

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number
24-559

SAP Number

Arrowhead Regional Medical Center


Department Contract Representative Andrew Goldfrach
Telephone Number (909) 580-6150

Contractor Smith & Nephew, Inc.
Contractor Representative Elizabeth McCaughey
Telephone Number 978-749-1273
Contract Term July 1, 2024 through June 30, 2025
Original Contract Amount Not to exceed \$100,000
Amendment Amount _____
Total Contract Amount Not to exceed \$100,000
Cost Center 7421

Briefly describe the general nature of the contract: Pricing Agreement with Smith & Nephew, Inc. for the purchase of disposable, endoscopic surgical supplies used in the Arrowhead Regional Medical Center Operating Room in the not-to-exceed amount of \$100,000 for the term of July 1, 2024 through June 30, 2025.

FOR COUNTY USE ONLY

Approved as to Legal Form


Charles Phan, Supervising Deputy County Counsel

Date 5/15/2024

Reviewed for Contract Compliance



Date _____

Reviewed/Approved by Department


Andrew Goldfrach, ARMC/Chief Executive Officer

Date 6/4/2024

PRICING AGREEMENT

This Pricing Agreement ("**Agreement**") is made by and between San Bernardino County on behalf of Arrowhead Regional Medical Center, having an address at 400 N. Pepper Avenue, Colton, CA 92324 [customer # 185740] ("**Customer**"), and Smith & Nephew, Inc., having an address at 1450 E. Brooks Road, Memphis, Tennessee 38116 ("**Smith & Nephew**").

1. Agreement Period; Termination. This Agreement is effective for a term of one (1) year (the "Term"), beginning on July 1, 2024 (the "Effective Date"). Any material breach by either party of any term of this Agreement will entitle the other party to terminate this Agreement, provided it first gives written notice to the other party and permits the other party thirty (30) days to cure such breach. Either party may terminate this Agreement without cause after providing the other party with sixty (60) days' written notice. Customer's Hospital Director or its designee is authorized to terminate this Agreement on behalf of Customer. San Bernardino County represents and warrants that it has the authority to enter into this Agreement on behalf of Arrowhead Regional Medical Center and to bind Arrowhead Regional Medical Center to the terms and conditions herein.

2. Confidentiality

2.1. During the term of this Agreement, Smith & Nephew and Customer may become aware of confidential information of the other party, including, but not limited to, information relating to discounts, contract price lists and sales reports. Each party (a) will maintain in confidence all such confidential information and (b) will not disclose such information to any third party, and particularly not to other vendors, distributors, group purchasing organizations or purchasers except (i) with the other party's written consent or (ii) to the extent such disclosure is required by law.

2.2. Smith & Nephew and Customer acknowledge that Smith & Nephew, as a medical device company, is, for limited purposes, a "health care provider" as that term is defined in the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA"), as amended, and applicable regulations promulgated under HIPAA, including, but not limited to, "Privacy Standards for Individually Identifiable Health Information," 45 C.F.R Part 160 and Part 164, Subparts A & E, as amended (the "Privacy Standards"). Pursuant to the Privacy Standards and guidance issued by the United States Department of Health & Human Services ("HHS") and the HHS Office of Civil Rights, Customer may disclose patient information to Smith & Nephew for treatment and payment purposes without a patient authorization and without a Business Associate Agreement. Smith & Nephew will take appropriate steps to safeguard confidential patient information under applicable federal and state law, and in no event will Smith & Nephew use or disclose such patient information other than as necessary and required for Smith & Nephew to provide supplies or services to Customer or to Customer's patients under this Agreement, or as required or allowed by law.

3. Pricing;

3.1. Smith & Nephew will supply Customer certain products (the "Products") at the prices set out in Exhibit A, which will reflect discounts granted to Customer, if any, excluding any rebate or other additional discount program separately contracted by Customer. The Product(s) price(s) set out in this Agreement may be subject to further reduction based upon potential periodic rebates, if any, that may be offered from time to time and separately agreed between the parties. Customer should consult the separate rebate agreement, if any, for additional rebate or discount information related to the Products hereunder. Prices for newly introduced products ("New Product") will be negotiated at market introduction. Custom-made and special products are excluded from the discounts set out in this Agreement. Smith & Nephew reserves the right to discontinue Products or to change specifications or designs.

3.2. Prices will be held firm for the first twelve (12) months of the Agreement. Adjustments to prices or discounts (excluding rebates, which will be addressed in the above-referenced agreement or amendment) in future years of the Agreement will be made annually at the anniversary date of this Agreement and will be held firm until the next anniversary date of this Agreement.

