

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



Contract Number

21-903

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	William L. Gilbert
Telephone Number	(909) 580-6150
Contractor	Karl Storz Endoscopy-America Inc.
Contractor Representative	Shawn Swanson
Telephone Number	424-218-6526
Contract Term	January 1, 2022- December 31, 2024
Original Contract Amount	NTE \$194,805
Amendment Amount	
Total Contract Amount	NTE \$194,805
Cost Center	7450

Briefly describe the general nature of the contract: Service Agreement with Karl Storz Endoscopy-America Inc. for the service of intubation scopes in the amount not to exceed \$194,805 for the period of January 1, 2022 through December 31, 2024.

FOR COUNTY USE ONLY

Approved as to Legal Form

Charles Phan, Deputy County Counsel

Date 10/7/2021

Reviewed for Contract Compliance

Date

Reviewed/Approved by Department

William L. Gilbert, Director

Date 10/12/21



KARL STORZ
Endoscopy-America, Inc.

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

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

Protection1® FLEXPack Service Agreement

Sold To Customer Name:	San Bernardino County on behalf of Arrowhead Regional Medical Center		
Sold To/Bill To Address:	400 N Pepper Ave Colton, CA 92324-1801	Sold To #:	103916
Attn (Facility Contact Name):	Luis Pesantes	Agreement Request #:	R510015126
Email:	pesantesle@armc.sbcounty.gov	Agreement #:	
Phone #:	909-580-2465	Effective Date:	January 1, 2022
Year 1 Additional Exchange Price:	\$ 4,995.00	Service Term (months):	36
Annual Service Billing:	\$64,935.00	Annual Total Exchange #	13
Monthly Service Billing:	\$ 5,411.25	Offer Date:	August 23, 2021

KARL STORZ Endoscopy-America, Inc. ("KARL STORZ") and Customer (identified above) hereby enter into this Protection1® FLEXPack Service Agreement ("Agreement") for the exchange needs of the KARL STORZ-branded endoscopy products supplied by KARL STORZ ("Products") listed on Exhibit A ("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.

1. **KARL STORZ Obligations.**

- Provide labor and replacement parts, as necessary, to return the Covered Products listed on Exhibit A to normal operating condition, provided that such service is necessitated by (i) the failure of or (ii) accidental damage to the Product during normal usage for its intended purpose and such failure is not otherwise excluded from coverage. All replaced parts shall become the property of KARL STORZ.
- Annual Total Exchange#.** The number of exchanges shall be referred to as the "Annual Total Exchange#". Any unused exchanges during a contract year will roll over to the following contract year until the expiration of the Service Term. Upon expiration of the Service Term, any unused exchanges will be deemed null and void.
- Additional Exchange Request.** Customer may request to increase its Annual Total Exchange# by purchasing additional exchanges ("Additional Exchange(s)"), using the process identified below. Should Customer elect to increase its Annual Total Exchange#, the modified/increased total shall apply to all subsequent years, if any.
 - Customer shall notify KARL STORZ of its desire to increase the Annual Total Exchange# and both parties shall mutually agree to the number of Additional Exchange(s) to be purchased. Customer shall be required to purchase a minimum number of Additional Exchanges; this minimum number is generally based upon Customer's repair history.
 - KARL STORZ shall then take the total price of the Additional Exchanges purchased by Customer, evenly divide it across the remaining months of the Service Term, and add it to the Monthly Billing. For each Additional Exchange purchased during Year 1, the price will be the Year 1 Additional Exchange Price provided in the table above. The Additional Exchange price for all subsequent years shall be provided near the time of purchase and the same formula will be applied.
- Default Additional Exchange Price.** Should Customer exceed its Annual Total Exchange# or fail to execute an amendment memorializing the purchase of Additional Exchanges, Customer shall automatically default to its applicable Protection1® Service Program price for each additional exchange in excess of the Annual Total Exchange# until the start of the subsequent contract year unless otherwise agreed to in writing by both parties; whichever occurs earlier.
- Provide technology updates, as designated by KARL STORZ, at the time of exchange.
- Upon request, and if available, provide a Damage Evaluation Report for each Covered Product exchanged.
- 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 is 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 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, caps, screws, mats, rubber tips, disposables, batteries, cleaning items, plugs, bottles, wrenches, hoses, bulbs and tubing.

3. **Customer Obligations.**

- 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. As additional invoices may result in accordance with this Agreement, Customer shall provide additional funds to its original P.O. to cover such incremental services.

