

## Equipment Loan Terms & Conditions – Effective 17 April 2024

### 1 OPERATION OF THESE TERMS

These Terms apply to requests for Equipment to be provided on loan as made by Customers directly to Baxter (and, for the avoidance of doubt, do not apply to requests for any purchase of Deliverables). If the Customer has the benefit of a separate Contract signed by Baxter and currently governing all or part of these arrangements, the terms and conditions contained in that other Contract applicable to the supply of the relevant Equipment and any related services will prevail to the extent of any inconsistency.

For particular Equipment, additional terms and conditions specific to that Equipment or any related services may also be specified in the relevant Schedule to this document.

### 2 DEFINITIONS

In this document, unless otherwise specified in a Schedule or the context otherwise requires:

- (a) **Additional Equipment Charge** means amounts that may be charged by Baxter from time to time for items of Equipment other than Equipment supplied on loan.
- (b) **Agreement** means the contractual arrangements arising between Baxter and the Customer through the provision of any Equipment and (as relevant) related services on these Terms, as modified by any Contract.
- (c) **APD** means Automated Peritoneal Dialysis.
- (d) **Available Equipment** means each item of equipment identified as available for loan from Baxter as listed in a Request or identified as available for loan under a Contract, subject to clause 10(a).
- (e) **Baxter** means, as relevant, **Baxter Healthcare Pty Limited** ABN 43 000 392 781, having its principal place of business at 1 Baxter Drive, Old Toongabbie, NSW 2146 (for Australia) or **Baxter Healthcare Limited** NZBN 9429040404080 having its principal place of business at 33 Vestey Drive, Mt Wellington, Auckland, 1060 (for New Zealand).
- (f) **Contract** means any agreement under which Baxter has offered to supply, or is currently supplying, certain Deliverables to the Customer (and any agreement entered into by Baxter with or for the benefit of the Customer which supersedes that).
- (g) **Customer** means any party making a Request or otherwise entitled by its Contract to a loan of Equipment together with provision of any related services (and, where a Deliverable sought includes access to and support of the Sharesource Platform, has also executed a Fee Letter (each as defined in Schedule 1)).
- (h) **Deliverable** means any products, services or other deliverables that may be manufactured, distributed or otherwise supplied by Baxter in connection with its business.
- (i) **Equipment** means those units of Available Equipment selected by the Customer for a Patient or for its own use as specified in a Request or otherwise provided by a Contract (and any replacement equipment provided by Baxter in accordance with these Terms).
- (j) **Equipment Loss** means any loss of or damage to the Equipment while in the possession, custody or control of the Patient or the Customer (as applicable) excluding normal fair wear and tear. Without limiting the foregoing, this includes loss and damage to the Equipment arising from or in connection with:

- (i) Improper Use;
  - (ii) inability to collect the Equipment as described in clause 6;
  - (iii) failure to take reasonable care of the Equipment;
  - (iv) unauthorised modification of the Equipment;
  - (v) deliberate misuse or abuse, recklessness, negligence, or unlawful conduct;
  - (vi) damage caused by use of cleaning methods or materials other than as specified in the user manual or other instructions provided by the manufacturer;
  - (vii) theft, malicious loss or damage, or accidental loss or damage; or
  - (viii) failure to report faults to Baxter in a timely manner.
- (k) **Improper Use** means any use of the Equipment other than strictly in accordance with the manufacturer's recommendations or instructions provided by Baxter from time to time.
- (l) **Loan Period** means the period from the date on which the Customer (or, where relevant, the Patient at the direction of the Customer) receives the Equipment and continuing for so long as:
- (i) the Patient continues to receive treatment through the Customer (where relevant); and
  - (ii) Baxter continues to provide Deliverables to the Customer under the Contract, or otherwise ending a specific date agreed by the Customer and Baxter.
- (m) **Loss and Damage Charge** means the total amounts charged by Baxter to compensate it for loss and damage arising from Equipment Loss, including (as applicable):
- (i) a specific charge set out in a Schedule from time to time;
  - (ii) if no specific charge is set out in the Schedule, then the lesser of the then- current replacement cost and written down value of the Equipment;
  - (iii) call-out fee and freight and handling charges; and
  - (iv) a reasonable administration fee.
- (n) **Other Fees** means any other fees and charges specified in a Schedule.
- (o) **Patient** means that person receiving medical care from the Customer as identified by a Request.
- (p) **Personal Information** has the same meaning as under *The Privacy Act 1988* (Cth) or the *Privacy Act 2020* (NZ), as relevant, and includes any sensitive information in connection with a Patient.
- (q) **PPSA** means the *Personal Property Securities Act 2009* (Cth) or the *Personal Property Securities Act 1999* (NZ), as relevant.
- (r) **Request** means a document in form approved by Baxter identifying Available Equipment, completed and executed by an authorised representative of the Customer and submitted to Baxter in accordance with the instructions on that document and (where relevant) in compliance with the Contract.
- (s) **Schedule** means a schedule to and forming part of these Terms.

