: Additional Terms and Conditions

5. **PERFORMANCE STANDARDS.**

5.1. CONTRACTOR warrants that CONTRACTOR and Contractor's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required

under this Agreement and are not employees of NMC, or immediate family of an employee of NMC.

5.2. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

5.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use NMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6. PAYMENT CONDITIONS.

6.1. ~~Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provide in this paragraph. NMC does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.~~ See Addendum


CONTRACTOR

NMC

6.2. Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety (90) days prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County (NMC) and the CONTRACTOR.

6.3. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement, and then only in accordance with any applicable County policies.

6.4. Invoice amounts shall be billed directly to the ordering department.

6.5. ~~CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. NMC shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor Controller for payment. The County Auditor Controller shall pay the amount certified within 30 days of receiving the certified invoice.~~ See Addendum


CONTRACTOR

NMC

7. TERMINATION.

7.1. ~~During the term of this Agreement, NMC may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.~~ See Addendum


CONTRACTOR

NMC

7.2. NMC may cancel and terminate this Agreement for good cause effective immediately upon written notice to Contractor. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If

NMC terminates this Agreement for good cause, NMC may be relieved of the payment of any consideration to Contractor, and NMC may proceed with the work in any manner, which NMC deems proper. The cost to NMC shall be deducted from any sum due the CONTRACTOR under this Agreement.

7.3 NMC's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for NMC's purchase of the indicated quantity of services, then NMC may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8. INDEMNIFICATION.

8.1 ~~CONTRACTOR shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any and all claims, liability and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.~~ See Addendum


CONTRACTOR

NMC

9. INSURANCE.

9.1 Evidence of Coverage:

Prior to commencement of this Agreement, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to NMC's Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and NMC has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

9.2 Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by NMC's Contracts/Purchasing Director.

- 9.3 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

- Exemption/Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

- Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, If CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

- Exemption/Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

- Exemption/Modification (Justification attached; subject to approval).

9.4 Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to NMC and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that NMC shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance. The required endorsement from for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by NMC, CONTRACTOR shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by NMC, annual certificates to NMC's Contracts/Purchasing Department. If the certificate is not received by the expiration date, NMC shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles NMC, at its sole discretion, to terminate the Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

10.1 Confidentiality. CONTRACTOR and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from NMC or prepared in connection with the performance of this Agreement, unless NMC specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to NMC any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

10.2 NMC Records. When this Agreement expires or terminates, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this Agreement.

10.3 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

10.4 Access to and Audit of Records. NMC shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess or \$10,000, the parties to this Agreement may be subject, at the request of NMC or as part of any audit of NMC, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

10.5 ~~Royalties and Inventions. NMC shall have a royalty free, exclusive and irrevocable license to reproduce, publish, and use, and authorize other to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of NMC.~~ See Addendum

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CONTRACTOR

NMC

11. **NON-DISCRIMINATION**. During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, full comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT**. If this Agreement has been or will be funded with monies received by NMC pursuant to a contract with the state or federal government in which NMC is the grantee, CONTRACTOR will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13. **INDEPENDENT CONTRACTOR**. In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent CONTRACTOR and not as an employee of NMC. No offer or obligation of permanent

employment with NMC or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from NMC any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of CONTRACTOR's failure to pay such taxes.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage per-paid mail to NMC and CONTRACTOR's contract administrators at the addresses listed below

NATIVIDAD MEDICAL CENTER:

Natividad Medical Center
Attn: Contracts Division
1441 Constitution Blvd
Salinas, CA. 93906
FAX: 831-757-2592

CONTRACTOR:

Business Name: KARL STORZ Endoscopy-America, Inc.

Attn: Protection1@ServiceContractOperations

Address: 2151 E. Grand Avenue

City, State, Zip: El Segundo, CA 90245

FAX: _____

Email: ServiceContractOperations@karlstorz.com

15. MISCELLANEOUS PROVISIONS.

- 15.1 **Conflict of Interest:** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 15.2 **Amendment:** This Agreement may be amended or modified only by an instrument in writing signed by NMC and the CONTRACTOR.
- 15.3 **Waiver:** Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.4 **Contractor:** The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.

