



Contract Number
24-934

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	Andrew Goldfrach
Telephone Number	(909) 580-6150
Contractor	Endologix LLC
Contractor Representative	Tracy Hill
Telephone Number	(949) 595-7278
Contract Term	September 24, 2024 through May 31, 2026
Original Contract Amount	NTE \$480,000
Amendment Amount	
Total Contract Amount	NTE \$480,000
Cost Center	
Grant Number (if applicable)	N/A

Briefly describe the general nature of the contract: Sales Pricing Agreement, including non-standard terms, with Endologix LLC for the provision of percutaneous arterial bypass graft and endovascular products in an amount not to exceed \$480,000 for the period of September 24, 2024 through May 31, 2026.

FOR COUNTY USE ONLY

Approved as to Legal Form

Charles Phan, Supervising Deputy County Counsel

Date 9/17/2024

Reviewed for Contract Compliance

Date

Reviewed/Approved by Department

Andrew Goldfrach, ARM/C Chief Executive Officer

Date 9/17/2024



Sales Pricing Agreement

This Sales Pricing Agreement (hereinafter referred to as "Agreement") for "Percutaneous Arterial Bypass Graft (PTAB) Products," and "AAA Endovascular Products," is made by and between **Endologix LLC**, a Delaware limited liability company located at 2 Musick, Irvine, CA, 92618 (hereinafter referred to as the "Company") and **San Bernardino County on behalf of Arrowhead Regional Medical Center**, located at 400 N. Pepper Avenue, CA 92324 (hereinafter referred to as "Buyer"). This Agreement becomes effective on the date of the last signature below will remain in effect through **May 31, 2026**, unless earlier terminated pursuant to the provisions of this Agreement. The Company and Buyer are collectively hereinafter referred to as the "Parties". The Parties hereby agree as follows:

1. Product pricing shall be as detailed in the attached Exhibit A for the term of this Agreement.
2. The Agreement terms & conditions shall be as detailed in Exhibit B.
3. The Insurance Requirements set forth on Attachment 1 apply for the term of this Agreement.

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 sign and transmit an electronic signature of 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.

AGREED TO AND ACCEPTED:

**San Bernardino County on behalf of
Arrowhead Regional Medical Center**

By:

Name:

Dawn Rowe

Title:

Chair, Board of Supervisors

Date:

SEP 24 2024

Endologix LLC

By:

Name:

Bonnie Kim

Title:

Director, Financial Planning &

Date:

08/02/2024

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

By


Deputy


EXHIBIT A – Products and Pricing

DETOUR™ SYSTEM MFG CATALOG NUMBER	PRODUCT DESCRIPTION	UOM	CAP PRICE (Per Case)
Case Price-DETOUR	DETOUR™ SYSTEM CAP FOR ANY NUMBER OF TORUS STENT GRAFTS AND ENDOCROSS DEVICE	EA	\$25,000.00
TSG-5.5X200	TORUS STENT GRAFT – 5.5MM X 200MM	EA	\$0.00
TSG-6.0X100	TORUS STENT GRAFT – 6.0MM X 100MM	EA	\$0.00
TSG-6.0X150	TORUS STENT GRAFT – 6.0MM X 150MM	EA	\$0.00
TSG-6.0X200	TORUS STENT GRAFT – 6.0MM X 200MM	EA	\$0.00
TSG-6.7X100	TORUS STENT GRAFT – 6.7MM X 100MM	EA	\$0.00
TSG-6.7X150	TORUS STENT GRAFT – 6.7MM X 150MM	EA	\$0.00
TSG-6.7X200	TORUS STENT GRAFT – 6.7MM X 200MM	EA	\$0.00
ENDOCROSS	ENDOCROSS Device	EA	\$0.00

ALTO™ ABDOMINAL STENT GRAFT SYSTEM

MFG CATALOG NUMBER	PRODUCT DESCRIPTION	UOM	CONTRACT PRICE
TV-AB2080-N	AORTIC BODY SYSTEM, ALTO, PMA, 20MM	EA	\$14,850
TV-AB2380-N	AORTIC BODY SYSTEM, ALTO, PMA, 23MM	EA	\$14,850
TV-AB2680-N	AORTIC BODY SYSTEM, ALTO, PMA, 26MM	EA	\$14,850
TV-AB2980-N	AORTIC BODY SYSTEM, ALTO, PMA, 29MM	EA	\$14,850
TV-AB3480-N	AORTIC BODY SYSTEM, ALTO, PMA, 34MM	EA	\$14,850
TV-IL141080-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-10-80	EA	\$6,050
TV-IL1410100-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-10-100	EA	\$6,050
TV-IL1410120-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-10-120	EA	\$6,050
TV-IL1410140-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-10-140	EA	\$6,050
TV-IL1410160-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-10-160	EA	\$6,050
TV-IL141280-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-12-80	EA	\$6,050
TV-IL1412100-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-12-100	EA	\$6,050