- (t) **Standard Sale Conditions** means Baxter's standard terms and conditions of sale accessible electronically on Baxter's website at [www.baxterhealthcare.com.au](http://www.baxterhealthcare.com.au) and selecting the 'Terms and Conditions of Sale' link.
- (u) **Terms** means the terms and conditions contained in this document including, for any specific item of Equipment or related service, the terms and conditions in the relevant Schedule to this document relating to that item of Equipment or service.

### **3 INTERACTION WITH CONTRACT**

The Customer acknowledges that any loan of Equipment on these Terms is consistent with and furthers the objectives of the Contract. Where relevant, the Customer requests Baxter to loan Equipment for use by a Patient as specified in a Request on these Terms.

### **4 LOAN REQUEST**

Unless otherwise provided in a Schedule and subject to clause 10, Baxter will provide the Equipment to the Customer on loan (free of charge) for the duration of the Loan Period. Baxter acknowledges that, at the direction of and for purposes of a bailment by the Customer, Baxter may be required to deliver the Equipment to a Patient at the address specified in a Request.

### **5 TITLE & RISK**

Baxter is the owner of the Equipment. Risk in the Equipment passes to the Customer immediately upon delivery of the Equipment to or at the direction of the Customer to the agreed delivery location and the Customer assumes all risk and liability in relation to Equipment Loss on and from the time of delivery. The Customer grants to Baxter a security interest in all Equipment as security for the performance by the Customer of its obligations to Baxter from time to time under these Terms. The security interest is granted on the same basis as if the Equipment had been sold (but not yet paid for) under the Standard Sale Conditions. Baxter is entitled and may choose to register a security interest under the PPSA in respect of the Equipment during the Loan Period. If Baxter elects to do so, the Customer will provide all reasonable assistance to Baxter in this regard.

### **6 DELIVERY & RETURN OF EQUIPMENT**

- (a) Unless otherwise provided in a Schedule, Baxter will deliver the Equipment free of charge. At the end of the Loan Period the Equipment is to be returned to Baxter in the same condition as delivered (allowing for normal wear and tear), unless alternative arrangements are agreed. Baxter will collect, or pay for return of, the Equipment. If delivery or collection proves impracticable during such time period or in such manner as initially agreed (other than by fault of Baxter), Baxter reserves the right to charge a \$250 call out fee plus freight and handling charges in relation to each further delivery or collection attempt.
- (b) Baxter may charge the Customer the Loss and Damage Charge after two unsuccessful attempts to collect the Equipment from the Patient's home following a collection time being made with the Patient.
- (c) Where Baxter has made reasonable attempts but is unable to contact the Patient to arrange collection of the Equipment, Baxter will contact the Customer and request assistance in contacting the Patient. If:
  - (A) the Customer does not successfully contact the Patient and facilitate or arrange a mutually convenient collection time within 30 days; or
  - (B) a mutually convenient collection time is made with the Patient, and Baxter subsequently makes two unsuccessful attempts to collect the Equipment from the Patient,

then this is deemed Equipment Loss and Baxter may charge the Customer the Loss Recovery Amount for that Equipment.

## 7 REPAIR & REPLACEMENT OF EQUIPMENT

Unless otherwise specified in a Schedule, Baxter will provide repairs for faulty Equipment. If needed, replacement equipment will be issued for the duration of any such repair. Repairs will be conducted by Baxter's nominated service providers. Baxter will be responsible for the cost of repairs, provision of replacement equipment and any standard servicing of the Equipment as and when that falls due in the course of normal use. If any repair of Equipment is due to Equipment Loss then Baxter may recover such costs from the Customer. For Equipment that requires replacement due to Equipment Loss, Baxter may charge the Loss and Damage Charge. Any collection and delivery of Equipment or replacement equipment will be in accordance with clause 6. Baxter Technical Services are to be contacted on **1800 BAXTER (1800 229 837)** (Australia) or **0800 BAXTER (0800 229 837)** (New Zealand) for all Equipment technical or service requirements.