3.3. Smith & Nephew reserves the right to discontinue Products or to change specifications or designs.

4. Reusable Instruments. From time to time, certain Endoscopy Product-specific re-usable instruments (Instruments) may be rented by Customer from Smith & Nephew for use in a procedure and (1) retrieved by Smith & Nephew after the procedure or (2) allowed to remain in Customer's custody for use in multiple and periodic procedures under the following terms and conditions. Instruments will be rented at Smith & Nephew's standard rates at time of delivery unless otherwise set out in the Agreement. The rented Instruments provided for Customer's use under the Agreement may be new or used, and Customer may use them only with Smith & Nephew products. All Instruments rented from Smith & Nephew will remain the sole property of Smith & Nephew. Upon termination or expiration of the Agreement, Customer will have fourteen (14) days to return any rented Instruments in its possession. Failure to return the rented Instruments will result in Customer's (i) payment of additional rental fees at Smith & Nephew's then current rates, or (ii) purchase of the Instruments at 90% of Smith & Nephew's then current list price, unless otherwise discounted in a pricing exhibit attached to the Agreement. Customer will notify Smith & Nephew promptly of any lost or damaged rented Instruments. Rented Instruments that no longer function properly after ordinary use should be returned to Smith & Nephew, and Smith & Nephew will replace such rented Instruments without charge. Customer is liable for any loss of rented Instruments, and will be invoiced for all damaged or lost Instruments caused by Customer's negligence or willful misconduct. Customer will not move the rented Instruments from its facility or make any modifications to the rented Instruments. Upon reasonable notice, Smith & Nephew may inspect and remove all or some of the rented Instruments. Instruments delivered to Customer are not sterile. Customer must clean and sterilize the Instruments before they are used in a surgical procedure or returned to Smith & Nephew. Recommendations for the sterilization of Instruments are available at: <http://www.smith-nephew.com/professional/resources/decontamination-and-sterilization-methods/>.

5. Standard Terms and Conditions. Smith & Nephew's Standard Terms and Conditions (the "Standard Terms"), attached hereto as Exhibit B, apply to this Agreement. The Standard Terms are incorporated herein by reference in their entirety. In the event there is a conflict between the Standard Terms and the terms in the text of this document, the terms of the text of this document will control. Customer represents and warrants that this Agreement will not breach any agreement or obligation that Customer may have with any third party, including, but not limited to, any agreement with a group purchasing organization.

6. Compliance

All transactions between Customer and Smith & Nephew in connection with this Agreement are made in good faith on the basis of arms-length negotiation. The parties represent and warrant that, throughout the term of this Agreement and any extension hereof, they will be and will remain in compliance with all applicable federal, state and local laws and regulations, including, but not limited to, the provisions of the federal anti-kickback statute, 42 U.S.C. 1320a-7b(b), and regulations promulgated thereunder relating to any applicable discounts or rebates. Where required and upon request, Smith & Nephew will disclose to Customer, per applicable regulations, the specified dollar value of any discounts and rebates. For purposes of 42 C.F.R. 1001.952(h), any reduction in the amount Smith & Nephew charges Customer (including products and/or services provided at reduced or no charge) may be a "discount or other reduction in price" to the Customer. If Customer is a buyer that reports costs on a cost report required by HHS or a state health care program, then: (a) any discount and rebate must be earned on purchases of the same good or service bought within a single fiscal year of the Customer; (b) Customer must claim the benefit of any discount and rebate in the fiscal year in which the discount or rebate is earned or the following year; (c) Customer must fully and accurately report any discount and rebate in its applicable cost report; and (d) Customer must provide, upon request by federal or state government, information provided by Smith & Nephew as specified in 42 C.F.R. 1001.952(h)(2)(ii)(B). Smith & Nephew will refrain from doing anything that would impede Customer from meeting its obligations set out in this paragraph. Furthermore, Customer acknowledges receipt of Smith & Nephew's Code of Conduct, which is available on Smith & Nephew's website at <http://compliance.smith-nephew.com>.

6.1. Certain Products are approved/market-cleared, as applicable, by the United States Food and Drug Administration ("FDA") only for certain indications, and Smith & Nephew's listing and pricing of Products set out in this Agreement will not be construed to constitute a promotion or approval by Smith & Nephew of uses that are other than, or contrary to, those indications (commonly called "off-label" uses). Smith & Nephew's Products should only be used for FDA-approved/market-cleared indications. Smith & Nephew will not be responsible for damages or losses of any kind arising out of "off-label" uses. Smith &

Nephew's warranties, representations, and obligations under this Agreement are void as to any such off-label uses.

7. Non-Waiver. A waiver or consent, express or implied, by either party of a breach or failure to perform under this Agreement will not be a waiver of any subsequent non-performance or breach.