- 15.5 Disputes: CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.6 Assignment and Subcontracting: The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of NMC. None of the services covered by this Agreement shall be subcontracted without the prior written approval of NMC. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.7 Successors and Assigns: This Agreement and the rights, privileges, duties, and obligations of NMC and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.8 Compliance with Applicable Law: The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.9 Headings: The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence: Time is of the essence in each and all of the provisions of this Agreement
- 15.11 Governing Law: This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement: This Agreement is non-exclusive and each of NMC and CONTRACTOR expressly reserves the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement: NMC and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Integration: This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations representations, or agreements, either written or oral, between NMC and CONTRACTOR as of the effective date of this Agreement, which is the date that NMC signs the Agreement.
- 15.16 Interpretation of Conflicting Provisions: In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

**COUNTY OF MONTEREY, on behalf of
NATIVIDAD MEDICAL CENTER**

By: _____
Charles R. Harris, Interim CEO

Date: _____

APPROVED AS TO LEGAL PROVISIONS

By: *Stacy L. ...*
Monterey County Deputy County Counsel

Date: 11/17/2021

APPROVED AS TO FISCAL PROVISIONS

By: *Gary Giboney*
Monterey County Deputy Auditor/Controller

11/18/2021

Date: _____

CONTRACTOR

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

Signature of Chair, President, or Vice-President

Name and Title

Date: _____

By: *Sara Thomas*
(Signature of Secretary, Asst. Secretary, CFO, Treasurer
or Asst. Treasurer)

Sara Thomas,
Executive Director, Analytics & Contract Operations
Name and Title

Date: November 3, 2021

APPROVED
By Pamela Fellin at 8:58 am, Nov 03, 2021

*****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).

ADDENDUM NO. 1

TO AGREEMENT BY AND BETWEEN KARL STORZ ENDOSCOPY-AMERICA, INC., AND THE COUNTY OF MONTEREY ON BEHALF OF NATIVIDAD MEDICAL CENTER FOR EQUIPMENT REPAIR AND EXCHANGE SERVICES

This Addendum No. 1 amends, modifies, and supplements the County of Monterey Agreement for Services (hereinafter "Agreement") by and between KARL STORZ Endoscopy-America, Inc., (hereinafter "CONTRACTOR") and the County of Monterey, on behalf of Natividad Medical Center (hereinafter "NMC"). This Addendum #1 has the full force and effect as if set forth within the Terms. To the extent that any of the terms or conditions contained in this Addendum #1 may contradict or conflict with any of the terms and conditions of the Agreement, it is expressly understood and agreed that the terms and conditions of this Addendum #1 shall take precedence and supersede the attached Agreement.

NOW, THEREFORE, NMC and CONTRACTOR agree that the Agreement terms and conditions shall be amended, modified, and supplemented as follows:

- I. **Paragraph 6.1 under, "PAYMENT CONDITIONS", shall be amended to:**
 - 6.1. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provide in this paragraph.

- II. **Paragraph 6.5 under, "PAYMENT CONDITIONS", shall be amended to:**
 - 6.5 CONTRACTOR shall invoice NMC for the total Monthly Service Billing on a monthly basis, in advance, commencing on the beginning of the Term unless CONTRACTOR and NMC have agreed upon a different billing frequency. If applicable, the Monthly Service Billing shall be prorated for any partial periods during the term of this Agreement. In addition, CONTRACTOR shall invoice NMC for any applicable Additional Repair/Exchange Charge immediately upon rendering such Service. CONTRACTOR shall reference the NMC's P.O. on all invoices. NMC shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

III. Paragraph 7.1 under, "TERMINATION", shall be amended to:

7.1. Either party may cancel and terminate this Agreement if the other party commits a material breach of this Agreement or Order and fails to cure such breach within thirty (30) days of receipt of written notice describing such breach. For purposes of termination of this Agreement by the NMC, "good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. Notwithstanding the foregoing, CONTRACTOR may terminate this Agreement and/or any order immediately upon written notice to NMC if NMC (a) infringes CONTRACTOR's intellectual property rights, (b) commits, or permits any third party to commit, any breach of confidentiality obligations under Section 10.1 ("Confidentiality"), or (c) Company has a receiver appointed to handle its assets or affairs, admits that it is insolvent, or is otherwise unable to pay its debts as they mature, or ceases to do business in the ordinary course.