## 8 USE OF EQUIPMENT

The Customer must take reasonable steps to ensure that Equipment is used by its own personnel and by the Patient in accordance with manufacturer's recommendations and any instructions provided by Baxter. The Customer shall not remove any labels, symbols, part numbers or serial numbers affixed to the Equipment. The Customer assumes full responsibility for the manner in which the Equipment is used and any medical decisions taken in connection with its use. Subject to any express limitation contained in the Contract, the Customer is responsible for all costs (including repair and replacement) resulting from Equipment Loss and, if requested by Baxter, will make good any loss, damage, cost or expense incurred by Baxter from such Equipment Loss, including payment of the Loss and Damage Charge if applicable.

## 9 PHARMACOVIGILANCE

The Customer shall comply with pharmacovigilance reporting obligations on the same terms and conditions as if the Equipment had been sold under the Standard Sale Conditions.

## 10 CHARGES

- (a) **Additional Equipment Charge.** The Customer acknowledges and agrees that the loan arrangement contemplated by these Terms is generally limited to one item of Equipment per Patient, unless otherwise agreed by Baxter. If additional items of Equipment are required for the Patient then, unless otherwise agreed by Baxter or documented in a Contract, such items may be charged to the Customer at the Additional Equipment Charge.
- (b) **Loss and Damage Charge.** In the event of:
- (i) Equipment Loss requiring substantial repair or replacement of the Equipment; or
  - (ii) failure of Baxter to collect the Equipment as described in clause 6,
- Baxter may charge the Customer the Loss and Damage Charge.
- (c) **Other Fees.** Other Fees applicable to the loan arrangement that may be charged by Baxter to the Customer from time to time are set out in the applicable Schedule.
- (d) **GST.** All fees and charges in these Terms are stated as GST-exclusive amounts unless expressly indicated to the contrary. If GST is payable by the Customer under these Terms then the Customer must pay to Baxter an amount equal to the GST component in addition to the fees and charges at the prevailing GST rate. Baxter will supply the Customer with a tax invoice showing the GST component and any other fees or charges incurred by the Customer under these Terms. In this clause "GST" means the same as in the *A New Tax System (Goods and*

*Services Tax) Act 1999 (Cth) or the Goods and Services Tax under the Goods and Services Tax Act 1985 (NZ), as applicable.*

- (e) **Payment.** The Customer must pay all invoices issued under these Terms within 30 days of the invoice date.

## **11 AMENDMENT**

Baxter may from time to time alter these Terms as it reasonably determines necessary. Baxter will provide the Customer with prior notice of changes and post those amended terms and conditions to this website. The Customer may terminate the loan within 30 days of being notified of the changes. Such alteration will not affect any Contract that Baxter has entered into with the Customer prior to the alteration. If the Customer terminates the loan under this clause 11, Baxter will arrange for repossession of the Equipment and:

- (a) If Schedule 3 or Schedule 4 applies, then the Early Exit Fee (as defined in the relevant Schedule) will be payable; and
- (b) If Schedule 1 or Schedule 2 applies, then Baxter may charge an early exit fee equal to the written down value of the Equipment.

**SCHEDULE 1 PERITONEAL DIALYSIS TREATMENT**

**1.1 ADDITIONAL DEFINITIONS:**

In this Schedule, unless the context otherwise requires:

(a) **Available Equipment** includes:

Item Number	Description	Availability	Loss and Damage Charge (ex GST)	Additional Equipment Charge (per unit / ex GST)
5C6M10	Homechoice Claria APD cyclor	ANZ	\$995	\$500
5C6M40	Homechoice Claria APD cyclor	ANZ	\$995	\$500
5H32401	3G cellular modem	ANZ		
5H33101	3G modem power supply	ANZ		
5H32409	4G cellular modem	ANZ	\$50	
5H33102	4G modem power supply	ANZ		
1510WTPV2	CAPD bag warmer	ANZ	\$50	
BXU004390	Hard carry case for Homechoice Claria	ANZ	\$100	

- (b) **Sharesource Fee** means the relevant amount specified as the fee per Patient per day payable by the Customer in the Fee Letter for connectivity to the Sharesource Platform.
- (c) **Fee Letter** means the letter between Baxter and the Customer identifying the fee per Patient per day payable by the Customer for access to and support of the Sharesource Platform.
- (d) **Request** includes a Patient Specific PD Equipment Request substantially in the form of Annexure A to this Schedule 1,
- (e) **Sharesource Platform** means the internet cloud based medical device connectivity platform supplied by Baxter and its related functions and associated services.

