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Contract Number

24-1003

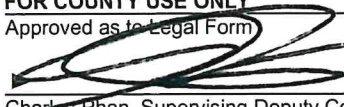
SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	<u>Andrew Goldfrach</u>
Telephone Number	<u>(909) 580-6150</u>
Contractor	<u>Karl Storz Endoscopy-America, Inc.</u>
Contractor Representative	<u>Shawn Swanson</u>
Telephone Number	<u>858-209-0651</u>
Contract Term	<u>January 1, 2025 through December 31, 2027</u>
Original Contract Amount	<u>\$194,805</u>
Amendment Amount	<u></u>
Total Contract Amount	<u>\$194,805</u>
Cost Center	<u></u>
Grant Number (if applicable)	<u>N/A</u>

Briefly describe the general nature of the contract: Service Agreement with Karl Storz Endoscopy-America, Inc. for the exchange and repair of endoscopy products, in the amount not to exceed \$194,805, for the period of January 1, 2025 through December 31, 2027.

FOR COUNTY USE ONLY

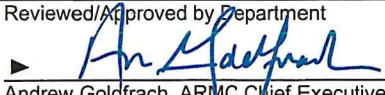
Approved as to Legal Form 

Charles Phan, Supervising Deputy County Counsel

Date 9/25/2024

Reviewed for Contract Compliance

Date

Reviewed/Approved by Department 

Andrew Goldfrach, ARMC Chief Executive Officer

Date 9/25/2024



KARL STORZ
Endoscopy-America, Inc.

2151 E. Grand Avenue
El Segundo, California 90245-5017

Toll Free 800-421-0837
Fax 424-218-8770

Protection1® Comprehensive Service Agreement

Sold To Customer Name:	San Bernardino County on behalf of Arrowhead Regional Medical Center	Sold To #:	103916
Sold To/Bill To Address:	400 N Pepper Ave Colton, CA 92324-1801	Phone #:	909-580-2465
Attn (Facility Contact Name):	Luis Pesantes	Agreement Request #:	R510025241
Email:	PesantesLe@armc.sbcounty.gov	Agreement #:	
Total Service Billing:	\$194,805.00	Effective Date:	January 1, 2025
Annual Service Billing:	\$64,935.00	Service Term (months):	36 months
Monthly Service Billing:	\$5,411.25	Offer Expiration Date:	February 1, 2025

KARL STORZ Endoscopy-America, Inc. ("KARL STORZ") and Customer (identified above) hereby enter into this Protection1® Comprehensive Service Agreement ("Agreement") for the exchange and repair needs of the KARL STORZ-branded endoscopy products supplied by KARL STORZ ("Products") listed on Exhibit A, as that may be updated by KARL STORZ with regard to Product replacements or exchanges made under this Agreement ("Covered Products"). Members eligible to receive services in accordance with this Agreement are identified by ship-to on Schedule 1 attached hereto ("Members"). 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 and as attached hereto.

1. KARL STORZ Services/Obligations.

- (a) Provide labor and replacement parts, as necessary, to return the Covered Products listed on Exhibit A (as that may be updated by KARL STORZ with regard to Product replacements or exchanges made under this Agreement) to normal operating condition, provided that such service is necessitated by (i) the failure of or (ii) accidental damage to the Product during normal usage for its intended purpose and such failure is not otherwise excluded from coverage as set forth herein. The number of repairs or exchanges that may be performed on the Covered Products is unlimited. All replaced or exchanged parts and Products shall become the property of KARL STORZ. Subject to the availability of product, KARL STORZ may provide Customer with loaner product while repairs or exchanges are being made.
- (b) In addition to, or instead of the services set forth in section 1(a) above, for the Covered Products referenced on Exhibit A attached hereto, KARL STORZ shall provide an unlimited number of exchanges whereby Customer will submit its damaged Covered Product in exchange for one that is in normal operating condition (each an "Exchange"), provided that such Exchange is necessitated by (i) the failure of or (ii) accidental damage to the Covered Product during normal usage for its intended purpose and such failure is not otherwise excluded from coverage under this Agreement. Exchanges will typically consist of the same Covered Product (by model/material number) or the closest available Product, as determined in the sole discretion of KARL STORZ. Upon customer request, and at the sole discretion of KARL STORZ, customer may receive for its damaged Covered Product an exchange with a similar Product but not the same (by model/material number).
- (c) Provide applicable technology updates, as designated by KARL STORZ, at the time of Exchange or repair.
- (d) Upon request, and if available, provide a Damage Evaluation Report for each Product repaired or Exchange.
- (e) Pay shipping costs to and from Customer using KARL STORZ's preferred carrier.