IV. Paragraph 8.1 under "INDEMNIFICATION", shall be removed in its entirety and replaced with the following:

8.1 MUTUAL INDEMNIFICATION

- A. The Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County") from any third-party claim, liability, loss, injury or damage arising out of, or in connection with, the performance of this Agreement by the Contractor and/or its officers, agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of County and/or its officers, agents, employees and subcontractors. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.
- B. The County shall indemnify, defend, and hold harmless the Contractor, its officers, agents, employees, and subcontractors from any claim, liability, loss, injury or damage arising out of, or in connection with, the performance of this Agreement by the County and/or its officers, agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of the Contractor and/or its officers, agents, employees and subcontractors. The County shall reimburse the Contractor for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the County is obligated to indemnify, defend and hold harmless the Contractor under this Agreement.

V. Paragraph 10.5, "ROYALTIES AND INVENTIONS", shall be omitted in its entirety.

The remainder of this page was intentionally left blank.

~ Signature page to follow ~

IN WITNESS WHEREOF, the Parties hereto are in agreement with this Addendum No.1 on the basis set forth in this document and have executed this Addendum No. 1 the day and year set forth herein.




<p align="center"><u>COUNTY OF MONTEREY, ON BEHALF OF NATIVIDAD MEDICAL CENTER</u></p>	<p><u>KARL STORZ Endoscopy-America, Inc.</u></p>
<p>Charles R. Harris, Interim CEO</p>	<p>Signature of Chair, President or Vice-President</p>
<p>Date</p>	<p>Printed Name and Title</p>
<p><u>Approved as to Legal Provisions:</u></p> <p></p>	<p>Date</p> <p></p>
<p>Monterey County Deputy County Counsel</p> <p>11/17/2021</p>	<p>Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer</p> <p>Sara Thomas, Executive Director, Analytics & Contract Operations</p>
<p>Date</p> <p>11/18/2021</p>	<p>Printed Name and Title</p> <p>November 3, 2021</p>
<p><u>Approved as to Fiscal provisions:</u></p> <p></p>	<p>Date</p> <div data-bbox="1122 1251 1409 1308" style="border: 1px solid black; padding: 2px;"> <p align="center">APPROVED By Pamela Fellin at 8:58 am, Nov 03, 2021</p> </div>
<p>Monterey County Chief-Deputy Auditor-Controller</p>	<p><u>Signature Instructions</u></p> <p>For 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).</p>
<p>Date</p>	

Exhibit A: Scope of Services/ Payment Provisions

Sold To Customer Name:	County of Monterey, on behalf of Natividad Medical Center		
Sold To/Bill To Address:	Attn: Accounts Payable Dept. P.O. Box 81611 Salinas, CA 93912	Sold To #:	109331
Attn (Facility Contact Name):	Wally Sayles	Agreement Request #:	R510014296
Email:	SaylesWD@natividad.com	Agreement #:	
Phone #:	831-772-7771	Effective Date:	
Annual Service Charge:	\$98,935.80	Service Term (months):	12
Monthly Service Charge:	\$ 8,244.65	Offer Date:	October 18, 2021

1. **CONTRACTOR Obligations.**

- (a) Provide labor and replacement parts, as necessary, to return the Products listed on Attachment A to normal operating condition, provided that such service is necessitated by (i) the failure of or (ii) accidental damage to the Product during normal usage for its intended purpose and such failure is not otherwise excluded from coverage. All replaced parts shall become the property of CONTRACTOR.
- (b) The Annual Service Billing shall cover an unlimited number of repair or exchanges that may be performed on the Products listed on Attachment A unless identified as "Capped Products".
 - (i) The Products designated as Capped Products shall have a predetermined number of repair or exchanges available for each Material # described in Attachment A as indicated on the Annual Total Exchange# column.
 - (ii) Should NMC exceed the Annual Total Exchange# during any twelve (12) month period, in addition to the Monthly Service Billing, NMC shall be invoiced per additional repair/exchange in accordance with NMC's applicable Protection 1[®] Service Program ("Additional Repair/Exchange Charge") until the start of the subsequent twelve (12) month period.
- (c) Provide technology updates, as designated by CONTRACTOR, at the time of exchange or repair.
- (d) Upon request, and if available, provide a Damage Evaluation Report for each Product repaired or exchanged.
- (e) Pay shipping costs to and from NMC using CONTRACTOR's preferred carrier.