8. Injunctive Relief. Certain breaches of this Agreement may result in substantial harm to the other party for which monetary damages alone might not provide adequate compensation. Therefore, the parties agree unconditionally and irrevocably that the non-breaching party will be entitled to obtain protective orders, injunctive relief and other remedies available at law or in equity (including, but not limited to, rescission of this Agreement) and that no bond or other surety will be required in connection with any related proceeding for such relief.

9. Group Purchasing Organization.

(i) Members of a group purchasing organization (**GPO**) may purchase a product either under a GPO agreement to which Smith & Nephew is a party (**GPO Agreement**) or a separate agreement between the member and Smith & Nephew (**Local Agreement**), but only under one agreement at a time, unless otherwise permitted by Smith & Nephew (or its authorized distributor, if applicable) at its discretion.

(ii) The parties agree that Smith & Nephew may only pay administrative fees to a GPO or its members for purchases made pursuant to a GPO Agreement as permitted by the applicable "safe harbor" exception under federal anti-kickback laws. In order for Smith & Nephew to pay administrative fees to a GPO for purchases by its member pursuant to a Local Agreement, (a) the Local Agreement must reference the applicable GPO Agreement and specify that any purchase of Smith & Nephew products under the Local Agreement shall be treated as a purchase under the applicable GPO Agreement for purposes of determining the administrative fees payable by Smith & Nephew to the GPO; or (b) the member must take the appropriate steps to make the Local Agreement a "subcontract" under the GPO Agreement, including execution of any documentation required by the GPO Agreement or Smith & Nephew.

(iii) Members may only purchase a Product under one GPO Agreement at a time, and Smith & Nephew will only pay administrative fees to one GPO for the applicable purchase. If Products are included in more than one GPO Agreement, and a member belongs to both GPOs, the member must designate a single GPO Agreement that will govern member's purchase of those Products by executing the appropriate document required by the applicable GPO Agreement. Members shall timely provide a copy of such document to Smith & Nephew and the parties shall comply with the designated GPO Agreement with respect to applicable product purchases.

10. Notices. All formal notices, requests, demands and other communications required to be given or made under this Agreement ("Notice") will be in writing and will be deemed to have been given on the date of (i) delivery personally confirmed by written receipt signed by the party to whom notice is given or by his or her agent, (ii) delivery by a reputable local or overnight courier service (FedEx, etc.) confirmed by such receipt or through such courier service's tracking service, or (iii) deposit in the United States mail, postage prepaid, registered or certified, return receipt requested, to the respective party. The parties will notify each other of address changes as they occur. **The e-mail addresses below are provided only for routine communications**

If to Smith & Nephew:
Smith & Nephew, Inc.
150 Minuteman Road

If to Customer:
Arrowhead Regional Medical Center
400 N. Pepper Avenue
Colton, CA 92324

Andover, MA 01810
Attn: Director, Contracts & Pricing,
Sports Medicine and ENT

Attn: Hospital Director

With a copy to:
Company.Secretary@smith-nephew.com

11. Section Headings. Section headings contained in this Agreement are only for convenience and do not define, limit or extend the scope or intent of this Agreement.

12. Severability. It is the intention of the parties that the provisions of this Agreement be enforceable to the fullest extent possible. If any provision of this Agreement is held invalid, unenforceable or inoperative, then (i) the remainder of this Agreement will be considered valid, enforceable and operative, (ii) the application of such provision to persons or circumstances other than those as to which it is held invalid will not be affected, and (iii) effect will be given to the intent manifested by the portion held invalid, unenforceable or inoperative to the greatest extent possible. If the latter cannot be achieved without rendering the remainder of the Agreement invalid, unenforceable or inoperative, then this Agreement will be construed in all respects as if such invalid, unenforceable or inoperative provisions were omitted.

13. Survival. Termination of this Agreement will not relieve either party from any liability or obligation which, by its terms, is meant to survive or be performed after the date of termination, nor will such termination affect any accrued rights or liabilities. The confidentiality terms provided herein will survive for five (5) years following the termination or expiration of this Agreement.

14. Applicable Law; Proceedings; Costs. This Agreement will be construed and enforced in accordance with the laws of the State of California, without regard to or application of conflict of law principles. The parties agree that any civil action or other proceeding relating to this Agreement or any act or omission relating to its performance or subject matter may and must be commenced and conducted solely in the San Bernardino County Superior Court, San Bernardino District; and each party consents to the process, personal jurisdiction, and venue of such Courts for that purpose. If any legal action, proceeding or other dispute arises relating to this Agreement, each party shall bear their own attorney's fees and costs.

15. Parties in Interest. This Agreement constitutes an agreement among the parties hereto and the list of facilities, if any, included with the Schedules or Exhibits to this Agreement, and, unless stated expressly to the contrary, none of the agreements, covenants, representations, or warranties contained herein is for the benefit of any person, facility or entity not a party to this Agreement.

16. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party.

17. Debarment. Smith & Nephew hereby represents and warrants that it is not and at no time has been convicted of any criminal offense related to health care nor has been debarred, excluded, or otherwise ineligible for participation in any federal or state government health care program, including Medicare and Medicaid. Further, Smith & Nephew represents and warrants that no proceedings or investigations are currently pending or to Smith & Nephew's knowledge threatened by any federal or state agency seeking to exclude Smith & Nephew from such programs or to sanction Smith & Nephew for any violation of any rule or regulation of such programs.

18. Insurance. Smith & Nephew shall comply with the insurance requirements set forth on Exhibit C, attached hereto and incorporated herein by this reference.

19. Indemnification. Smith & Nephew will indemnify, defend, and hold harmless Customer and its officers, employees, and agents, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) of such third party by any Products provided under this Agreement, provided that: (i) Customer's activity was pursuant to and in accordance with the terms of this Agreement including, but not limited to, handling and use of the Product in accordance with the Product label and written Instructions for Use (IFU); (ii) the claim does not arise out of any modifications Customer made to Products or any Trade Mark; (iii) the claim is not based on a combination of Products with a third party product unless the claim would have existed in the absence of such combination; (iv) Customer will

notify Smith & Nephew in writing of the claim promptly, and will give Smith & Nephew immediate and complete control of such claim and not by any act or omission materially prejudice Smith & Nephew's defense or settlement; and (v) Customer will give Smith & Nephew such assistance (at Smith & Nephew's expense) as Smith & Nephew may reasonably require to settle or oppose any the claim. Customer's failure to provide or delay in providing such notice will relieve Smith & Nephew of its obligations only if and to the extent that such delay or failure materially prejudices Smith & Nephew's ability to defend such lawsuit or claim. Smith & Nephew may not settle the claim or suit absent the written consent of Customer unless such settlement (a) contains no admission of liability or wrongdoing by Customer, and (b) imposes no obligations upon Customer other than an obligation to stop using the Products that are the subject of the claim.

If, in Smith & Nephew's opinion, any Products become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Smith & Nephew may, at its option: (i) procure for Customer the right to continue using the Products; (ii) replace or modify the Products to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of Smith & Nephew, Customer shall cease use of the Products upon written notice from Smith & Nephew, and Smith & Nephew shall provide Customer with a pro-rata refund of the unearned fees paid by Customer to Smith & Nephew for such Products.

Smith & Nephew also agrees to indemnify, defend and hold harmless the Customer and its authorized officers, and employees from any and all third party claims, actions, losses, damages and/or liability to the extent arising out of any defects in the Products and any negligence or willful misconduct of Smith & Nephew, its employees, and its agents; provided, however, that the indemnification obligation shall not extended to any claim where such indemnification is prohibited by law or to the extent such claim arises out of the gross negligence or willful misconduct of Customer, its employees, agents, officers or volunteers. Smith & Nephew's indemnification obligation does not apply where the claim arises out of the Customer's "sole negligence" or "willful misconduct" within the meaning of California Civil Code section 2782.

20. Improper Consideration. Smith & Nephew shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employees or agent of the Customer in an attempt to secure favorable treatment regarding this Agreement. Smith & Nephew shall immediately report any attempt by a Customer officer, employee, or agent to solicit (either directly or through an intermediary) improper consideration from Smith & Nephew. The report shall be made to the supervisor or manager charged with supervision of the employee or the San Bernardino County Administrative Office. In the event of a termination under this provision, the Customer is entitled to pursue any available legal remedies.

21. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to electronically sign and transmit this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request. For the avoidance of doubt, the parties acknowledge and agree that a signature page transmitted separately or alone shall not constitute a valid counterpart.

22. Entire Agreement; Modification. This Agreement, including all Exhibits, Addenda, Schedules and other documents which are attached to or which accompany this Agreement (whether on the date of this Agreement or later and in whatever media), all of which are incorporated herein by reference in their entirety, constitutes the entire agreement between the parties regarding Products and supersedes all prior oral or written agreements, understandings, representations and warranties and courses of conduct and dealing between them which relate to Products. No amendment, change, modification, alteration, or renewal of this Agreement will be binding unless it is in writing and signed by authorized representatives of the parties. No modified, additional or different terms or conditions proposed by Customer, verbally or in writing, including, but not limited to, any terms appended to Customers purchase order, will be accepted by Smith & Nephew and are expressly rejected by Smith & Nephew.

Customer Acceptance:
San Bernardino County on behalf of Arrowhead
Regional Medical Center

Smith & Nephew, Inc.

