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-American, 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: Equipment maintenance repair and preventative maintenance 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 July 10, 2017 through July 9, 2020 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:

   Exhibit A: Scope of Services/Payment Provisions

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~~.

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.

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.

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 Provided that NMC provides prompt notice of any claim to CONTRACTOR and that CONTRACTOR shall control all aspects of any defense, CONTRACTOR shall fully indemnify, defend, and hold harmless NMC, and its directors/trustees, officers, agents and employees, from and against any and all third-party claims, judgments, awards, liability and expenses, including attorney fees, (a) for bodily injury, including death to persons, and damage to property resulting from or arising out of, and to the extent of, (i) the negligence, willful acts, or omissions of CONTRACTOR, its officers, agents, employees and subcontractors, or (ii) a defect in any CONTRACTOR-branded product provided to NMC under the terms of this Agreement, or (b) for or by reason of, and to the extent of, any actual or alleged infringement of any United States patent or copyright by any CONTRACTOR-branded product provided to NMC under the terms of this Agreement. CONTRACTOR's strict liability, as provided by law, shall not be affected, diminished or impaired by this indemnity provision. Liability of NMC for its own negligence, omissions, or strict liability, including medical malpractice, shall not be affected, diminished or impaired by this indemnity provision. NMC agrees to provide CONTRACTOR with prompt notice of claims made under the terms of this indemnity provision, and shall reasonably cooperate with CONTRACTOR in the defense of such claims.

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 the 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.

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:	**CONTRACTOR:**
Natividad medical Center Attn: Contracts Division Natividad Medical Center 1441Constitution Blvd Salinas, CA. 93906 FAX: 831-757-2592	Name: KARL STORZ ENDOSCOPY-America Inc. Attn: Contract Dept. Address: 2151 E. Grand Ave City, State, Zip: El Segundo, CA 90245 FAX: 424-218-8744 Email:

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.

NATIVIDAD MEDICAL CENTER

By: _____
Gary R. Gray, DO, CEO

Date: 5/31/17

APPROVED AS TO LEGAL PROVISIONS

By: _____
Monterey County Deputy County Counsel

Date: May 23, 2017

APPROVED AS TO FISCAL PROVISIONS

By: _____
Monterey County Deputy Auditor/Controller

Date: 5/25/17

CONTRACTOR

KARL STORZ ENDOSCOPY - America Inc
Contractor's Business Name*** (see instructions)

_____
Signature of Chair, President, or Vice-President

Patrick F. Furtaw, V.P. Service & Operations
Name and Title

Date: 5/3/17

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).

Protection1® Capped Comprehensive Service Agreement

Sold To Customer Name:	**Natividad Medical Center**		
Sold To/Bill To Address:	Attn: Accounts Payable Dept. P.O. Box 81611 Salinas CA 93912	Sold To #:	109331
Ship To Address:	Refer to Schedule 1 (Members)	Ship To #:	Refer to Schedule 1 (Members)
Attn (Facility Contact Name):	Maria Gutierrez Materials Management~ Buyer I Jasmine Bolanos Buyer	Agreement Request #:	
Email:	GutierrezMG@natividad.com bolanosys@natividad.com	Agreement #:	
Phone #:		Effective Date:	
Annual Service Charge:	$150,712.20	Service Term (months) :	36
Monthly Service Charge:	$12,559.35	Proposal Expiration Date:	7/10/2017

KARL STORZ Endoscopy-America, Inc. ("KARL STORZ") and Sold To Customer (identified above) hereby enter into this Protection1® Capped Comprehensive Service Agreement ("Agreement") on behalf of its Members (as hereinafter defined) for the exchange and repair needs of the KARL STORZ-branded products ("Products") listed on Exhibit A ("Products Subject to this Agreement"). Members eligible to receive services under this Agreement are identified on Schedule 1 hereto ("Members"). Sold To Customer and Members shall be hereinafter referred to collectively as "Customer". All transactions covered under this Agreement are subject to the terms and conditions provided herein.

1. **KARL STORZ Obligations.**
   (a) Provide labor and replacement parts, as necessary, to return the Products listed on Exhibit A 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. All replaced parts shall become the property of KARL STORZ.
   (b) The Annual Service Charge shall cover an unlimited number of repair or exchanges that may be performed on the Products listed on Exhibit A unless identified as "Capped Products".
      (i) The Products designated as Capped Products shall have a predetermined number of repair or exchanges as indicated on the Annual Total Cap# column of Exhibit A. The Annual Total Cap# is defined as the predetermined number of repair/exchanges multiplied by the quantity of covered Product/Material.