2. **Exclusions.** Except as otherwise set forth in Attachment A, the following is excluded from coverage under this Agreement: cosmetic damage; Products that have been altered other than by CONTRACTOR, damage arising or resulting from NMC's use in combination with adaptors, accessories and/or equipment from other manufacturers unless authorized or recommended by CONTRACTOR Product specific literature, instruction manual and/or labeling; damage caused by the gross negligence or willful misconduct of the NMC; any damage arising or resulting from NMC's use of the Product other than for which the Product is designed or otherwise intended to be used; OR1[®] Integration products; trainers; software; towers; baskets; cases; boxes; carts; trays; stands; headlights; spare parts and accessories which may include, but not be limited, caps, screws, mats, rubber tips, disposables, batteries, cleaning items, plugs, bottles, wrenches, hoses, bulbs and tubing; and prior third-party repaired Products. The prior third-party repair price shall be applied to each repair/exchange transaction performed on a prior third-party repaired Product. Subsequent to such repair/exchange by CONTRACTOR, the prior third-party repaired product may be eligible for coverage under this Agreement.

3. **NMC Obligations.**

- (a) Concurrent with the execution and delivery of Natividad Medical Center County of Monterey Services Agreement, NMC shall also provide a hard copy purchase order (“P.O.”) for the services to be provided during the full Service Term. As additional invoices may result in accordance with this Agreement, NMC shall provide additional funds to its original P.O. to cover such incremental services.
- (b) Utilize CONTRACTOR to provide repair/exchange service for the Products listed on Attachment A.
- (c) Submit all Products to CONTRACTOR in a high-level disinfected or sterilized condition.
- (d) Obtain a Return Material Authorization (RMA) number from CONTRACTOR as detailed in Exhibit B prior to submitting any Products to CONTRACTOR for exchange or repair.
- (e) Submit all damaged Products to be exchanged to CONTRACTOR 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, NMC will be invoiced for the list price of the replacement less any applicable discounts.

6. **Pre-Existing Damaged Product.** This Agreement shall only cover Product that is in proper working condition and meets CONTRACTOR’s original equipment specification and shall exclude any Pre-Existing Damaged Product. A “Pre-Existing Damaged Product” shall be defined as a Product, identified by the NMC or CONTRACTOR, requiring service to return such Product to CONTRACTOR original equipment specification in order for such Product to be covered under this Agreement.

- (a) NMC must review its inventory and identify for CONTRACTOR any Pre-Existing Damaged Product. A Pre-Existing Damaged Product must be submitted to CONTRACTOR for repair or exchange prior to being eligible for coverage under this Agreement. The NMC shall pay CONTRACTOR to repair or exchange the Pre-Existing Damaged Product in full for it to be eligible for coverage under this Agreement.
- (b) Should NMC fail to repair or exchange any Pre-Existing Damaged Product and such Product is submitted for, or is in the process of service, CONTRACTOR shall exclude such from coverage.

7. **End-of-Service-Life.** In the event CONTRACTOR designates any Product Subject to this Agreement as being end-of-service-life or support, CONTRACTOR shall provide NMC an amendment addressing the removal of such Product and any resulting price adjustments.