Dawn Rowe JUN 25 2024
Signature Date

Kenneth Stiles 05/09/2024
Kenneth Stiles (May 9, 2024 16:54 EDT)
Signature Date

Dawn Rowe
Name (Printed)

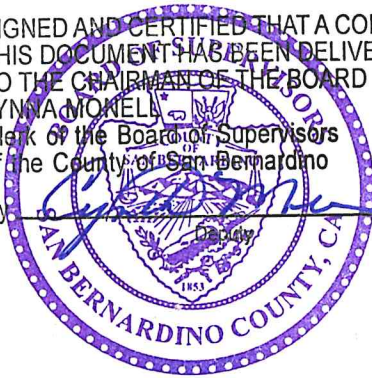
Kenneth Stiles
Name

Chair, Board of Supervisors
Title

Director, Pricing & Contracts-Sports
Title

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD
LYNN MONELL
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____



**EXHIBIT A
PRODUCT AND PRICING SCHEDULE**

Part #	Description	List Price	UOM	UOM Qty.	Contract Price
601-00100	ENTACT SEPTAL STAPLER 3-PACK	\$ 540.84	BX	3	\$ 540.84
EICA4835-01	REFLEX ULTRA PTR COBLATOR II	\$ 295.26	EA	1	\$ 295.26
EICA4845-01	REFLEX ULTRA 45 COBLATOR II	\$ 281.19	EA	1	\$ 281.19
EICA6895-01	TURBINATOR COBLATOR II	\$ 307.65	EA	1	\$ 259.00
EICA7070-01	PROCISE LW COBLATOR II	\$ 864.47	EA	1	\$ 864.47
EICA7071-01	PROCISE MINI LARYNGEAL COBLATOR II	\$ 864.47	EA	1	\$ 864.47
EICA8872-01	PROCISE XP COBLATOR II	\$ 311.85	EA	1	\$ 311.85
EICA8898-01	PROCISE MAX COBLATOR II	\$ 327.43	EA	1	\$ 327.43
RR 650	SINU FOAM	\$ 175.10	BX	2	\$ 175.10
RR 750	7.5CM ANTERIOR/POSTERIOR	\$ 482.70	BX	10	\$ 482.70
RR 550	5.5CM ANTERIOR	\$ 468.20	BX	10	\$ 468.20
RR 900	9CM ANTERIOR/POSTERIOR DUAL	\$ 878.60	BX	10	\$ 878.60

EXHIBIT B

TERMS AND CONDITIONS

The below apply for purchases of products directly from Smith & Nephew, Inc. (S&N). For purchases of S&N's AWM products from S&N authorized distributors, only Sections 6 through 11 apply, as terms covered by Sections 1 through 5 will be negotiated and agreed to between Customer and the S&N authorized distributor.

1. **ORDERS.** Orders for S&N products may be placed by:

S&N Products – U.S.			
	Advanced Wound Management	Orthopaedics – Reconstructive, Trauma & NAVIO ^o	Endoscopy – Sports Med, ENT & Spine
Phone	800-876-1261	800-238-7538	800-343-5717
Fax	727-392-6914	800-621-6924	800-554-6105; or 978-749-1108
EDI	Contact EDI Analyst for details: 800-876-1261	Contact EDI Analyst for details: 800-238-7538	Contact EDI Analyst for details: 800-343-5717
S&N Sales Rep	N/A	Call your local S&N sales rep	N/A
Special, Custom, MTO Products	N/A	Ortho Specialties Department: 800-262-3536	800-343-5717

Not all products listed in catalogues are available in all countries; contact your local S&N representative for specific availability. No Customer order is deemed accepted by S&N until received and approved by authorized S&N personnel. Product is sold in case quantity only. S&N accounts are not transferable. Any major change within Customer's organization requires a new and independent review by S&N before it shall extend a Customer's account to the changed organization. As elected by S&N, Products are sold directly by S&N to Customer or through S&N's authorized distributors. For the name and address of your S&N representative or authorized distributor, contact S&N's customer service team noted above. Sales personnel may not alter the terms of this agreement, extend credit, or accept payment for merchandise. For all Orthopaedic orders, unless Customer issued a valid purchase order number at the time of initial order placement, Customer shall issue a valid purchase order number within forty-eight (48) hours of receipt of product.