      For example: If KARL STORZ considered the CMOS Video Ureterosope and the Flex Video Cystoscope as Capped Products and predetermined that the agreement would cover 5 repair/exchanges for each of these Capped Products, the Annual Total Cap# would reflect the following:

Material	Description	Annual Total Cap#
11278V	CMOS VIDEO URETEROSCOPE, 8.5 FR. X 700MM	15 (3 x 5 repair/exchanges)
11272VNU	16 FR. FLEXIBLE VIDEO CYSTOSCOPE	15 (3 x 5 repair/exchanges)

      (ii) Should Customer exceed the Annual Total Cap# during any twelve (12) month period, in addition to the Monthly Service Charge, Customer shall be invoiced per additional repair/exchange in accordance with Customer's applicable Protection 1® Service Program ("Additional Repair/Exchange Charge") until the start of the subsequent twelve (12) month period.
   (c) Provide Field Service Technician visits where coverage is available*.
   (d) Provide technology updates, as designated by KARL STORZ, at the time of exchange or repair.
   (e) Upon request, provide a Damage Evaluation Report for each Product repaired or exchanged.
   (f) Pay shipping costs to and from Customer using KARL STORZ's preferred carrier.

2. **Exclusions.** The following items are excluded from coverage under this Agreement: cosmetic damage; Products that have been altered other than by KARL STORZ; 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; and damage arising or resulting from Customer's use in combination with adaptors, accessories and/or equipment from other manufacturers unless authorized or recommended by KARL STORZ Product specific literature, instruction manual and/or labeling.

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. As additional invoices may result in accordance with this Agreement, Customer must either (i) include language in the original/initial P.O. that authorizes payment by Customer for any additional invoices which may arise under this Agreement or (ii) upon receipt of any additional invoices, Customer must provide an additional P.O. that authorizes payment by Customer for the same.
   (b) Utilize KARL STORZ as its provider of the services for the Products listed on Exhibit A.
   (c) Submit all Products to KARL STORZ in a high-level disinfected or sterilized condition.
   (d) Obtain a Return Material Authorization (RMA) number from KARL STORZ prior to submitting any Products to KARL STORZ for exchange or repair.
   (e) Submit all damaged Products to be exchanged to KARL STORZ 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.** KARL STORZ shall invoice Customer for the total Monthly Service Charge as set forth above on a monthly basis, in advance, commencing on the Effective Date unless KARL STORZ and Customer have agreed upon a different billing frequency. If applicable, the Monthly Service Charge shall be prorated for any partial periods during the term of this Agreement. In addition, KARL STORZ shall invoice the Customer for any applicable Additional Repair/Exchange Charge immediately upon rendering such Service. KARL STORZ shall reference the Customer's P.O. on all invoices.

5. **Term; Termination.**

   (a) Term. The term of this Agreement ("Service Term") will commence upon receipt of both the P.O. and this Agreement, signed by the Customer, by the KARL STORZ's Protection 1® Services Coordinator whichever occurs later ("Effective Date"). The Service Term shall continue for the period set forth above.
   (b) Termination. Either party may terminate this Agreement prior to the end of the Service Term upon thirty (30) days prior written notice to the other party. In the event of termination, Customer agrees to pay within thirty (30) days of termination all the amounts due under the Agreement for services rendered and/or non-cancelable obligations (e.g. repair/exchanges already in process) incurred up to the date of termination.

6. **Pre-Existing Damaged Product**. Customer authorizes a KARL STORZ representative to perform a visual inspection of the Products Subject to this Agreement at Customer's location prior to the Effective Date. Should the KARL STORZ representative recommend repairs or exchanges to return such Product(s) to KARL STORZ original equipment specification (meets KARL STORZ basic performance criteria and be safe for patient use), these shall be identified as "Pre-Existing Damaged Product". Any Pre-Existing Damaged Product must be repaired or exchanged by KARL STORZ prior to the Effective Date to be eligible for listing on Exhibit A. The Customer shall have the option of paying KARL STORZ to perform the repair or exchange on the Pre-Existing Damaged Product in full prior to the Effective Date, or adding such cost to the Annual Service Charge to be paid over the Service Term. Should Customer fail to repair or exchange any Pre-Existing Damaged Product prior to the Effective Date, KARL STORZ reserves the right to exclude such from Exhibit A. Any modification to the Monthly or Annual Service Charge subsequent to the Effective Date shall be mutually agreed upon by both parties and reflected via an amendment to this Agreement.

