



**OFFICE OF MANAGEMENT AND BUDGET**  
**Division of Procurement**

**Non-Competitive Purchase / Contract Request Form**

Department	Emergency Services	Department Contact	Chris Lokits
Contact Email	christopher.lokits@louisvilleky.gov	Contact Phone	502-574-4246

Professional Services are services that require specialized skills, knowledge, and expertise, often provided by individuals or firms with professional qualifications.  
 Sole Source is when goods or services being procured are unique, specialized, or proprietary in nature, and there are no comparable alternatives available in the market.

Request Date **4/24/24** Contract Type: Professional Service  Sole Source (Goods/Services)   
 Requested Contract Term: Start **4/24/24** End **6/30/25** One-time purchase

Title of goods or service to be acquired: **Service/repair or replacement of C-MAC Blades**

**CONTRACT SCOPE and PURPOSE (Attach additional documentation if necessary)**

Be specific about the work to be performed or product to be purchased including but not limited to scope of work; description of service and work product created.

Provide labor and replacement parts, as necessary, to return the Covered Products listed 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. Subject to the availability of product, KARL STORZ may provide Customer with loaner product while repairs and exchanges are being made.

In addition to, or instead of the services set forth in subsection 1(a) above, for the Covered Products, KARL STORZ shall provide a limited 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 consist of the same Covered Product (by model/material number) or the closest available KARL STORZ product, as

**SUPPLIER INFORMATION**

Supplier Legal Name	Karl Storz Endoscopy Inc.				
DBA	Karl Storz Endoscopy Inc.				
Point of Contact	Sara Thomas	Email	servicecontractoperations@karlstorz.com		
Street	2151 E Grand Ave.				
Suite/Floor/Apt		Phone	1-800-421-0837		
City	El Segundo	State	CA	Zip Code	90245-5017
Federal Tax ID#		SSN# (If sole proprietor)			
Louisville Metro Revenue Commission Account #					
Louisville Human Relations Commission Certified Business	<input type="checkbox"/> Minority	<input type="checkbox"/> Disabled			
	<input type="checkbox"/> Woman	<input type="checkbox"/> LGBT			

**FINANCIAL INFORMATION**

Not to Exceed Contract Amount	\$144,750.00	(Including reimbursement expenses, if applicable)			
Spend Category:	Medical Equipment (Non-Capital)				
Fund:	1101 General	Cost Center:	362 Supply		
Program:		Project:			
Grant:		Other Worktags:			
Payment Rate		per hour		per day	Other - describe below
		per month		per service	
Payment Frequency		Monthly	X	Upon Completion / Delivery	
		Quarterly		Other	



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**JUSTIFICATION FOR NON-COMPETITIVE PURCHASE / CONTRACT** (Attach additional documentation if necessary)

**Technical Justification** - Explain why the requested goods or services can only be provided by the selected supplier. Include any technical specifications, unique features, or specialized expertise that make the supplier the only viable option.

Karl Storz is the sole maker of the C-MAC device. They do not sell parts to any third party service providers. There are no authorized service providers who can service the Karl Storz line of products. This is due to the rigorous standards Karl Storz maintains as well as requirements by the FDA for servicing medical devices and standards to return the device to peak performance when service is performed. Karl Storz is the manufacturer and service provider of its products making it the sole provider of service.

**Operational Necessity** - Describe how the requested goods or services are critical to the operation. Explain any potential disruptions or negative impacts that could arise from using an alternative supplier.

During the COVID-19 pandemic, Louisville Metro EMS was able to acquire the C-MAC video laryngoscope to better protect the Paramedic when providing advanced airway management with intubation for our patients. This device continues to allow the provider to further distance themselves from the patients airway and minimize their exposure to airborne and droplet exposures from patients whom may have an infectious disease. Additionally, since the pandemic, these devices have become the standard of care for intubation and are an expectation of the tools within the pre-hospital providers arsenal. The device allows a safer environment for the provider and increases success and improved outcomes for this highly litigious procedure.

**Market Research** - Provide the results of the market research conducted to determine if alternative suppliers are available. Include a summary of the research process, the suppliers considered, and the reasons why these alternatives were deemed unsuitable.

There are no other vendors or service suppliers who are able to service these devices. We currently have the devices, and to switch to another device would be very costly. This is for service/replacement for the equipment we currently have and is not a new equipment purchase.

**Cost Considerations** - Where it is reasonable to do so, departments should make all efforts to negotiate and validate that pricing meets market expectations and is advantageous to Metro. Describe how the cost of services offered were determined to be reasonable. Detail any cost savings, if applicable, and how these savings compare to potential alternative suppliers.

If replacement is required without this agreement, we would pay nearly double the current pricing. When replaced, we also receive the newest edition, which is also a cost savings to Metro. If we do not service the equipment and were forced to replace it, we would incur costs well over double, not to mention the potential loss of the capability, which would have dire consequences for our patients.

**Previous Relationship** - Note any known pre-existing relationship or business history with the supplier.

We previously purchased the devices from Karl Storz.

**AUTHORIZATIONS:** I confirm that the information contained herein is accurate and complete to the best of my knowledge.

Based upon the review of information contained herein, competition is not feasible and the request for purchase / contract is approved.

*Edward Meiman*

DocuSigned by:

*Joel Neaveill*

DC169A0C0EC34D6...