2. **SPECIAL, CUSTOM, MADE TO ORDER (MTO) PRODUCTS.** Requests for special, customized or MTO orthopedic or endoscopy instrument products must be submitted at the contacts provided in the above table, which contacts shall provide a price quote valid for thirty (30) days and the estimated time required to manufacture the product. Manufacturing shall not begin until receipt of a purchase order for the requested product and credit is approved. All special, customized or MTO sales are final and nonreturnable, and product lead time may vary depending on the product. In some cases, the surgeon shall be required to sign a copy of the blueprint and/or template prior to S&N beginning to manufacture the product. Service agreements and service exchange is not available on special, customer or MTO endoscopy instrument products, as such products are serviced on a repair only basis.
3. **TITLE; DELIVERY; SHIPMENT VERIFICATION.** Product shall be deemed accepted by Customer upon delivery at the named point of destination. S&N reserves the right to select the mode and carrier. If Customer requests a certain method, carrier or other special or rush shipping then additional shipping and handling charges may be added to the invoice. Customer is responsible for noting any damage, potential damage and shortages on freight bill at time of delivery and notifying S&N's customer service team within fifteen (15) days of delivery. Any discrepancy in the quantity billed and quantity received resulting from damage (concealed or otherwise), shortages, overages, non-delivery or wrong product must be reported to S&N's customer service team within fifteen (15) days of date a shipment is or was to have been received. Any discrepancy reported after fifteen (15) days shall be addressed by S&N in its sole discretion, failing which S&N shall be under no liability for such issues. In addition, except as otherwise provided above:
- 3.1 **For AWM Products:** Orders shipped to destinations within continental U.S., Alaska or Hawaii are shipped CIP Customer's dock, except for orders shipped C.O.D. Customer pays full shipping costs and are shipped freight collect. Title to product passes to Customer when signed for by the carrier at the shipper's dock.
- 3.2 **For Ortho Products (except NAVIO^o):** Orders shipped to destinations within continental U.S., Alaska or Hawaii are shipped CPT Customer's dock except shipping then is added to Customer's invoice. Title to product passes to Customer upon delivery at the destination point.
- 3.3 **For NAVIO^o Products:** Orders shipped to destinations within continental U.S., Alaska or Hawaii are shipped CPT Customer's dock. Title to product passes to Customer when signed for by the carrier at the shipper's dock.
- 3.4 **For Endo Products:** Orders shipped to destinations within continental U.S., Alaska or Hawaii are shipped CPT Customer's dock except shipping then is added to Customer's invoice. Title to product passes to Customer when signed for by the carrier at the shipper's dock
- 3.5 **For drop shipments to distributors:** All are responsibility of the distributor and consignee's purchase order number must be included with distributor's order. Title to product passes to distributor when signed for by the carrier at the shipper's dock.
4. **PRICE; PAYMENT.** Prices are subject to applicable tax. Organizations exempt from taxes or that resell product must provide S&N with a valid exemption or resale certificate for each applicable jurisdiction to avoid being invoiced for taxes. Exemption or resale certificates received after the sale shall not void taxes already charged but shall prevent tax from being charged on future invoices. All taxes are due for payment as billed. For sales by S&N to its distributors, distributor is free to resell products at prices determined in its sole discretion. Payment by Customer is due net thirty (30) days from date of invoice and must be sent to the address on S&N's invoices/statements to Customer. S&N reserves the right to terminate or limit open account credit at any time. Any discrepancy in an invoiced price and the corresponding order price must be reported to S&N's customer service team within thirty (30) days of the date of invoice. Customer's failure to make timely payment is a material breach for which (in addition to other available remedies) S&N may suspend performance under any or all S&N agreements until

all past due amounts are brought current. Any credits due to Customer under an agreement may be applied first to any outstanding balance. If, after product delivery, Customer does not make required payments within forty-five (45) days after the payments are due, S&N may, upon ten (10) days' prior written notice to Customer, either enter upon Customer's site and remove the products or temporarily disable the products so they are not operational.