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

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 Service Term of this Agreement.
- (b) Utilize KARL STORZ to provide repair/Exchange service for the Covered 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 as detailed in Exhibit B prior to submitting any Products to KARL STORZ for Exchange or repair.



- (e) Upon issuance of an RMA from KARL STORZ, return all damaged Products to be exchanged to KARL STORZ using the return label that will be provided on the written KARL STORZ Service Confirmation within thirty (30) days of receipt of the replacement Product, unless the written KARL STORZ Service Confirmation related to the damaged Products expressly instructs the Customer to properly dispose of those Products in lieu of returning them. If the written KARL STORZ Service Confirmation does not expressly provide that the damaged Product is to be disposed (in lieu of being returned to KARL STORZ) and the Product is not returned to KARL STORZ 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 Billing 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 Billing shall be prorated for any partial periods during the Service Term of this Agreement. KARL STORZ shall reference the Customer's P.O. on all invoices.
5. **Term; Termination.**
- (a) **Offer Expiration Date.** Unless otherwise agreed, the offer contained in this Agreement will automatically expire at the close of KARL STORZ business on the Offer Expiration Date provided on page one of this Agreement ("Offer Expiration Date"). Customer shall indicate its acceptance of this Agreement by providing its signature and the related P.O. prior to the Offer Expiration Date.
- (b) **Service Term.** This Agreement shall commence on the January 1, 2025 ("Effective Date"). This Agreement will remain in effect for the period of time set forth on the first page, unless terminated earlier pursuant to the terms herein ("Service Term").
- (c) **Termination.**
- (i) **Termination for Convenience.** Either party may terminate this Agreement without cause 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.
- (ii) **Termination for Cause.** Either party shall have the right to immediately terminate this Agreement effective on written notice to the other party if a party materially breaches any of the provisions of this Agreement including, but not limited to, the following: failure by Customer to pay any amounts due hereunder after receiving notice from KARL STORZ of the possibility of termination for failure to make such payments or failure by Customer to provide the required purchase order for each respective contract year during the Service Term. With such termination by either party, 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.
- (iii) **Effect of Termination.** In the event that Customer terminates for convenience or KARL STORZ terminates for cause prior to the end of the Service Term, the parties agree that the service fees as of the date of termination may be insufficient compensation for the services performed and Exchanges provided. Accordingly, Customer shall pay KARL STORZ any difference between the service fees paid or owed as of the date of termination and the transactional repair cost of all services and Exchanges furnished as of the date of termination.
6. **Pre-Existing Damaged Product.** This Agreement shall only cover Product that is in proper working condition and meets KARL STORZ's original equipment specification and shall exclude any Pre-Existing Damaged Product. A "Pre-Existing Damaged Product" shall be defined as a Product, identified by the Customer or KARL STORZ, requiring service to return such Product to KARL STORZ original equipment specification in order for such Product to be covered under this Agreement.
- (a) Customer must review its inventory and identify for KARL STORZ any Pre-Existing Damaged Product. A Pre-Existing Damaged Product must be submitted to KARL STORZ for repair or Exchange prior to being eligible for coverage under this Agreement. The Customer shall pay KARL STORZ to repair or Exchange the Pre-Existing Damaged Product in full for it to be eligible for coverage under this Agreement.
- (b) Should Customer fail to repair or Exchange any Pre-Existing Damaged Product and such Product is submitted for, or is in the process of service, KARL STORZ shall exclude such from coverage.
7. **Notices.** Any notice issued hereunder by Customer shall be in writing and provided to KARL STORZ via email transmission (with a simultaneous confirmation copy sent by first class mail properly addressed and postage prepaid) to the address provided below. Such notice shall be deemed sufficiently given on the date of transmission if sent during normal business hours of KARL STORZ, and on the next business day if sent after normal business hours of the recipient.