SCHEDULE 1

MEMBERS

Ship-To	Ship-To Name	Address	City	State	Zip
310263	Natividad Medical Center	1441 Constitution Blvd	Salinas	CA	93906

**ATTACHMENT A
PRODUCTS SUBJECT TO THIS AGREEMENT**

Material	Description	Quantity	Specialty	Serial # (* = N/A)
R11301BNXK	FLEX INTUBATION VIDEO ENDOSCOPE F/CMAC5.5MMX65CM W/2.3MM CHANNEL W/SUCTION	1	ANE	31103
R11302BDXK	FLEX. INTUBATION VIDEO ENDOSCOPE F/CMAC4.0MM X 65CM W/1.5 MM CHANNEL W/SUCTION	1	ANE	35866
I0023ABA	HOPKINS 0° TELESCOPE, 2.8MM X 44CM AUTOCLAVABLE	1	ENT	1877215
I0328AA	HOPKINS 0° TELESCOPE, 4.5MM X 50CM AUTOCLAVABLE	1	ENT	1834684
I0328BA	HOPKINS 30° TELESCOPE, 4.5MM X 50CM AUTOCLAVABLE	1	ENT	1823760
R10017AA	HOPKINS 0° TELESCOPE, 1.9/2.1MM X 18CM FOR PEDIATRIC BRONCH, AUTOCLAVABLE	1	ENT	1629651
R10030AA	MINI SEMI-RIGID 0° TELESCOPE, STRAIGHTFORWARD, 1.3MM X 30.6CM, AUTOCLAVABLE	1	ENT	1620739
R10324AA	HOPKINS 0° TELESCOPE, 2.9MM X 36CM AUTOCLAVABLE	1	ENT	1200BG
R10324BA	HOPKINS 30° TELESCOPE, 2.9MM X 36CM AUTOCLAVABLE	1	ENT	10002T
R7229AA	HOPKINS II 0° TELESCOPE, 2.7MM X 18CM AUTOCLAVABLE	1	ENT	1201PY
R7229BA	HOPKINS II 30° TELESCOPE, 2.7MM X 18CM AUTOCLAVABLE	1	ENT	1201GY
R7229FA	HOPKINS II 45° TELESCOPE, 2.7MM X 18CM AUTOCLAVABLE	1	ENT	100036
R7230BA	HOPKINS II 30° TELESCOPE, 4MM X 18CM AUTOCLAVABLE	1	ENT	1206A5
R7230CA	HOPKINS II 70° TELESCOPE, 4MM X 18CM AUTOCLAVABLE	1	ENT	1928641
R7230FVA	HOPKINS II 45° TELESCOPE, REVERSE LIGHT POST, 4MM X 18CM, AUTOCLAVABLE	1	ENT	12003D
R26120BA	HOPKINS II 30° TELESCOPE, 2.9MM X 30CM AUTOCLAVABLE, FOR GYNECOLOGY	1	GYN	120BH9
R26120BA	HOPKINS II 30° TELESCOPE, 2.9MM X 30CM AUTOCLAVABLE, FOR GYNECOLOGY	1	GYN	120K1S
26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CM AUTOCLAVABLE	1	LAP	120GP6
R26003AA	HOPKINS II 0° TELESCOPE, 10MM X 31CM AUTOCLAVABLE	1	LAP	1206QL
R26003BA	HOPKINS II 30° TELESCOPE, 10MM X 31CM AUTOCLAVABLE	1	LAP	1214LL
R26003EC	ENDOCAMELEON® HOPKINS® DIAMETER 10MM, LENGTH 31CM, AUTOCLAVABLE	1	LAP	1000EC
R26003EC	ENDOCAMELEON® HOPKINS® DIAMETER 10MM, LENGTH 31CM, AUTOCLAVABLE	1	LAP	1000EE
R26003EC	ENDOCAMELEON® HOPKINS® DIAMETER 10MM, LENGTH 31CM, AUTOCLAVABLE	1	LAP	1000EL
R26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CM AUTOCLAVABLE	1	LAP	1203Y8
R26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CM AUTOCLAVABLE	1	LAP	120D3A
R26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CM AUTOCLAVABLE	1	LAP	1211VT
R26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CM AUTOCLAVABLE	1	LAP	12138Y
R26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CM AUTOCLAVABLE	1	LAP	1213ED
R26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CM AUTOCLAVABLE	1	LAP	1213JF
R26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CM AUTOCLAVABLE	1	LAP	1218PK
R26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CM AUTOCLAVABLE	1	LAP	1218S9
R26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CM AUTOCLAVABLE	1	LAP	121AYX
R26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CM AUTOCLAVABLE	1	LAP	121DQ6
R26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CM AUTOCLAVABLE	1	LAP	121DRR
R26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CM AUTOCLAVABLE	1	LAP	121FVD
R26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CM AUTOCLAVABLE	1	LAP	1574705S