TV-IL1412120-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-12-120	EA	\$6,050
TV-IL1412140-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-12-140	EA	\$6,050
TV-IL1412160-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-12-160	EA	\$6,050
TV-IL141480-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-14-80	EA	\$6,050
TV-IL1414100-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-14-100	EA	\$6,050
TV-IL1414120-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-14-120	EA	\$6,050
TV-IL1414140-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-14-140	EA	\$6,050
TV-IL1414160-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-14-160	EA	\$6,050
TV-IL141680-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-16-80	EA	\$6,050
TV-IL1416100-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-16-100	EA	\$6,050
TV-IL1416120-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-16-120	EA	\$6,050
TV-IL1416140-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-16-140	EA	\$6,050
TV-IL1416160-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-16-160	EA	\$6,050
TV-IL141880-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-18-80	EA	\$6,050
TV-IL1418100-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-18-100	EA	\$6,050
TV-IL1418120-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-18-120	EA	\$6,050
TV-IL1418140-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-18-140	EA	\$6,050
TV-IL1418160-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-18-160	EA	\$6,050
TV-IL142280-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-22-80	EA	\$6,050
TV-IL1422100-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-22-100	EA	\$6,050
TV-IL1422120-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-22-120	EA	\$6,050
TV-IL1422140-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-22-140	EA	\$6,050
TV-IL1422160-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-22-160	EA	\$6,050
TV-IL142880-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-28-80	EA	\$6,050
TV-IL1428100-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-28-100	EA	\$6,050
TV-IL1428120-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-28-120	EA	\$6,050
TV-IL1428140-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-28-140	EA	\$6,050
TV-IL1428160-J	ILIAC LIMB SYSTEM, OVATION, iX, PMA, 14-28-160	EA	\$6,050
TV-EX101045-J	ILIAC EXT SYSTEM, OVATION iX, PMA, 10-10-45	EA	\$6,050
TV-EX121245-J	ILIAC EXT SYSTEM, OVATION iX, PMA, 12-12-45	EA	\$6,050
TV-EX141445-J	ILIAC EXT SYSTEM, OVATION iX, PMA, 14-14-45	EA	\$6,050
TV-EX161645-J	ILIAC EXT SYSTEM, OVATION iX, PMA, 16-16-45	EA	\$6,050
TV-EX181845-J	ILIAC EXT SYSTEM, OVATION iX, PMA, 18-18-45	EA	\$6,050
TV-EX222245-J	ILIAC EXT SYSTEM, OVATION iX, PMA, 22-22-45	EA	\$6,050
TV-EX282845-J	ILIAC EXT SYSTEM, OVATION iX, PMA, 28-28-45	EA	\$6,050
TV-CS14-G	CUSTOMSEAL KIT, US	EA	\$1,060
TV-AI01-N	AUTOINJECTOR 2, PMA	EA	\$550
DST0655507D2	DESTINO CATHETER (STEERABLE SHEATH, 55CM, 7MM CURVE)	EA	\$1,150

EXHIBIT B – Terms and Conditions

1. Terms and Conditions for the Sale of the Products: The Company shall furnish the Products to Buyer only on the terms and conditions ("T&C's") stated herein. Notwithstanding any other terms or conditions set forth on Buyer's order, the Company's sale of Products to Buyer is expressly made conditional on Buyer's agreement to the T&C's set forth in this Agreement, unless otherwise specifically agreed to in writing by the Company. Either Party may terminate this Agreement (i) at any time and for any reason or no reason by providing the other Party with not less than sixty (60) days' advance written notice or (ii) upon breach by the other Party, provided such breach continues uncured for thirty (30) days after receipt by the breaching Party of written notice of breach from the non-breaching Party. Buyer's ARMC Chief Executive Officer or its designee is authorized to terminate this Agreement on behalf of Buyer.