KARL STORZ Endoscopy-America, Inc.
 Attn: Protection1® Service Contract Operations
 ServiceContractOperations@karlstorz.com
 2151 E. Grand Avenue
 El Segundo, CA 90245

Any notice issued hereunder by KARL STORZ to Customer shall be deemed fully given, when made in writing and either served personally or deposited in the United States mail, postage prepaid, and addressed to Customer as follows:

Arrowhead Regional Medical Center
 400 N. Pepper Avenue
 Colton, CA 92324
 Attn: ARMC Chief Executive Officer



Notice to Customer shall be deemed communicated two (2) business days from the time of mailing if mailed as provided in this paragraph.

- 8. **End-of-Service-Life.** In the event that KARL STORZ designates, in its sole discretion, any Products as being end-of-service (i.e., KARL STORZ shall no longer offer or provide service for such Products), this Agreement shall be unilaterally amended by KARL STORZ providing the Customer with a written notice ("EOS Notice"). The EOS Notice will set forth the Products to be removed from this Agreement, as well as any resulting price adjustment that reflects that such Products are no longer eligible for service. The EOS Notice will be effective immediately upon delivery to Customer unless otherwise provided in the EOS Notice. The effective date of the EOS Notice shall also serve as the end date of any active warranty periods for Products identified in the EOS Notice. Any provision of this Agreement requiring that any amendments to this Agreement be signed by the parties shall not apply to this section of the Agreement.
- 9. **Entire Agreement.** This Agreement, Schedule 1 (Members), Exhibit A (Covered Products) 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. In the event of any conflicting, inconsistent and/or additional provisions in a Customer purchase order or other document, this Agreement will supersede and prevail and such conflicting, inconsistent and/or additional provisions shall be of no force or effect. This Agreement may be modified or amended only by a written instrument executed by the authorized representatives of both of the parties, and not by the terms of Customer's purchase order or any other communication.
- 10. **SIGNATURES.** The 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 sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email 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.

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: San Bernardino County on behalf of Arrowhead Regional Medical Center	
Print Name:	Sara Thomas	Print Name:	Dawn Rowe
Title:	Executive Director, Analytics & Contract Operations	Title:	Chair, Board of Supervisors
Email:	ServiceContractOperations@karlstorz.com	Email:	
Signature:	<small>DocuSigned by:</small> Sara Thomas	Signature:	<i>Dawn Rowe</i>
Date:	10/15/2024	Date:	OCT 22 2024

Electronic Submission:

Email a scanned signed copy of this Agreement to:
KARL STORZ Endoscopy-America, Inc.
 Attn: Protection1® Service Contract Operations
 Email: ServiceContractOperations@karlstorz.com

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

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD LYNN MONELLE COUNTY OF SAN BERNARDINO Clerk of the Board of Supervisors of the County of San Bernardino
 By *[Signature]*
 Deputy



SCHEDULE 1

MEMBERS

Ship-To	Ship-To Name	Address	City	State	Zip
304251	Arrowhead Regional Medical Center	400 N Pepper Ave	Colton	CA	92324-1801
378304	Arrowhead Regional-DO NOT USE	400 N Pepper Ave	Colton	CA	92324-1801