R26046AA	HOPKINS II 0° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	1651293
R26046BA	HOPKINS II 30° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	1002R5
R26046BA	HOPKINS II 30° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	120BDP
R26046BA	HOPKINS II 30° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	121B5R
R26046BA	HOPKINS II 30° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	121BUE
R26046BA	HOPKINS II 30° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	121GCK
R26046BA	HOPKINS II 30° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	121GHH
R26046BA	HOPKINS II 30° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	121PKF
R26046BA	HOPKINS II 30° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	121SP0
R26046BA	HOPKINS II 30° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	121SYV
R26046BA	HOPKINS II 30° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	121SYX
R26046BA	HOPKINS II 30° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	121T9L
R26046BA	HOPKINS II 30° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	121VF6
R26046BA	HOPKINS II 30° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	1451075S
R26046BA	HOPKINS II 30° TELESCOPE, 5MM X 29CMAUTOCLAVABLE	1	LAP	1582016S
27020AA	HOPKINS II 0° TELESCOPE, 2.9MM X 30CM, AUTOCLAVABLE	1	URO	1896325
R11272CUK1	FLEXIBLE CYSTOSCOPE, CHNL: 7FR, 15FRX37CMUS DEFLECTION: 140°D/210°U	1	URO	2194455
R11272CUK1	FLEXIBLE CYSTOSCOPE, CHNL: 7FR, 15FRX37CMUS DEFLECTION: 140°D/210°U	1	URO	2225068
R11278AUK1	FLEX-X2S FLEXIBLE URETEROSCOPE, 7.5FR X67.5CM, CHNL: 3.6FR, US DEFL: 270°U/270°D	1	URO	2210750
R11278AUK1	FLEX-X2S FLEXIBLE URETEROSCOPE, 7.5FR X67.5CM, CHNL: 3.6FR, US DEFL: 270°U/270°D	1	URO	2236697
R27005BA	HOPKINS II 30° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	1229FB
R27005BA	HOPKINS II 30° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	123EAC
R27005BA	HOPKINS II 30° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	123FHH
R27005BA	HOPKINS II 30° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	123GRE
R27005BA	HOPKINS II 30° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	123L6L
R27005BA	HOPKINS II 30° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	123N3J
R27005BA	HOPKINS II 30° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	123N3K
R27005BA	HOPKINS II 30° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	1243U5
R27005CA	HOPKINS II 70° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	120EL6
R27005CA	HOPKINS II 70° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	120ZFH
R27005CA	HOPKINS II 70° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	12111J
R27005CA	HOPKINS II 70° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	12151Z
R27005CA	HOPKINS II 70° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	12157S
R27005CA	HOPKINS II 70° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	1216X6
R27005CA	HOPKINS II 70° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	1216XH
R27005CA	HOPKINS II 70° TELESCOPE, 4MM X 30CM, AUTOCLAVABLE	1	URO	1216XL
R27010LA	SEMI-RIGID 6° URETERO-RENOSCOPE W/STRGHTYEYEPICE, TIP: 7FR, LENGTH: 43CM, ACLAV	1	URO	1003B2
R27010LA	SEMI-RIGID 6° URETERO-RENOSCOPE W/STRGHTYEYEPICE, TIP: 7FR, LENGTH: 43CM, ACLAV	1	URO	1003UE
R27010LA	SEMI-RIGID 6° URETERO-RENOSCOPE W/STRGHTYEYEPICE, TIP: 7FR, LENGTH: 43CM, ACLAV	1	URO	4006198
495NA	LIGHT CABLE, 3.5MM X 230CM (7.6')	4	VID	*
495ND	LIGHT CABLE, 3.5MM X 300CM (9.8')	10	VID	*
495NE	LIGHT CABLE, 4.8MM X 300CM (9.8')	11	VID	*
	Total:	100		

SUBSET OF CAPPED PRODUCTS REFERENCED ABOVE

Material	Description	Annual Total Exchange #
R11301BNXK	FLEX INTUBATION VIDEO ENDOSCOPE F/CMAC5.5MMX65CM W/2.3MM CHANNEL W/SUCTION	3
R11302BDXK	FLEX, INTUBATION VIDEO ENDOSCOPE F/CMAC4.0MM X 65CM W/1.5 MM CHANNEL W/SUCTION	

*Serial Numbers may be added or modified during the Service Term and shall be provided to NMC under separate cover.