2. Product Delivery and Responsibility. For case usage, the Company's representatives may hand-carry Products into the facility, or the Company may ship the Products directly to Buyer for brief storage until used in the case upon request by Buyer. Company may also enter into a separate Consignment Agreement with the Buyer to store Product at its site longer-term for convenience of usage/emergent cases. All such carry-in Products will remain the property of the Company for the duration of this Agreement until title passes to the Buyer as indicated herein. All sales shall be made in accordance with the terms of this Agreement. Title for carry-in Products shall pass and Buyer shall become obligated to pay the Company: (1) when a Product is used, (2) in the event a Product is damaged (due to improper handling, storage or otherwise), (3) in the event that Product packaging is altered or modified or (4) in the event that any Product is missing or unaccounted for. The price for each Product shall be at the price set forth on Exhibit A. Based on written notification of product usage (i.e., a Product Use Report) by Buyer, the Company shall invoice Buyer for such product. Buyer will send to the Company via email, facsimile or first-class mail, an Endologix *Device Tracking Form* within twenty-four (24) hours after Product usage. Buyer agrees to use commercially reasonable efforts to expedite the return of unused Product to Company as soon as possible. All such Products shall be handled and stored in accordance with applicable guidelines, including the instructions for use for such items.

3. Prices: Buyer shall pay the Company for the Products according to the Company's prices set forth in Exhibit A. The prices set forth in Exhibit A are exclusive of all applicable taxes, which will be charged to Buyer, and Buyer agrees to pay all such taxes unless Buyer provides a valid tax exemption certificate prior to execution of this Agreement certifying that Buyer is a tax-exempt organization under Sections 501(1) and 501(c)(3) of the Internal Revenue Code of the United States, as amended, or under other applicable laws or regulations. If the Company is required to pay additional taxes applicable to Buyer, Buyer shall promptly reimburse the Company for all such taxes within sixty (60) days of receipt of an invoice for such taxes. Each Party represents and warrants that the pricing in Exhibit A represents the fair market value of the Products. The Parties further agree that all pricing in Exhibit A has been negotiated at arm's-length and has not been determined in any manner with regard to any implicit or explicit agreement to provide favorable procurement decisions with regard to the Company's Products or to the value or volume of any business or referrals generated between the Parties.

4. Discounts. The Parties agree that the discounted pricing provided by the Company under this Agreement may constitute a "discount or other reduction in price" under Section 1128B(b)(3)(A) of the Social Security Act, 42 U.S.C. §1320a-7b(b)(3)(A). Buyer is responsible for reporting and/or providing accurate information on all claims for reimbursement, including any and all discounts or price reductions, to reimbursing agencies (including Medicare and Medicaid) and other entities in accordance with all applicable laws and regulations, including, without limitation, 42 C.F.R. §1001.952(h). The Company shall refrain from taking any actions that will impede Buyer from meeting its obligations under 42 C.F.R. §1001.952. In the event that any Products sold pursuant to this Agreement are sold at a discount, the Company shall fully and accurately report such discount on the invoice, coupon or statement submitted to Buyer and provide all information and documents reasonably requested by Buyer to enable Buyer to comply with its reporting obligations. If the value of the discount is not known at the time of the sale, the Company shall fully and accurately disclose the existence of a discount program on the invoice, coupon or statement and, when the value of the discount becomes known, provide Buyer with documentation of the calculation of the discount identifying the specific goods or services purchased to which the discount will or has been applied.

5. Terms of Payment: Buyer will provide a bill-only purchase order for any carry-in Product within forty-eight (48) hours of completion of the procedure. Payment is due net thirty (30) days from the date of the Company's invoice. Except as otherwise specified in this Agreement, in no event shall Buyer set off any payment due in connection with this transaction with any claim or an amount owed by the Company to Buyer in connection with this or any other transaction.

6. Direct Sales to Buyer. From time to time, Buyer may purchase Product prior to case usage, based upon receipt of a PO from the Buyer. The Company is responsible for all shipping, handling, and insurance costs for delivery of such purchased Product. Unless previously agreed to by the Company, the Company shall ship the Products in the Company's standard packaging, using a two (2) day delivery service. The Company reserves the right to ship items in a single shipment or in multiple shipments. Except as provided in Section 2 for Products stored in Buyer's facility as consignment Products, the property in or title to, and the risk of loss of, Products purchased under this Agreement shall transfer to Buyer when such Products are delivered to Buyer (e.g., FOB Destination).