EXHIBIT A

COVERED PRODUCTS*

Material	Description	Quantity	Specialty	Serial # (*=N/A)
11301ABXK	FLEX INTUBATION VIDEO SCOPE, 3.0MM X51.5CM, NO WORKING OR SUCTION CHANNELS	1	ANE	61127
11302BDXK	FLEX INTUBATION VIDEO ENDOSCOPE F/CMAC4.0MMX65CM W/1.5MM CHANNEL W/SUCTION	1	ANE	63626
11302BDXK	FLEX INTUBATION VIDEO ENDOSCOPE F/CMAC4.0MMX65CM W/1.5MM CHANNEL W/SUCTION	1	ANE	63708
11302BDXK	FLEX INTUBATION VIDEO ENDOSCOPE F/CMAC4.0MMX65CM W/1.5MM CHANNEL W/SUCTION	1	ANE	63735
11303BNXK	FLEX. INTUBATION VIDEO ENDOSCOPE 5.5X 65	1	ANE	62891
11303BNXK	FLEX. INTUBATION VIDEO ENDOSCOPE 5.5X 65	1	ANE	62892
R11301ABXK	FLEX INTUBATION VIDEO SCOPE, 3.0MM X51.5CM, NO WORKING OR SUCTION CHANNELS	1	ANE	70192
R11302BDXK	FLEX. INTUBATION VIDEO ENDOSCOPE F/CMAC4.0MM X 65CM W/1.5 MM CHANNEL W/SUCTION	1	ANE	29788
R11302BDXK	FLEX. INTUBATION VIDEO ENDOSCOPE F/CMAC4.0MM X 65CM W/1.5 MM CHANNEL W/SUCTION	1	ANE	31941
R11302BDXK	FLEX. INTUBATION VIDEO ENDOSCOPE F/CMAC4.0MM X 65CM W/1.5 MM CHANNEL W/SUCTION	1	ANE	32378
R11302BDXK	FLEX. INTUBATION VIDEO ENDOSCOPE F/CMAC4.0MM X 65CM W/1.5 MM CHANNEL W/SUCTION	1	ANE	44159
R11302BDXK	FLEX. INTUBATION VIDEO ENDOSCOPE F/CMAC4.0MM X 65CM W/1.5 MM CHANNEL W/SUCTION	1	ANE	45765
R11302BDXK	FLEX. INTUBATION VIDEO ENDOSCOPE F/CMAC4.0MM X 65CM W/1.5 MM CHANNEL W/SUCTION	1	ANE	51724
R11303BNXK	FLEX. INTUBATION VIDEO SCOPE 5.5 X 65 CM	1	ANE	15178
R11303BNXK	FLEX. INTUBATION VIDEO SCOPE 5.5 X 65 CM	1	ANE	17688
R11303BNXK	FLEX. INTUBATION VIDEO SCOPE 5.5 X 65 CM	1	ANE	29772
R11303BNXK	FLEX. INTUBATION VIDEO SCOPE 5.5 X 65 CM	1	ANE	33283
R11303BNXK	FLEX. INTUBATION VIDEO SCOPE 5.5 X 65 CM	1	ANE	36646
R11303BNXK	FLEX. INTUBATION VIDEO SCOPE 5.5 X 65 CM	1	ANE	46155
R11303BNXK	FLEX. INTUBATION VIDEO SCOPE 5.5 X 65 CM	1	ANE	50679
R11303BNXK	FLEX. INTUBATION VIDEO SCOPE 5.5 X 65 CM	1	ANE	51441
R11303BNXK	FLEX. INTUBATION VIDEO SCOPE 5.5 X 65 CM	1	ANE	63732
Total:		22		

*Covered Products may be updated during the Service Term by KARL STORZ with respect to Product replacements or Exchanges made under this Agreement, and Customer shall be notified of such updates via letter or other written communication.