Department Director Signature  
Edward Meiman

8/3/2024

Procurement Director Signature  
Joel Neaveill

8/5/2024

Printed Name

Date

Printed Name

Date

Comments:



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**

<b>Sold To Customer Name:</b>	Louisville Metro EMS		
<b>Sold To/Bill To Address:</b>	Attn: Michael Bennett 410 S. 5th St. Louisville, KY 40202	<b>Sold To #:</b>	143082
<b>Attn (Facility Contact Name):</b>	Christopher Lokits	<b>Agreement Request #:</b>	R510016689
<b>Email:</b>	christopher.lokits@louisvilleky.gov	<b>Agreement #:</b>	
<b>Phone #:</b>	502-475-2609	<b>Effective Date (to be added by KARL STORZ):</b>	
<b>Annual Service Billing:</b>	\$144,750.00	<b>Service Term (months):</b>	36 months
<b>Monthly Service Billing:</b>	\$12,062.50	<b>Total # of Exchanges Over Service Term:</b>	150
<b>Price Per Exchange:</b>	\$2,895.00	<b>Offer Expiration Date:</b>	July 27, 2024

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 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 attached hereto 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. All replaced parts shall become the property of KARL STORZ. Subject to the availability of product, KARL STORZ may provide Customer with loaner product while repairs and exchanges are being made.
- (b) In addition to, or instead of the services set forth in subsection 1(a) above, for the Covered Products referenced on Exhibit A attached hereto, KARL STORZ shall provide a limited 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 consist of the same Covered Product (by model/material number) or the closest available KARL STORZ product, as determined in the sole discretion of KARL STORZ.
- (c) **Total Exchange #.** The number of Exchanges permitted by this Agreement over the term of this Agreement shall be referred to as the "Total Exchange #". Exchanges that exceed the Total Exchange # are subject to subsections 1(d) and (e) below. Any unused Exchanges at the expiration of the Service Term will be deemed null and void.
- (d) **Additional Exchange Request.** Customer may request to increase its Total Exchange # by purchasing additional Exchanges ("Additional Exchanges") by amending this Agreement, using the process identified below.
  - (i) Customer shall notify KARL STORZ of its desire to increase the Total Exchange # and both parties shall mutually agree to the number of Additional Exchanges 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.
  - (ii) 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.
- (e) **Default Additional Exchange Price.** Should Customer exceed its 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 Total Exchange #.
- (f) Provide applicable technology updates, as designated by KARL STORZ, at the time of any Exchange.
- (g) Upon request, and if available, provide a Damage Evaluation Report for each Exchange.
- (h) 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; 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 .

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. 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 Covered Products listed on Exhibit A.
- (c) Submit all Covered 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 Covered Products to KARL STORZ for exchange.
- (e) Submit all damaged Covered 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 subsection 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 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 the Offer Expiration Date provided on page one of this Agreement above ("Offer Expiration Date"). Customer shall indicate his/her acceptance of this Agreement by providing his/her signature and the related P.O. prior to the Offer Expiration Date.
- (b) **Service Term.** The Service Term of this Agreement shall commence upon the date inserted by KARL STORZ on the first page of this Agreement on a return copy of the fully executed Agreement to Customer following KARL STORZ's receipt of both this Agreement, signed by the Customer, and the related P.O. prior to the Offer Expiration Date ("Effective Date") and will continue for the period of months set forth on page one of this Agreement.
- (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", as calculated below. To the extent Customer has used less exchanges than allowed under this Agreement, resulting in a negative Remaining Obligation Amount, that amount will not be refunded or credited to Customer.

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

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: Service Contract Operations  
 ServiceContractOperations@karlstorz.com  
 2151 E. Grand Avenue  
 El Segundo, CA 90245

7. **End-of-Service-Life.** In the event that KARL STORZ designates, in its sole discretion, any Covered 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 for the Covered Products to be removed from this Agreement, as well as any resulting price adjustment that reflects that such Covered 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.

- 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.

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: Louisville Metro EMS	
Print Name:	Sara Thomas	Print Name:	
Title:	Executive Director, Analytics & Contract Operations	Title:	
Email:	ServiceContractOperations@karlstorz.com	Email:	
Signature:		Signature:	
Date:		Date:	

**Electronic Submission:**

Email a scanned signed copy of this Agreement to:

**KARL STORZ Endoscopy-America, Inc.**

Attn: Service Contract Operations

Email: ServiceContractOperations@karlstorz.com

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



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**SCHEDULE 1**

**MEMBERS**

Ship-To	Ship-To Name	Address	City	State	Zip
379396	Louisville Metro EMS	834 E Broadway 5th Floor	Louisville	KY	40204-1072



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EXHIBIT A

COVERED PRODUCTS

Products	Description	Total Exchange#
8403*	C-MAC Blades	150

\*Products that start with those characters



## 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 date of invoice, 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 30 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. To the extent that KARL STORZ must incur reasonable attorney's fees and/or other extraordinary costs to secure payment of any sums due from Customer, Customer agrees that it shall be responsible to KARL STORZ for all such reasonable costs and that KARL STORZ may use all legal means at its disposal to collect such amounts. 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 7 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. **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.

9. **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.

10. **LIMITATION OF LIABILITY.** KARL STORZ is not liable 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 KARL STORZ has been advised of the possibility of such damages. SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS AND DISCLAIMERS OF CERTAIN WARRANTIES OR LIMITATIONS OF LIABILITY, SO THE LIMITATIONS AND/OR EXCLUSIONS SET FORTH IN THESE AGREEMENT MAY NOT APPLY. IN THAT EVENT, KARL STORZ'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.