7. Delivery: Delivery schedules for the Products are subject to the Company's then-current lead times and Product availability. The Company will make reasonable efforts to meet delivery dates quoted or acknowledged, but in no event will the Company be liable for

failure to meet any such date(s). The Company shall have the right to deliver the Products prior to any agreed upon delivery date. Delay in delivery or default of any installment shall not relieve Buyer of its obligation to accept and pay for remaining installments.

8. Acceptance: For direct sales, Buyer will have the right to visually inspect the Products upon delivery by the Company. Buyer shall have the right to reject each shipment within ten (10) calendar days of delivery if the Product is damaged or if the Product type or quantity does not conform to the purchase order. All Products shall be deemed accepted by Buyer, unless Buyer provides the Company with notice of receipt of damaged Products, and Buyer's rejection specifies the specific nature of the damage, within ten (10) calendar days of delivery of the Products, by calling the Company's Customer Service department at 1-800-983-2284 to obtain a Return Goods Authorization ("RGA") number, unless the damage cannot be reasonably discovered upon a reasonable inspection of the Product upon delivery. Returned items must be in the original shipping cartons and must be accompanied by the RGA number. Exchanges may only be made for Products in the same class and price as the originally purchased Products and may not be made for new, unrelated Products.

9. Cancellation: Acceptance by the Company of Buyer's purchase order will give rise to a binding contract between the parties which, except as otherwise specifically provided herein, may not be canceled or modified by either Party without the consent in writing of the other Party. In the event Buyer fails to accept the Products ordered or advises the Company of its intention not to accept deliveries, Buyer shall be liable for the Company's cancellation charges, which shall not exceed the purchase price of the undelivered materials. Notwithstanding the foregoing, in the event that Company is unable to deliver any Products requested by Buyer within the delivery dates quoted or acknowledged, Buyer may cancel or modify any such order without incurring any cancellation charges.

10. No Product Returns: Other than as provided in Section 2 (Product Delivery and Responsibility) for returns after cases where Products were brought in or shipped to the Buyer, no Products may be returned or exchanged without the prior written authorization of the Company, which it may withhold in its reasonable discretion.

11. Use of the Products: The Products shall only be for use by a trained physician or a physician who is being trained pursuant to the Endologix training program. The Products include the medical device itself, the immediate packaging and all labeling inclusive of the instructions for proper handling, storage, use and all precautions and warnings.

12. Product Changes; New and Discontinued Products: The Company reserves the right at any time, in its sole election and without notice, to make changes in design or additions to or improvements in its existing Products without liability or obligation to install such change, addition, or improvement in any Product manufactured prior thereto. If, during the term of this Agreement, the Company markets any new Products after the effective date of this Agreement, then the Company may, in its sole election, make such new Products available to Buyer under the terms of this Agreement, upon mutual written agreement of the parties and with mutually negotiated pricing. The Company reserves the right, in its sole election, to discontinue or withdraw any Products without notice.

13. Intellectual Property Infringement: The Company will defend or settle, at its own expense, any suit or action that may be brought against Buyer for alleged infringement of any U.S. patents or other intellectual property of third parties by reason of Buyer's proper use of the Products and will indemnify and hold Buyer harmless from and against all damages and costs which may be adjudged or decreed against Buyer on account of such infringement in any such suit or action and actually paid by Buyer; provided, however, that Buyer shall have given prompt written notice to the Company of any claim of such alleged infringement and of the commencement, or any written threat of commencement, of any such suit or action, and shall permit the Company to have full control over the defense or settlement of the same; and provided further, that (1) Buyer shall not settle or compromise any such suit or action without the prior written consent of the Company, and (2) Company shall not settle any such suit or action without the written consent of Buyer unless such settlement (a) includes a release of all claims pending against Buyer, (b) contains no admission of liability or wrongdoing by Buyer, and (c) imposes no obligations upon Buyer other than an obligation to stop using the Products that are the subject of the claim. Notwithstanding anything in the foregoing, Buyer's failure to provide or delay in providing such notice will relieve Company of its obligations only if and to the extent that such delay or failure materially prejudices Company's ability to defend such action, lawsuit, or claim. In the event that Company fails to or elects not to defend Buyer against any claim for which Buyer is entitled to a defense or indemnity by Company, then Company shall reimburse Buyer for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from Buyer.