EXHIBIT B

GENERAL STANDARD TERMS AND CONDITIONS

1. **ORDERS.** Orders are to be placed with the Customer Support Department or sales force of KARL STORZ Endoscopy-America, Inc. ("KARL STORZ"); however, orders will only be accepted by KARL STORZ's Customer Support Department located in California or Massachusetts.
2. **PRICES.** Pricing set forth in the Agreement does not include any applicable taxes, as well as shipping and/or handling charges. Such will be added to the invoice, if applicable. If Customer is tax exempt, Customer shall provide a tax exemption certificate for the "sold to" entity at the time of issuance of the purchase order under this Agreement.
3. **SHIPPING.** For the Covered Products, shipments are F.O.B. shipping point, shipping and handling prepaid by KARL STORZ and absorbed.
4. **PAYMENT.** Invoices are due and payable upon receipt, net 30 days from receipt of invoice but will not be in default until forty-five (45) days, which shall not be earlier than the date of shipment. KARL STORZ accepts customer payment in ACH, wire, credit card, or check form. Payment via credit card may be subject to surcharges in jurisdictions where it is legally permissible. Credit card fees will only be reflected on the credit card receipt and will not appear on the individual invoice. Payment via all other forms of customer payment must be reviewed and approved by the KARL STORZ Credit & Collections department. Invoices will be issued on authorized partial shipments and are payable as set forth in this section. Customer agrees that KARL STORZ may use all legal means at its disposal to collect on all Customer's balances outstanding for more than 45 days, including, but not limited to, court orders, use of third-party collection agencies, and reporting to credit agencies. KARL STORZ shall have the continuing right to approve Customer's credit during the Service Term. If Customer fails to pay any amount when due, or there is otherwise any negative change in Customer's credit or account standing, in addition to any other rights or remedies available, KARL STORZ may discontinue the delivery of any Product or provision of service hereunder, withhold issuance of any earned credit, and/or revise the payment terms (including requirement of advance payment or a guaranty of payment), following prior written notice to Customer of such change in payment terms. Amounts payable to KARL STORZ for the purchase, lease, or rental of Products and/or the provision of services are not subject to withholding, set-off, or counter-claim under any circumstances without the prior written consent of KARL STORZ.
5. **RETURN MERCHANDISE AUTHORIZATION PROCESS.** A return merchandise authorization ("RMA") must be obtained from KARL STORZ's Customer Support Department prior to sending any Products to KARL STORZ for any reason. When contacting KARL STORZ for an RMA, the Customer Support Representative must be provided with: (a) the applicable P.O. number; (b) the KARL STORZ catalog number and, if applicable, the serial number for each Product; and (c) the reason for the return. KARL STORZ will not be responsible for Products returned without an RMA. 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 KARL STORZ's personnel, all opened Products must be cleaned and then sterilized and/or disinfected before sending to KARL STORZ, which reserves the right to return unclean and contaminated Products to Customer. Additionally, if any Product becomes damaged and is not immediately returned for repair or Exchange, KARL STORZ assumes no responsibility or liability for Customer's continued use of that damaged Product. KARL STORZ does not guarantee the performance of, and may decline to repair or accept for repair/Exchange, any Product that has been repaired, modified and/or altered by any person or entity other than KARL STORZ or a KARL STORZ authorized repair facility.
6. **SERVICE WARRANTY POLICY.** All repairs performed by KARL STORZ pursuant to this Agreement shall be free from defects in materials and workmanship for the remainder of the original Product warranty period (if any) or 90 days, whichever is longer. Notwithstanding the foregoing, in the event a Product is identified as end-of service, the warranty period shall end as set forth in Section 8 above. During the applicable warranty period and continuing thereafter for the life of the Product, KARL STORZ shall, upon request or consent by Customer, perform on-site inspections of the Products to ensure such Products are operating in accordance with specifications. Any Exchange products provided under this Agreement carry the applicable KARL STORZ new Product warranty. To submit a warranty claim, Customer must follow the RMA procedure set forth in the "Return Merchandise Authorization Process" above.

Damage which might arise or be caused, whether by Customer or by any of the users of the Products provided by KARL STORZ, as a result of, in connection with, or otherwise attributable to the following is excluded from all Product and service warranty coverage: (a) misuse, abuse, mishandling and/or improper operation and/or storage; (b) repairs, servicing, modifications and/or alterations performed by any person or entity other than KARL STORZ or an authorized repair facility of KARL STORZ; (c) use in combination with adaptors, accessories and/or equipment from other manufacturers unless authorized or recommended by KARL STORZ; (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 KARL STORZ. THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED AND/OR STATUTORY, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS AND/OR OF SUITABILITY FOR A PARTICULAR PURPOSE, WITH RESPECT TO ALL KARL STORZ PRODUCTS AND/OR SERVICES. ANY AND ALL OTHER WARRANTIES, REPRESENTATIONS AND/OR GUARANTEES, OF ANY TYPE, NATURE OR EXTENT, BE IT IMPLIED, EXPRESS AND/OR WHETHER ARISING UNDER OR AS A RESULT OF ANY STATUTE, LAW, COMMERCIAL USAGE, CUSTOM, TRADE OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED. Any contrary course of performance by and between the parties will not modify any representations and/or warranties set forth herein. 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 KARL STORZ Products or provision of services. To ensure proper use, handling and care of KARL STORZ Products, Customer should consult the Product specific literature, instruction manual and/or labeling included with the Product or otherwise available. Repairs, modifications or



alterations of KARL STORZ Products performed by any person or entity other than by 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 section.