Exhibit B: Additional Terms and Conditions

1. **ORDERS.** Orders are to be placed with the Customer Support Department or sales force of CONTRACTOR; however, orders will only be accepted by Customer Support Department located in California.
2. **PRICES.** Pricing does not include any applicable taxes, as well as shipping and/or handling charges. Such will be added to the invoice, if applicable. If NMC is tax exempt, NMC shall provide a tax exemption certificate for the "sold to" entity at the time of issuance of the purchase order under this Agreement.
3. **SHIPPING.** For the Products subject to this Agreement, shipments are F.O.B. shipping point, shipping and handling prepaid by CONTRACTOR and absorbed.
4. **RETURN MERCHANDISE AUTHORIZATION PROCESS.** A return merchandise authorization ("RMA") must be obtained from CONTRACTOR's Customer Support Department prior to sending any Products to CONTRACTOR for any reason. When contacting CONTRACTOR for an RMA, the Customer Support Representative must be provided with: (a) the applicable P.O. number; (b) the KARL STORZ catalog number and, if applicable, the serial number for each Product; and (c) the reason for the return. CONTRACTOR will not be responsible for Products returned without an RMA. Returns must be carefully packed and shipped pre-paid to CONTRACTOR, Attn: RMA number. CONTRACTOR's Customer Support Department will provide the return address and the RMA number. In order to prevent the transmission of disease to the medical facilities' and/or CONTRACTOR's personnel, all opened Products must be cleaned and then sterilized and/or disinfected before sending to CONTRACTOR, which reserves the right to return unclean and contaminated Products to NMC. Additionally, if any Product becomes damaged and is not immediately returned for repair or exchange, CONTRACTOR assumes no responsibility or liability for NMC's continued use of that damaged Product. CONTRACTOR does not guarantee the performance of, 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 CONTRACTOR or a CONTRACTOR authorized repair facility.
5. **SERVICE WARRANTY POLICY.** All repairs performed by CONTRACTOR pursuant to this Agreement shall be free from defects in materials and workmanship for the remainder of the original Product warranty period (if any) or 90 days, whichever is longer. During the applicable warranty period and continuing thereafter for the life of the Product, CONTRACTOR shall, upon request or consent by NMC by way of an amendment signed by both Parties, NMC, perform on-site inspections of the Products to ensure such Products are operating in accordance with specifications. Any exchange products provided under this Agreement carry the applicable new Product warranty provided by CONTRACTOR. To submit a warranty claim, NMC must follow the RMA procedure set forth in the "Return Merchandise Authorization Process" above.

Damage which might arise or be caused by NMC or by any of the users of the Products provided by CONTRACTOR, as a result of, in connection with, or otherwise attributable to the following is excluded from all Product and service warranty coverage: (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 CONTRACTOR or an authorized repair facility of CONTRACTOR; (c) use in combination with adaptors, accessories and/or equipment from other manufacturers unless authorized or recommended by CONTRACTOR; (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 CONTRACTOR. THE WARRANTIES SET FORTH HEREIN ARE 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 CONTRACTOR PRODUCTS AND/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. CONTRACTOR 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 CONTRACTOR Products or provision of services. To ensure proper use, handling and care of CONTRACTOR Products, NMC should consult the Product specific literature, instruction manual and/or labeling included with the Product or otherwise available. Repairs, modifications or alterations of CONTRACTOR Products performed by any person or entity other than by CONTRACTOR or an authorized repair facility of CONTRACTOR nullifies and otherwise voids all applicable CONTRACTOR warranties. Repair or replacement of a CONTRACTOR Product shall not extend the term of any applicable warranty. The remedies provided herein are NMC's exclusive remedies under this section.