If, in Company's opinion, any Products become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Company may, at its option: (i) procure for Buyer 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 Company, Buyer shall cease use of the Products upon written notice from Company, and, once the Products have been returned by Buyer, at Company's expense, Company shall refund the actual amounts paid by Buyer for such Products.

The remedies set forth in this paragraph shall constitute Buyer's sole and exclusive remedy and the Company's sole liability in connection with alleged infringement of any third-party intellectual property rights.

14. Limited Warranty: The Company warrants to Buyer that the Products will be free from defects in materials and workmanship under normal conditions of use until the expiration date indicated on the Product. No person has the authority to bind the Company to any representation or warranty, and there are no warranties that extend beyond these T&Cs. The conditions of handling, storage and use of

the Products are factors beyond the control of the Company and may affect the Products and the results obtained from the Products. Buyer assumes responsibility for any consequences that may arise from the final use of Products not handled, stored or used in accordance with the Company's guidelines. Products that do not conform to the description, or which are defective in material or workmanship, will be replaced or, at the Company's sole option, credit for the original purchase price of such Products will be issued, provided the Company is notified of such defect promptly after delivery, and Buyer returns such Products in accordance with the Company's instructions. The foregoing constitutes Buyer's sole remedy, and the Company's sole obligation, with respect to breach of this express limited warranty for the Products furnished hereunder. It is Buyer's responsibility to check the Products upon receipt before putting into process. This warranty does not cover damage caused by use of the Product for any purpose for which it was not designed, damage caused by unauthorized modifications, damage during storage, or any other abuse or misuse by Buyer.

15. Limitation of Liability: THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO CASE SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES BASED UPON BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY. SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF SAVING OR REVENUE, COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, AND/OR DOWN-TIME. EXCEPT CLAIMS BASED ON INDEMNIFICATION, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, GROSS NEGLIGENCE, WILFUL MISCONDUCT, OR VIOLATIONS OF LAW, IN NO EVENT SHALL THE AMOUNT OF A CLAIM EXCEED THE PURCHASE PRICE PAID UNDER THE PARTICULAR PURCHASE ORDER. THESE TERMS MAY NOT BE ALTERED, AMENDED, REPLACED, SUBSTITUTED OR RESCINDED BY ANY EMPLOYEE, AGENT, INDEPENDENT CONTRACTOR OR CONSULTANT OF THE COMPANY, AND ANY SUCH ALTERATION, AMENDMENT, REPLACEMENT, SUBSTITUTION OR RESCISSION SHALL NOT BE BINDING UPON THE COMPANY OR ITS AFFILIATES.

16. Indemnity: The Company shall indemnify and hold harmless Buyer from any and all claims, lawsuits, damages, losses or expenses (collectively, "Claims") that are caused by or arise out of the use of the Products that are solely and directly caused by (1) any alleged defect(s) in any Products provided under this Agreement, or (2) by the negligent acts or omissions or intentional misconduct of Company, its employees, and its agents. Company's indemnity obligation shall not extend to any Claims that are proximately caused by the negligence of Buyer or Buyer's agents, employees, or subcontractor in the handling, storage or use of the Products or in a manner inconsistent with the Company's guidelines, including the instructions for use for such Product. The Company shall not be subject to any liability, whether based in contract, warranty, tort (including negligence and strict liability) or otherwise, arising out of assistance or advice provided by the Company which is not expressly provided for in this Agreement.