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

8. **FORCE MAJEURE.** Except for the payment of any monetary sums required to be paid with respect to any KARL STORZ product or services that have been delivered or provided to Customer, neither party shall have any responsibility for, or liability with respect to, any failure or delay in the performance of any term or condition in this Agreement if such failure or delay in performance is due in whole or part to any event, occurrence or condition which is unforeseeable, unavoidable, or beyond either party's reasonable control, including, but not limited to: acts of god, flood, fire, strike, pandemic, acts of war or terrorism, or civil disorder; any order, decree, law or regulation of any court or governmental agency; any failure or delay in obtaining any government approvals; or any delay or failure on the part of carriers, suppliers or subcontractors.

9. **DISPUTES.** This Agreement and all transactions by and between Customer and KARL STORZ will be governed by and construed in accordance with the laws of the State where the Products or services are delivered or provided. The invalidity or unenforceability of any term of this Agreement will not affect the validity or enforceability of any other or remaining term or condition hereof. Any action arising under this agreement will be exclusively venued in the San Bernardino County Superior Court, San Bernardino District.

10. **LIMITATION OF LIABILITY.** Except by way of indemnity as provided in Section 12 herein, neither party is liable to the other party for any special, incidental, consequential, punitive, exemplary or indirect damages, from any cause whatsoever in connection with or arising from the purchase, sale, lease, rental, installation, performance or use of KARL STORZ Products or services, even if the party 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 AGREEMENT MAY NOT APPLY. IN THAT EVENT, THE PARTY'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW IN THE SUBJECT JURISDICTION.

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

12. **INDEMNIFICATION.** Provided that Customer provides prompt notice of any claim to KARL STORZ and that KARL STORZ shall, subject to the last sentence of this Section, control all aspects of any defense, KARL STORZ agrees to indemnify, defend (with counsel reasonably approved by Customer) and hold harmless the Customer and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability (collectively, "Claims") arising out of this Agreement (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 KARL STORZ, its officers, agents, employees and subcontractors, or (ii) a defect in any products provided



to Customer 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, trademark, or copyright by any product provided to Customer under the terms of this Agreement except where such indemnification is prohibited by law. Customer's failure to provide or delay in providing notice of a Claim under this Section will relieve KARL STORZ of its obligations only if and to the extent that such delay or failure materially prejudices KARL STORZ's ability to defend such lawsuit or Claim. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. KARL STORZ's indemnification obligation applies to the Customer's "active" as well as "passive" negligence but does not apply to the Customer's "sole negligence" or "willful misconduct" within the meaning of California Civil Code section 2782. This provision shall survive termination or expiration of the Agreement. Customer will give KARL STORZ sole control of the defense (with counsel reasonably acceptable to Customer) and settlement of such Claim; provided that KARL STORZ may not settle the Claim or suit absent the written consent of Customer unless such settlement (a) includes a release of all claims pending against Customer, (b) contains no admission of liability or wrongdoing by Customer, and (c) imposes no obligations upon Customer.

13. **INSURANCE.** KARL STORZ shall comply with the insurance requirements set forth on Exhibit C for the term of this Agreement.

14. **DEBARMENT AND SUSPENSION.** KARL STORZ 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, KARL STORZ represents and warrants that no proceedings or investigations are currently pending or to KARL STORZ's knowledge threatened by any federal or state agency seeking to exclude KARL STORZ from such programs or to sanction KARL STORZ for any violation of any rule or regulation of such programs.

15. **ASSIGNMENT.** KARL STORZ may not assign this Agreement or its rights or obligations hereunder without the express written consent of the Customer, which consent may be withheld, delayed or conditioned in the sole and absolute discretion of the Customer.

16. **LICENSES, PERMITS, AND/OR CERTIFICATIONS.** KARL STORZ shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules and regulations. KARL STORZ shall maintain these licenses, permits and/or certifications in effect for the duration of this Agreement. KARL STORZ will notify Customer immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of the Agreement.