5. **RETURNS.** All product returns, whether for defect or otherwise, require the prior written authorization of S&N, which must be obtained through S&N's customer service team. If the return is authorized, S&N shall provide Customer a return authorization, and Customer must return the product to S&N within thirty (30) days of receipt of such return authorization. Any product returned after thirty (30) days shall be addressed by S&N in its sole discretion, including for Endoscopy products not returned within thirty (30) days Customer will be charged the then list price for such products. Credit shall be issued only after product is received by S&N and then examined and determined to be returnable by S&N's return goods department. Customer shall not make any changes to the return authorization without receiving prior approval through S&N's customer service team. In addition, product may be returned only under the following conditions:
- From date of invoice, up to 180 days for Advanced Wound Management and Orthopaedic products and up to 60 days for Endoscopy products. (Except for *FRESHNET^o, OASIS^o, PROSHIELD^o, REGRANEX^o, SANTYL^o brands, up to 12 months past the expiration date, or in the case of such brands shipped in error by S&N, damaged in shipping or recalled by S&N.)
 - A restocking fee shall be charged: 25% for Advanced Wound Management products and 20% for Orthopaedic and Endoscopy products, except for product defects or an error by S&N.
 - Only unopened, full cases.
 - Product is still listed on S&N's current product list.
 - For Advanced Wound Management products, a copy of the original invoice is included.
 - S&N reserves the right to destroy product shipped to S&N that it deems unfit for sale. S&N shall not accept returns for product:
 - not in standard S&N packaging.
 - purchased through anyone other than S&N.
 - with unauthorized labels or that has been defaced.
 - that is a temperature controlled product.
 - that is obsolete, discontinued, special price, damaged or in broken lots or cases.
 - that is a sterile Endoscopy product with less than 1 year of shelf life remaining.
 - except for warranty claims, NAVIO^o products may not be returned.
6. **COMPLIANCE.** Each party shall conduct its business and affairs in an ethical manner and comply with all applicable laws, regulations, and industry codes. Any breach by Customer or its representatives or agents shall entitle S&N to terminate this agreement immediately upon S&N's written notice to Customer. Customer acknowledges receipt of S&N's Code of Conduct that is available on S&N's website at <http://www.smith-nephew.com/compliance/global-compliance-programme/>. All transactions between Customer and S&N in connection with this agreement are made in good faith on the basis of arms-length negotiation and all prices are consistent with fair market value. The prices reflected on S&N invoices incorporate applicable discounts to S&N's list prices for the named products. Consistent with S&N's understanding of the requirements that apply to purchases of discounted products under 42 U.S.C. § 1320a-7b(3)(A) or 42 C.F.R. § 1001.952(h), listing of these invoice prices constitute S&N's notice to Customer of the amount and value of all discounts given on these products. Prices may be subject to further rebates earned (if any) pursuant to an agreement between Customer and S&N. Customer may be responsible for reporting prices, discounts, and rebates to third parties under laws and regulations that apply to Customer's business, and for providing information to certain third parties in accordance with those laws and regulations. Any invoice prices less than S&N's list prices are "discounts" within the meaning of any safe harbors or other applicable protections regarding discounted product pricing (including the statute and regulation cited above), whether or not the invoice includes language indicating that a price is "discounted."
7. **LIMITED WARRANTY – OTHER THAN ARTHROCARE CORPORATION MANUFACTURED PRODUCTS.** S&N products are warranted to conform in all material respects to S&N's standard specification for a particular product in effect at the time of product delivery to the buyer (including any tolerance parameters) for the warranty period specified for the products at www.SNWarranties.com (Warranty Period). For any products found to not be in conformance with this warranty during the Warranty Period, this warranty provides and is restricted to, as elected by S&N, either (i) repair or replacement of such products without charge and within a reasonable period of time or (ii) a refund or credit in the amount of the purchase price of such products (except for product equipment the refund shall be based on the straight line depreciation schedule specified at the Warranty Period website). If S&N repairs or replaces product under this warranty and requests Customer to return such product, Customer must ship such product to S&N freight prepaid by Customer. Customer shall be invoiced for any replacement product if Customer does not return the requested replaced product within thirty (30) days after S&N's shipment of the replacement product. This warranty does not cover and is voided by any of the following: (i) product packaged or labeled by someone other than S&N or its authorized agents; (ii) product not used in compliance with the specifications, instructions or claims for use of the product; (iii) equipment product used in conjunction with disposables or accessories not specified for use with such equipment; (iv) equipment product used in conjunction with reprocessed disposables or accessories; (v) modification of product; (vi) product past its expiration date; (vii) normal wear and tear; (viii) damage due to misuse, reprocessing, alteration, unauthorized repair or negligent handling or damage due to lack of care by the owner, user or handler of the product including but not limited to storage, handling or cleaning; or (ix) any other damage inflicted to products by the owner, user or handler. A 90-day warranty on repairs applies to the defective component repaired. This warranty applies only to the original buyer from S&N (or its authorized distributor) and is not transferable. **EXCEPT TO THE EXTENT PROHIBITED OR OTHERWISE REQUIRED BY APPLICABLE LAW, THIS WARRANTY IS THE SOLE WARRANTY OF S&N, AND ALL OTHER WARRANTIES OF ANY KIND OR DESCRIPTION WHATSOEVER, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, EXPRESSED OR IMPLIED, ARE EXCLUDED.**