7. **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 KARL STORZ 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.

8. **Entire Agreement.** This Agreement, Schedule 1 (Members), Exhibit A (Products Subject to this Agreement) initialed and dated by a representative of both KARL STORZ and Customer, and Exhibit B (General Standard Terms and Conditions) attached hereto constitute the entire agreement between KARL STORZ 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 KARL STORZ representative for availability of FST Services.*

(Signatures to follow on the next page.)

IN WITNESS WHEREOF, the parties have indicated their acceptance of the terms of this Agreement by the signatures set forth below on the dates indicated. Each individual signing for a corporate entity hereby personally warrants his or her legal authority to bind that entity.

KARL STORZ Endoscopy-America, Inc. (KARL STORZ)		Customer: Natividad Medical Center	
Authorized Agent:	Sara Thomas	Authorized Agent (Print Name):	
Title:	Director, Contracts & Revenue Management	Title:	
Email:	Sara.Thomas@karlstorz.com	Email:	
Signature:		Signature:	
Date:	5/3/17	Date:	

Electronic Submission:

Email a scanned signed copy of this Agreement to:
KARL STORZ Endoscopy-America, Inc.
Attn: Repair Services
Email: RepairServices@karlstorz.com

OR

FAX a signed copy of this Agreement to:
KARL STORZ Endoscopy-America, Inc.
Attn: Repair Services
FAX #: (424) 218-8770

Please include a return Email address or FAX # for the return of a KARL STORZ counter-signed copy.

SCHEDULE 1

MEMBERS

Ship To	Ship To Name	Address	City	State	Zip
310263	Natividad Medical Center	1441 Constitution Blvd	Salinas	CA	93906-3100

EXHIBIT A

PRODUCTS SUBJECT TO THIS AGREEMENT

Material	Description	Quantity	Serial # (*=N/A)
Specialty: UROLOGY			
R27005BA	TELESCOPE,AUTOCLAV,HOPKINS II>	1	121LM6
R27005BA	TELESCOPE,AUTOCLAV,HOPKINS II>	1	121U73
R27005BA	TELESCOPE,AUTOCLAV,HOPKINS II>	1	121U75
R27005BA	TELESCOPE,AUTOCLAV,HOPKINS II>	1	121Y12
R27005BA	TELESCOPE,AUTOCLAV,HOPKINS II>	1	122195
R27005BA	TELESCOPE,AUTOCLAV,HOPKINS II>	1	1223M3
R27005CA	TELESCOPE,HOPKINS II,AUTOCLAV>	1	120EL6
R27005CA	TELESCOPE,HOPKINS II,AUTOCLAV>	1	120K6X
R27005CA	TELESCOPE,HOPKINS II,AUTOCLAV>	1	120KX7
R27005CA	TELESCOPE,HOPKINS II,AUTOCLAV>	1	120M9A
R27005CA	TELESCOPE,HOPKINS II,AUTOCLAV>	1	120MQM
27020AA	TELESCOPE,HOPKINS FORWARD OBLQ	1	1896325
R11278AUK1	FLEX-X² FLEXIBLE URETEROSCOPE, 7.5FR	1	2220893
R11278AUK1	FLEX-X² FLEXIBLE URETEROSCOPE, 7.5FR	1	2228537
R27010LA	URETERO-RENOSCOPE, 7FR X 43CM, ACLAV	1	4006198
R27010LA	URETERO-RENOSCOPE, 7FR X 43CM, ACLAV	1	4006665
R11272CUK1	FIBERSCOPE, CYSTO-URETHRO, US DEFLECTION	1	2220567
11272CUK1	FIBERSCOPE, CYSTO-URETHRO, US DEFLECTION	1	2219502
Specialty: GYNECOLOGY			
R26120BA	TELESCOPE, HOPKINS,30'AUTOCLAV	1	120BH9
R26120BA	TELESCOPE, HOPKINS,30'AUTOCLAV	1	1205YF
Specialty: GYNECOLOGY			
R26003AE	ENDOCAMELEON HOPKINS TELESCOPE, 0-120°	1	10018T
R26003AE	ENDOCAMELEON HOPKINS TELESCOPE, 0-120°	1	1001AH
R26003AE	ENDOCAMELEON HOPKINS TELESCOPE, 0-120°	1	1001B1
R26003AE	ENDOCAMELEON HOPKINS TELESCOPE, 0-120°	1	10014Z
26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	120GAT
26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	120GP6
26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	120GPQ
R26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	120M1E
R26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	120R4D
R26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	120SMV
R26046BA	TELESCOPE,HOPKINS II, 30°, ENLARGED	1	120BDP
R26046BA	TELESCOPE,HOPKINS II, 30°, ENLARGED	1	120K94
R26046BA	TELESCOPE,HOPKINS II, 30°, ENLARGED	1	120P3Z
R26046BA	TELESCOPE,HOPKINS II, 30°, ENLARGED	1	120SMK
R26046BA	TELESCOPE,HOPKINS II, 30°, ENLARGED	1	120TGA
R26046BA	TELESCOPE,HOPKINS II, 30°, ENLARGED	1	120TH3
R26046BA	TELESCOPE,HOPKINS II, 30°, ENLARGED	1	120XT4
R26003BA	TELESCOPE,HOPKINS II,AUTOCLAV,	1	1206QL
R26003BA	TELESCOPE,HOPKINS II,AUTOCLAV,	1	1214LL
R26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	120SQP
R26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	120LBB
R26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	120KX4
R26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	120K06
R26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	1574705S
R26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	120D3A
R26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	12094J