17. **RELATIONSHIP OF THE PARTIES.** Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto. In the performance of this Agreement, KARL STORZ, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the Customer. Any provision of this Agreement that may appear to give the Customer any right to direct KARL STORZ concerning the details of performing the services/Scope of Work, or to exercise any control over such performance, shall mean only that KARL STORZ shall follow the direction of the Customer concerning the end results of the performance.

18. **LEGALITY AND SEVERABILITY.** The parties' actions under the Agreement shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Agreement are specifically made severable. If a provision of the Agreement is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

19. **CAMPAIGN CONTRIBUTION DISCLOSURES (SB1439).** KARL STORZ has disclosed to the Customer using Exhibit D - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the San Bernardino County ("County") Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the 12 months before the date this Agreement was approved by the Board of Supervisors. KARL STORZ acknowledges that under Government Code section 84308, KARL STORZ is prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Agreement.

In the event of a proposed amendment to this Agreement, KARL STORZ will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of KARL STORZ or by a parent, subsidiary or otherwise related business entity of KARL STORZ.

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**EXHIBIT C
INSURANCE REQUIREMENTS**

KARL STORZ agrees to provide insurance set forth in accordance with the requirements herein. If KARL STORZ uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, KARL STORZ agrees to amend, supplement or endorse the existing coverage to do so.

1. Without in anyway affecting any indemnity obligations provided and in addition thereto, KARL STORZ shall secure and maintain throughout the contract term 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 covering all persons including volunteers providing services on behalf of KARL STORZ and all risks to such persons under this contract. If KARL STORZ has no employees, it may certify or warrant to Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by Customer's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
 - b. Commercial/General Liability Insurance – KARL STORZ shall carry General Liability Insurance covering all operations performed by or on behalf of KARL STORZ providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - i. Premises operations and mobile equipment.
 - ii. Products and completed operations.
 - iii. Broad form property damage (including completed operations).
 - iv. Explosion, collapse and underground hazards.
 - v. Personal injury.
 - vi. Contractual liability.
 - vii. \$2,000,000 general aggregate limit.
 - c. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
2. **Additional Insured.** All policies, except for Worker's Compensation, shall contain additional endorsements naming Customer and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for Customer to vicarious liability but shall allow coverage for Customer to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
3. **Waiver of Subrogation Rights.** KARL STORZ shall require the carriers of required coverages to waive all rights of subrogation against Customer, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit KARL STORZ and KARL STORZ's employees or agents from waiving the right of subrogation prior to a loss or claim. KARL STORZ hereby waives all rights of subrogation against Customer.
4. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Customer.
5. **Severability of Interests.** KARL STORZ agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between KARL STORZ and Customer or between Customer and any other insured or additional insured under the policy.
6. **Proof of Coverage.** KARL STORZ shall furnish Certificates of Insurance to Arrowhead Regional Medical Center evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, and KARL STORZ shall maintain such insurance from the time KARL STORZ commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, KARL STORZ shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
7. **Acceptability of Insurance Carrier.** Unless otherwise approved by 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".
8. **Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.



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9. **Failure to Procure Coverage.** In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, Customer has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by Customer will be promptly reimbursed by KARL STORZ or Customer payments to KARL STORZ will be reduced to pay for Customer purchased insurance.
 10. **Insurance Review.** Insurance requirements 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. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against Customer, inflation, or any other item reasonably related to Customer's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. KARL STORZ agrees to execute any such amendment within thirty (30) days of receipt. 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.



EXHIBIT D
Campaign Contribution Disclosure
(SB 1439)

DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. All references to "Contractor" on this Exhibit refer to KARL STORZ. If a question does not apply respond N/A or Not Applicable.



1. Name of Contractor: KARL STORZ Endoscopy-America, Inc.

2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)? No

Yes If yes, skip Question Nos. 3-4 and go to Question No. 5 No

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision:

N/A

4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):

Karl Storz SE & Co. KG

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship
Karl Storz SE & Co. KG	parent

6. Name of agent(s) of Contractor: N/A

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and//or Agent(s):



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8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision: N/A

Company Name	Individual(s) Name

9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No If **no**, please skip Question No. 10.

Yes If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Agreement, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while award of this Agreement is being considered and for 12 months after a final decision by the County.