17. Compliance with Laws, Rules and Regulations: Each Party shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including the Health Insurance Portability and Accountability Act of 1996 (as the same has been or may be amended, "HIPAA"), and each Party represents and warrants that it shall have obtained all licenses and permits required by law to engage in the activities necessary to perform its obligations under this Agreement. In the course of performing its obligations under this Contract, the Company or its representatives may be provided with access to "protected health information" ("PHI") as defined by HIPAA. The Parties acknowledge that Buyer may disclose PHI to the Company or its representatives pursuant to HIPAA exceptions for (1) public health purposes related to quality, safety, or effectiveness of an FDA-regulated product and (2) for purposes of providing medical treatment to a patient. The Company and Buyer acknowledge that the terms of any Business Associate Agreement shall only apply to the extent that the Company meets the definition of a Business Associate as set forth in HIPAA. It is the Company's position that it does not meet the definition of a Business Associate for the reasons set forth above. Notwithstanding the foregoing, if the Company does not meet the definition of a Business Associate, it will maintain any patient information in strict confidence in accordance with current industry standards. Whenever providing Products pursuant to this Agreement on Buyer's premises, the Company, its employees and agents shall comply with and observe all of Buyer's rules and regulations that are provided to the Company concerning conduct on Buyer's premises. By acceptance of the Company's Products, Buyer acknowledges that United States federal law requires that all Abdominal Aneurysm Stent Grafts be tracked according to 21 CFR 821 and that patient disclosure information is covered under Section 164.512(b)(1)(iii) of the HIPAA Privacy Rule. Buyer shall deliver, via facsimile or overnight mail, an Endologix – Device Tracking Form within 24 hours after the use of such Product by Buyer.

18. Federal Program Eligibility: Each Party represents and warrants to the other that: (a) neither it nor any of its affiliates are excluded from participation under any federal health care program, as defined under 42 U.S.C. §1320a-7b(f), or state health care program, for the provision of items or services for which payment may be made under a federal or state health care program; (b) neither Party has arranged or contracted (by employment or otherwise) with any employee, contractor or agent that it or its affiliates know or should know are excluded from participation in any federal or state health care program; and (c) no final adverse action, as such term is defined under 42 U.S.C. §1320a-7e(g), has occurred or is pending against it or its affiliates or, to its knowledge, against any employee, contractor or agent engaged to provide items or services under this Agreement. Each Party shall notify the other Party of any exclusion/adverse actions or any basis therefore within seven (7) days of its learning of any such exclusion/adverse action or any basis therefore. Ineligibility to participate in any federal or state health care program is grounds for immediate termination of this Agreement at the other Party's sole discretion.

19. No Physician Ownership: The Company hereby expressly represents and warrants that no physician, no physician organization and no member of a physician's immediate family owns or holds an ownership or financial interest in the Company, including any affiliated or related entity or person, that is not the subject of an exception or "safe harbor" under applicable law, such as the exception for publicly-traded securities under 42 CFR 411.356(a).

20. Force Majeure: The Company shall not be liable for delays in the performance of any purchase order arising out of causes beyond the control and without the fault or negligence of the Company. Causes beyond the Company's control shall include, but not be limited to, government action or failure of the government to act where such action is required, war, acts of terrorism, strike or other labor trouble, fire, regional or global disease outbreak or other public health crisis or unusually severe weather.

21. Bankruptcy/Insolvency: In the event Buyer (i) fails to fulfill previous terms of payment, (ii) files for bankruptcy or is granted a delay in payment to creditors or (iii) in case the Company shall have any reasonable doubt at any time as to Buyer's financial responsibility, the Company may decline to make further deliveries except upon receipt of cash or other special arrangements agreed to by the parties.

22. Confidential Information: The information and material contained herein (including the Company's pricing and discounts) is submitted in confidence and with the condition that it will not be copied or otherwise reproduced and will not be used or disclosed to anyone outside Buyer's company except where disclosure is required by law or as authorized in writing by the Company. Buyer acknowledges that by reason of its agreements with the Company hereunder, it will have access to certain information and materials concerning the Company's Products that are confidential and of substantial value to the Company, which value would be impaired if such information were disclosed to third parties. Buyer agrees that it will not use in any way for its own account or the account of any third party, nor disclose to any third party, any such confidential information revealed to it by the Company, except for disclosures to its officers, agents and third-party contractors who have a specific need to know such information, and who are bound by confidentiality obligations, or where disclosure is required by law. The parties agree that monetary damages would not be a sufficient remedy for any breach of this provision by Buyer and that the Company shall be entitled to equitable relief, including injunction and specific performance, as a remedy for any such breach. Such remedies shall not be exclusive but shall be in addition to all other remedies available at law or in equity. Notwithstanding anything the foregoing, Company understands that Buyer is a public entity subject to, among other laws, decisions, rules and statutes, the Ralph M. Brown Act, the California Public Records Act, and the Sunshine Ordinance in its County Code and Company understands that this Agreement may be made public as part of the approval process required under California law and that no further consent to Company is required for such disclosure, provided that such disclosure is strictly limited to that required by applicable law.