R26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	1204SY
R26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	1203Y8
R26046AA	TELESCOPE,HOPKINS II, 0°, ENLARGED VIEW,	1	1651293
R26046BA	TELESCOPE,HOPKINS II, 30°, ENLARGED	1	1002R5
R26046BA	TELESCOPE,HOPKINS II, 30°, ENLARGED	1	1451075S
R26046BA	TELESCOPE,HOPKINS II, 30°, ENLARGED	1	1582016S
R26046BA	TELESCOPE,HOPKINS II, 30°, ENLARGED	1	120NVZ
R26046BA	TELESCOPE,HOPKINS II, 30°, ENLARGED	1	120Q24
R26046BA	TELESCOPE,HOPKINS II, 30°, ENLARGED	1	120TY2
R26046BA	TELESCOPE,HOPKINS II, 30°, ENLARGED	1	120XP3
Specialty: VIDEOIMAGING			
495NE	LIGHT CABLE ASSEMBLY, 4.8 MM X 3000MM		NA
495ND	LIGHT CABLE, 3.5MM X 300CM. LGTH 9.8 FT		NA
495NA	LIGHT CABLE, 3.5MM X 230CM (7.6')		NA
22220055-3	IMAGE 1,H3-Z HEAD,ZOOM,50/60HZ,CE	1	OW810193-H
22220055-3	IMAGE 1,H3-Z HEAD,ZOOM,50/60HZ,CE	1	OW810200-H
22220055-3	IMAGE 1,H3-Z HEAD,ZOOM,50/60HZ,CE	1	PW810219-H
22220055-3	IMAGE 1,H3-Z HEAD,ZOOM,50/60HZ,CE	1	QZ762230-H
22220055-3	IMAGE 1,H3-Z HEAD,ZOOM,50/60HZ,CE	1	RUU853844-H
22220055-3	IMAGE 1,H3-Z HEAD,ZOOM,50/60HZ,CE	1	RPT872288-H
22220055-3	IMAGE 1,H3-Z HEAD,ZOOM,50/60HZ,CE	1	ROV830668-H
22220055-3	IMAGE 1,H3-Z HEAD,ZOOM,50/60HZ,CE	1	SY780421-H
22220055-3	IMAGE 1,H3-Z HEAD,ZOOM,50/60HZ,CE	1	SY780422-H
22220055-3	IMAGE 1,H3-Z HEAD,ZOOM,50/60HZ,CE	1	SY780425-H
22220055-3	IMAGE 1,H3-Z HEAD,ZOOM,50/60HZ,CE	1	SY780459-H
Specialty: ENT			
10023ABA	TELESCOPE HOPKINS STRGHT	1	1877215
10328AA	TELESCOPE,HOPKINS,0',AUTOCLAV,	1	1834684
10328BA	TELESCOPE,HOPKINS,FORWARD-	1	1823760
R7229AA	HOPKINS® II Telescope 0°, 2.7 mm, 18 cm	1	1201PY
R7229BA	HOPKINS II TELESCOPE 30°, 2.7MM, 18CM	1	1201GY
R7229FA	HOPKINS II TELESCOPE 45, 2.7MM, 18CM	1	100036
R7230BA	TELESCOPE,HOPKINS II, FORWARD-OBLIQUE,	1	1206A5
R7230CA	TELESCOPE, HOPKINS II, LATERIAL, 70',	1	1928641
R7230FVA	TELESCOPE, HOPKINS II FORWARD OBLIQUE	1	12003D
Specialty: ANESTHESIOLOGY			
8401AX	C-MAC-VIDEOLARYNGOSCOPE, MAC #3	1	21248
8401AXC	C-MAC VIDEO LARYNGOSCOPE # 3	1	29931
8401AXC	C-MAC VIDEO LARYNGOSCOPE # 3	1	30564
8401BX	C-MAC VIDEO LARYNGOSCOPE # 4, W/SUCTION	1	20430
8401BXC	C-MAC VIDEO LARYNGOSCOPE # 4,	1	25792
8401BXC	C-MAC VIDEO LARYNGOSCOPE # 4,	1	30281
8401BXC	C-MAC VIDEO LARYNGOSCOPE # 4,	1	30686
8401HX	DOERGES DIFFICULT AIRWAY BLADE F/C-MAC	1	30489
8401HX	DOERGES DIFFICULT AIRWAY BLADE F/C-MAC	1	30914
R11301BNXK	FLEX. INTUBATION VIDEO SCOPE 5.5 X 65 CM	1	30082
R11302BDXK	FLEX. INTUBATION VIDEO SCOPE 4.0 X 65 CM	1	30715
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SUBSET OF CAPPED PRODUCTS REFERENCED ABOVE