7. **SOFTWARE OWNERSHIP AND LICENSING.** Subject to annual license fees, as applicable, set forth in the applicable quotation, CONTRACTOR grants to NMC a non-exclusive, limited, non-transferable (except in connection with a transfer of a Product), non-sublicensable and irrevocable (except as provided herein) license ("License") to use software (including, but not limited to, programmed logic, computer programs and/or operating information) programmed into and/or embedded in Products provided by CONTRACTOR or separately provided by CONTRACTOR. Such licensed software may be developed by or on behalf of (a) CONTRACTOR ("KARL STORZ Software") and/or (b) third party developers (all of whom are considered third party beneficiaries of this section) ("Third Party Software") ("KARL STORZ Software" and "Third Party Software" are referred to collectively as "Software"). The Software is licensed only in the form in which delivered to NMC and only for use in accordance with CONTRACTOR's written instructions for the Software or the Product in which the Software is embedded or to which the Software relates and may be subject to annual license fees as set forth in the applicable quotation. The Software, and all modifications, updates, enhancements and upgrades provided by CONTRACTOR, will, at all times, remain the property of CONTRACTOR or the applicable third party developer. Customer may not (a) duplicate, copy, reverse-engineer, create, re-create, de-compile or disassemble the Software (or the source code of the Software), (b) create derivatives of the Software, or (c) unless authorized by CONTRACTOR in advance, modify or customize the Software. Any and all duplicates, copies and derivatives of the Software, and any and all unauthorized modifications to, or customizations of, the Software will immediately become the sole property of CONTRACTOR. NMC acknowledges and agrees that (a) neither the licensing of Software to NMC, nor the purchase, lease or other acquisition of Products by NMC constitutes a transfer of the Software. (b) the Software is the property of CONTRACTOR or the applicable third party developer, (c) NMC neither owns nor acquires any interest in any copyright, patent or other intellectual property right in or to the Software as a result of the License granted herein or the purchase, lease or other acquisition of any Product, and (d) CONTRACTOR, or the applicable third party developer, 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 any copy of the Software may exist. In the event of a failure of NMC or its agents, employees or representatives to comply with any terms and conditions of the License granted herein, the License will, without any further action by CONTRACTOR or any other party, immediately terminate.

7. **LIMITATION OF LIABILITY.** Except as otherwise provided under Section 8 (Indemnification) of the relevant Natividad Medical Center County of Monterey Agreement for Services, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) SHALL NOT EXCEED THE AGGREGATE LIMITS OF THE INSURANCE AS STATED HEREIN.

8. **COMPLIANCE WITH LAWS; DISCOUNT EXCEPTION AND SAFE HARBOR.** NMC shall comply with all applicable laws and regulations, including but not limited to the federal health care program anti-kickback statute, 42 U.S.C. § 1320a-7b(b) ("AKS"). NMC acknowledges its obligations to fully and accurately report the discounts, rebates, credits, product replacements (including those related to a warranty, service, or otherwise) and/or other price reductions (collectively "Discounts"), if any, it receives from CONTRACTOR, under all applicable laws and regulations, including but not limited to the AKS, the Discount Exception and the Discount Safe Harbor. NMC may be obligated to report and/or provide information concerning any such Discounts provided by CONTRACTOR pursuant to 42 U.S.C. § 1320a-7b(b)(3)(A) (the "Discount Exception") and/or 42 C.F.R. § 1001.952(h) (the "Discount Safe Harbor"), other federal or state laws, or agreement with third party payers. NMC should retain documentation of Discounts and make such information available to federal or state health care programs, applicable federal and/or state agencies, and/or third party payors, upon request. CONTRACTOR will provide to NMC invoices related to purchases, and other reports/documentation as applicable, documenting any Discounts for such Products and/or services. NMC is responsible for appropriate allocation and/or apportionment of any Discounts among Products and/or services purchased. NMC acknowledges that this section has put NMC on notice of its obligations under the AKS, Discount Exception and Discount Safe Harbor and all other applicable laws and regulations.