23. Governing Law: The validity, interpretation, construction and performance of these terms and conditions shall be governed and construed in accordance with the laws of the State of California, except its conflict of laws rules. Any action arising hereunder shall be venued in the state or federal courts of California.

24. Dispute Resolution: In the event of a controversy, dispute or question arising out of or in connection with this Agreement, or the interpretation, performance or non-performance of this Agreement or any breach hereof, the Parties agree that they shall meet and confer at a mutually agreeable time within 10 (ten) calendar days after such controversy, dispute or question is identified in order to attempt to resolve such controversy, dispute or question.

25. Assignment and Binding Effect: Except as otherwise provided in this Agreement, neither Party may, directly or indirectly, assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party; provided however, that the Company may assign this Agreement in connection with the sale or transfer of the business or assets to which it relates upon notice to Buyer and so long as the assignee is not a business with whom Buyer is legally prohibited from doing business. Any assignment to the contrary is null and void. No permitted assignment of rights or delegation of duties under this Agreement shall relieve the assigning or delegating Party of its liabilities hereunder. This Agreement is binding upon, and inures to the benefit of, the Parties and their respective successors and permitted assigns.

26. Partial Invalidity: If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall remain in full force and effect. The Parties agree to renegotiate in good faith any term held invalid and to be bound by the mutually agreed substitute provision in order to give the most approximate effect intended by the Parties.

27. No Waiver; Amendment: No waiver of any term or condition of this Agreement shall be valid or binding on any Party unless agreed to in writing by the Party to be charged. The failure of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of either Party to enforce each and every such provision thereafter. This Agreement may not be amended or modified except by the written agreement of the Parties.

28. Insurance: Company shall comply with the insurance requirements set forth on Attachment 1 for the term of this Agreement. Buyer is a California authorized self-insured public entity for purposes of general liability and professional liability and warrants that through its programs of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions, or obligations under this Agreement.

29. 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.

32. Entire Agreement: This Agreement, including Exhibit A, Exhibit B, Attachment 1 and Attachment 2, sets forth the entire agreement and understanding of the Parties relating to the subject matter hereof and supersedes all prior oral and written, and all contemporary oral, negotiations, agreements and understandings with respect to the same, and constitutes the entire contract of sale and purchase of the Products. In the event of any conflict of the terms of a purchase order and the terms and conditions set forth in this Agreement, the terms and conditions set forth in this Agreement shall prevail.

33. Campaign Contribution Disclosure (SB1439): Company has disclosed to the Buyer using Attachment 2 - 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. Company acknowledges that under Government Code section 84308, Company 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, the Company 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 the Company or by a parent, subsidiary or otherwise related business entity of Company.

ATTACHMENT 1

INSURANCE REQUIREMENTS

Company agrees to maintain insurance set forth in accordance with the requirements herein

1. Without in anyway affecting any indemnity obligations provided and in addition thereto, Company 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 covering all persons providing services on behalf of such party and all risks to such persons under this Agreement
 - b. Commercial/General Liability Insurance – Company shall carry General Liability Insurance covering all of its operations 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
 - c. Automobile Liability Insurance – Company owns no autos, so a non-owned auto endorsement to the General Liability policy described above is acceptable for Company to satisfy this obligation.
 - d. 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 Buyer 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 Buyer to vicarious liability but shall allow coverage for Buyer 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.** Company shall require the carriers of required coverages to waive all rights of subrogation against Buyer, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Company and Company's employees or agents from waiving the right of subrogation prior to a loss or claim. Company hereby waives all rights of subrogation against Buyer.
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 Buyer.
5. **Proof of Coverage.** Company shall furnish Certificates of Insurance to Buyer evidencing the insurance coverage upon request.

ATTACHMENT 2



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 Attachment apply to Company. If a question does not apply respond N/A or Not Applicable.

Name of Contractor: Endologix LLC

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

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

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: Matthew Thompson

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):

Deerfield Partners, L.P.
Deerfield Private Design Fund III, L.P.
Deerfield Private Design Fund IV, L.P.

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

Company Name	Relationship
Endologix Holdings, LLC	Parent of Endologix LLC
Deerfield Partners L.P.	Parent of Endologix Holdings, LLC

Name of agent(s) of Contractor:

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

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):
n/a		

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:

Company Name	Individual(s) Name

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.

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.