Material	Description	Quantity	Annual Total Cap#
Specialty:			
R11302BDXK	FLEX. INTUBATION VIDEO SCOPE 4.0 X 65 CM	1	3 (1 x 3 repair/exchanges)

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

By initialing and dating below, Customer and KARL STORZ acknowledge this Agreement shall only cover the Products set forth above herein. Except for any Serial Numbers listed above, this Exhibit A, as part of the Agreement, shall not be modified except by a formal amendment signed by duly authorized representatives of both parties. Any changes to this list may result in an increase or decrease to Customer's payment obligations contained herein.

_____ (Initial) and _____ (Date) of Customer Representative

_____ (Initial) and 5/3/2017 (Date) of KARL STORZ Representative

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. ("KARL STORZ") or with its sales force. However, orders will only be accepted by KARL STORZ'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; KARL STORZ hereby objects to such other provisions or terms proposed by Customer. By accepting delivery of Products, and/or the performance of services from, KARL STORZ 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 KARL STORZ 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 KARL STORZ.

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 KARL STORZ 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 KARL STORZ to secure payment of any sums due from Customer and/or to effectuate repossession of Products purchased from KARL STORZ 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, Central District of California, which courts shall have exclusive jurisdiction of such matters. All transactions by and between Customer and KARL STORZ 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 KARL STORZ. Amounts payable to KARL STORZ 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 KARL STORZ.

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 KARL STORZ. If concealed loss or damage is discovered, Customer must retain all packing materials and immediately notify KARL STORZ, requesting an inspection. If shipments are received short, Customer must contact KARL STORZ's Customer Support Department at once. KARL STORZ 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. KARL STORZ 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 KARL STORZ's Customer Support Department prior to returning any Products. When phoning or writing KARL STORZ for an RMA, the Customer Support Representative must be provided with: (a) Customer name and number as it appears on the invoice; (b) the telephone number and the person to contact; (c) the applicable P.O. number; (d) the KARL STORZ catalog number and, if applicable, the serial number for each Product; and (e) the reason for the return. KARL STORZ reserves the right to refuse or return any Products sent back to KARL STORZ without prior authorization of its Customer Support Department. Returns must be carefully packed and shipped pre-paid to KARL STORZ, Attn: RMA number. KARL STORZ'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 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, KARL STORZ may, in its sole discretion: (a) install and set up the Product; (b) perform preventative maintenance services; (c) provide onsite or remote troubleshooting services and other services: (d) provide software updates; and (e) provide loaners in case of back orders.

8. **TRAINING.** To the extent reasonable as to the complexity and quantity of Products, KARL STORZ will provide training regarding the proper use of Products at or near the time of delivery or installation, as applicable. KARL STORZ may also provide additional training regarding the proper use of Products upon Customer's request, in KARL STORZ's sole discretion and subject to availability of KARL STORZ 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 new 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 KARL STORZ'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 KARL STORZ, 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, KARL STORZ 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. KARL STORZ 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 KARL STORZ or an authorized repair facility of KARL STORZ 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.** KARL STORZ 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 KARL STORZ 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, KARL STORZ'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 KARL STORZ 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: (a) the purchase, lease or other acquisition of Products does not constitute a transfer of the Software; (b) the Software is the property of KARL STORZ or the applicable third party; (c) 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; (d) 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 (e) 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.