- (b) Utilize KARL STORZ to provide repair/exchange service for the Products listed on Exhibit A.
 - (c) Submit all Products to KARL STORZ in a high-level disinfected or sterilized condition.
 - (d) Obtain a Return Material Authorization (RMA) number from KARL STORZ as detailed in Exhibit B prior to submitting any Products to KARL STORZ for exchange.
 - (e) Submit all damaged Products to be exchanged to KARL STORZ within ten (10) business days after issuance of a RMA number. If the damaged Product is not returned within thirty (30) days of receipt of the replacement Product, Customer will be invoiced for the list price of the replacement less any applicable discounts.
4. **Billing.** KARL STORZ shall invoice Customer for the total Monthly Service 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 term of this Agreement. KARL STORZ shall reference the Customer's P.O. on all invoices.
 - (a) In addition to the Monthly Service Billing invoice, as mentioned in Section 1(c) above, KARL STORZ shall invoice the Customer as follows:
 - (i) For any applicable Additional Exchanges; and
 - (ii) For any applicable additional exchanges(s) performed under this Agreement in excess of the agreed upon Annual Total Exchange#.
5. **Term; Termination.**
 - (a) Offer Expiration Date. Unless otherwise agreed to, the offer contained in this Agreement will automatically expire at the close of KARL STORZ business on December 21, 2021 ("Offer Expiration Date"). Customer shall indicate his/her acceptance of this Agreement by providing his/her signature and related P.O. prior to the Offer Expiration Date.
 - (b) Term. Contingent upon KARL STORZ's receipt of this Agreement, signed by the Customer, and related P.O. by the Offer Expiration Date, the term of this Agreement ("Service Term") will commence January 1, 2022 ("Effective Date"). The Service Term shall continue for the period set forth above.
 - (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.
 - (iii) Remaining Obligation Amount. In any event of early termination for any reason (excluding default by KARL STORZ), Customer agrees to pay within thirty (30) days of termination any outstanding amounts due under the Agreement up to the date of termination in addition to the ("Remaining Obligation Amount"). Any resulting credit shall not be provided to Customer. The Remaining Obligation Amount shall be calculated in accordance with the following formula:

$$\text{Remaining Obligation Amount} = \left(\frac{\text{Total Exchanges Used}}{\text{Total Exchanges}} \right) \times \text{Total Service Term Charge} - \text{Total amount invoiced to date}$$
6. **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: Hospital Director

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

7. **End-of-Service-Life.** In the event KARL STORZ designates any Covered Product as being end-of-service-life or support, KARL STORZ shall provide Customer an amendment addressing the removal of such Covered Product and any resulting price adjustments.

8. **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. The parties may amend this Agreement only in a written document signed by both parties. 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.
9. **Signatures.** 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 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	
Authorized Agent:	Sara Thomas	Authorized Agent (Print Name):	Curt Hagman
Title:	Executive Director, Analytics & Contract Operations	Title:	Chairman, Board of Super
Email:	Sara.Thomas@karlstorz.com	Email:	
Signature:		Signature:	
Date:	October 8, 2021	Date:	DEC 0 / 2021

Electronic Submission:

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

OR

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

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





SCHEDULE 1

MEMBERS

Ship-To	Ship-To Name	Address	City	State	Zip
304251	Arrowhead Regional Medical Center	Sterile Processing Department 400 N Pepper Ave	Colton	CA	92324-1801

EXHIBIT A

COVERED PRODUCTS

Description	Annual Total Exchange#
Video Flexible Intubation Scopes	13

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 Products subject to this Agreement, 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 date of invoice. 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 at least 30 days prior written notice to Customer of such change in payment terms. Any and all collection expenses, including reasonable attorneys' fees, incurred by KARL STORZ to secure payment of any sums due from Customer and/or to effectuate repossession of Products purchased from KARL STORZ but not paid for will be borne by Customer. 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. 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. **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. Any action arising under this Agreement will be exclusively venued in the San Bernardino County Superior Court, San Bernardino District. 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.

9. **LIMITATION OF LIABILITY.** Except as provided in the second paragraph of this Section 9, neither party will be liable to the other 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 parties have 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 PARTIES' LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW IN THE SUBJECT JURISDICTION.

NOTWITHSTANDING THE FOREGOING LIMITATIONS OF LIABILITY, NO SUCH LIMITATIONS OF LIABILITY SHALL SERVE TO LIMIT KARL STORZ'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 11.

10. **COMPLIANCE WITH LAWS; DISCOUNT EXCEPTION AND SAFE HARBOR.** Customer and KARL STORZ 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.

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

12. **INSURANCE.** KARL STORZ shall maintain the following insurance coverage at the following minimum limits for the term of the Agreement:

- Workers' Compensation/Employer's Liability –Workers' Compensation insurance as required by statute.
- Commercial General Liability Insurance – Commercial 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: Products and completed operations, Broad form property damage (including completed operations), Personal injury, Contractual liability, and two million dollars (\$2,000,000) general aggregate limit.
- Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.
- Policy limits may be satisfied through a combination of primary and excess liability coverage.

All policies, except for Worker's Compensation, shall contain additional endorsements naming Customer as an additional named insured with respect to liabilities arising out of this Agreement. When applicable, and when requested by Customer, evidencing proof of the foregoing coverage shall be furnished to Customer.

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the Customer.

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.

Unless otherwise approved by Customer's Department of 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".

13. **DEBARMENT AND SUSPENSION**. KARL STORZ represents and warrants, to the best of its knowledge, 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.

14. **ASSIGNMENT**. Neither party may assign this Agreement or its rights or obligations hereunder without the express written consent of the other party. Neither party shall unreasonably withhold its consent to any requested assignment. KARL STORZ may designate one or more of its affiliates to perform some of its duties or undertakings under this Agreement without the necessity of obtaining prior consent of the Customer so long as KARL STORZ remains responsible to Customer for the actions and omissions of such affiliates in the performance of any of the services under this Agreement.

15. **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.

16. **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.