8. **LIMITED WARRANTY – ARTHROCARE CORPORATION MANUFACTURED PRODUCTS.** For any products for which ArthroCare Corporation is the legal manufacturer, the product warranty (including warranty length) is as stated in the Information For Use (IFU) accompanying the product. (See product packaging for the name of the legal manufacturer.)
9. **LIMITATION OF LIABILITY. WITH THE EXCEPTION OF ITS GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, INDEMNIFICATION OBLIGATIONS HEREUNDER, BREACH OF ANY CONFIDENTIALITY PROVISION OF THIS AGREEMENT, LIABILITY OWED TO THIRD PARTIES OR FOR DEATH OR PERSONAL INJURY, OR AS OTHERWISE PROHIBITED BY LAW: (I) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE OR SIMILAR TYPES OF LOSS OR DAMAGE OF ANY KIND, OR FOR ANY LOST OR ANTICIPATED PROFITS OR SAVINGS, COST OF COVER FOR REPLACEMENT OR ALTERNATIVE PRODUCT OR DAMAGE TO REPUTATION OR GOODWILL, ARISING FROM THIS AGREEMENT; (II) CUSTOMER'S SOLE REMEDY FOR S&N'S BREACH OF ANY PRODUCT WARRANTY SHALL BE THE REPAIR, REPLACEMENT OR REFUND BY S&N AS PROVIDED IN THE WARRANTY; AND (III) IN NO EVENT SHALL THE TOTAL LIABILITY OF EITHER PARTY TO THE OTHER PARTY UNDER ANY THEORY OF LIABILITY EXCEED THE TOTAL PURCHASE PRICE PAID FOR THE APPLICABLE PRODUCT(S) INVOLVED IN THE CLAIM DURING THE YEAR IN WHICH THE CLAIM AROSE. THE PARTIES EXPRESSLY ACKNOWLEDGE THAT THE PRECEDING LIMITATIONS ON LIABILITY ARE A FAIR COMPROMISE AND WAIVE ANY RIGHT TO LATER CHALLENGE THEM AS UNREASONABLE, UNCONSCIONABLE OR OTHERWISE.**
10. **RESERVED.**
11. **MISCELLANEOUS.** S&N reserves the right to discontinue products or change specifications or designs from time to time. Upon S&N's request as to purchases by its distributors, distributor, at no charge, will submit electronically to S&N end-user monthly sales tracings for all S&N products sold d by distributor. Neither party is liable for delays or failures in performance (other than payment obligations) due to causes beyond its reasonable control. In the event of such delay, the time for performance shall be extended as reasonably necessary to enable performance. No modified, additional or different terms or conditions proposed by Customer, verbally or in writing, including without limitation any terms set forth in Customer's RFP or purchase order, shall apply and are expressly rejected by S&N. Any waiver of any breach of any provision of this agreement shall not be a waiver of any subsequent breach of the same or of any other provision of this agreement. The terms hereof will not be construed to create between the parties the relationship of principal and agent, joint venturers, partners or any other similar relationship, the existence of which is expressly denied by each party. If a court of competent jurisdiction finds any provision of this agreement is invalid or unenforceable, such finding shall not affect the remainder of these terms and conditions and otherwise shall remain in full force and effect.⁹Indicates trademark of S&N.

EXHIBIT C Insurance Requirements

S+N agrees to provide insurance set forth in accordance with the requirements herein during the Term of this Agreement.

1. Without in anyway limiting any indemnity obligations provided under this Agreement, S+N shall secure and maintain throughout the Term of the Agreement, the following types of insurance with limits as shown:
 - a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits .
 - b. Commercial/General Liability Insurance – S+N shall carry Commercial General Liability Insurance with a limit of not less than one million dollars (\$1,000,000), per occurrence, \$2,000,000 general aggregate limit.
 - a. Automobile Liability Insurance –Business Auto coverage form for all owned, hired and non-owned automobiles. The policy shall have a combined single limit of not less than Five Hundred Thousand dollars (\$500,000) for bodily injury and property damage, per occurrence. If S+N owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
 - b. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with the CGL limits for occurrences arising out solely of the Equipment and Services provided under this Agreement.
2. **Additional Insured.** S+N's CGL coverage above will name Customer as an additional insured for occurrences arising solely out of the Equipment provided under this Agreement.
3. **Waiver of Subrogation Rights.** S+N shall require the carriers of required Worker's Compensation and Employer's Liability coverages to waive all rights of subrogation against Customer.
4. **Policies Primary and Non-Contributory.** S+N's CGL insurance coverage set out above is to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Customer for occurrences arising solely out the Equipment provided under this Agreement.
5. **Proof of Coverage.** Upon request, S+N shall furnish certificates or evidence of the above insurance to Arrowhead Regional Medical Center . S+N will provide thirty (30) days written notice to Arrowhead Regional Medical Center in the event of a termination or expiration of the above insurance coverages, and S+N shall maintain such insurance during the Term of the Agreement.
6. **Acceptability of Insurance Carrier.** Unless otherwise approved by Customer's Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
7. **Insurance Review.** The insurance requirements set out herein are subject to periodic review by Customer. The Customer's Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of Customer. . Any change requiring additional types of insurance coverage or higher coverage limits must be made by a written amendment to this Agreement executed by both parties. Any failure, actual or alleged, on the part of Customer to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of Customer.