**1.2 SPECIFIC CUSTOMER RESPONSIBILITIES**

Without limiting clause 8, the Customer will take all reasonable steps to ensure that the Patient (or their legal caregiver):

- (a) is registered on Baxter's Homecare System;
- (b) is trained on the proper use, storage and care, as well as the proper procedures and methods for administration, of any products or Equipment provided by or at the direction of the Customer and operates the Equipment in accordance with operating instructions provided by Baxter; if travelling outside of New Zealand and Australia and not otherwise covered by the Customer's insurance, takes out travel insurance to cover any loss of or damage to the Equipment;
- (c) retains possession of the Equipment throughout the Loan Period; and

- (d) where practicable, retains the original carton and packing materials for the Equipment, to be used when the Equipment is returned to Baxter for maintenance, repairs, or when the Patient concludes APD treatment.

### **1.3 WARRANTIES FOR SHARESOURCE PLATFORM**

Where the Deliverables include connectivity to the Sharesource Platform, the Customer warrants that it has obtained an effective consent from the Patient for the Customer to share the Patient's Personal Information with Baxter and has explained to the Patient, and the Patient expects and has accepted, that:

- (a) the primary purpose for collecting Personal Information is to provide the Patient with goods and services enabling them and their healthcare practitioners to manage, track, treat and provide medical supplies for their condition;
- (b) the Customer will create an account for the Patient on the Sharesource Platform using Personal Information of the Patient;
- (c) the Sharesource Platform is hosted by Baxter under arrangements with other Baxter group companies, and will collect Personal Information of the Patient;
- (d) it is impractical, and would undermine the benefits of a centralised remote patient management system as afforded by the Sharesource Platform, for Patients to directly input their own data to that system; and
- (e) both Baxter and, if the Patient so elects, the Customer will be able to analyse data and generate reports using that Personal Information (although, in the case of Baxter, any such analysis or reports will use de-identified data to protect the Patient) and that this functionality is both reasonably necessary for each entity's activities and within the reasonable expectations of the Patient and the Customer.

### **1.4 SHARESOURCE FEE**

Baxter will charge a Sharesource Fee for access to and support of the Sharesource Platform. All fees are priced exclusive of GST. If GST is payable by Baxter on any sale, the Customer will pay to Baxter an amount equal to the GST. The Sharesource Fee applies irrespective of whether a Patient uploads data or otherwise uses the interface on any particular day. Baxter will issue a tax invoice to the Customer for these services. The Customer will be sent the tax invoice in line with the Customer's regular invoicing cycles from Baxter (eg, consolidated monthly, consolidated weekly or daily) as specified by the Contract or, in the absence of any such pre-existing arrangements, on a monthly basis with the Sharesource Fee calculated on a 28-day invoicing cycle (unless otherwise agreed). The Sharesource Fee is payable for all days of an invoicing cycle, including that in which a Patient commences use of the Sharesource Platform after the start of that cycle, but is not payable for the billing cycle in which that use ceases.

### **1.5 CONTINUED COMPLIANCE WITH PRIVACY OBLIGATIONS**

For the avoidance of doubt, Baxter confirms that, in any dealings with or through the Sharesource Platform, Baxter will comply, and will ensure that its personnel comply, with all relevant privacy obligations of Baxter under the Contract or as otherwise applying from time to time in relation to Personal Information.

Without limitation to the foregoing, where Baxter makes available access to the Sharesource Platform as a Deliverable, Baxter does not thereby own any Personal Information uploaded by a Patient or the Customer.

**Patient PD Equipment Request**  
**Australia & New Zealand**



Fax requests to Homecare: 1800 806 923 (Australia) or 0800 229 329 (New Zealand)

**METRO AREAS** - Please allow up to 10 working days for delivery of equipment  
**REMOTE AREAS** - Please allow up to 15 working days for delivery of equipment

Date: 17 <sup>th</sup> November 2022 Version: 22-Nov-01
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Equipment Required <i>Select applicable box(es)</i>	Item Number	Description	Serial Number
<b>Loan</b>			
<input type="radio"/>	5C6M1O	Homechoice Claria APO cycler	
<input type="radio"/>	5H324O9	4G cellular modem	
<input type="radio"/>	5H331O3	4G modem power supply	
<input type="radio"/>	151OWTPV2	CAPO bag warmer	

<b>Patient at Home Guide</b>
A Homechoice Claria Patient at Home Guide will be delivered to all new APO patients and existing APO patients transitioning from the Homechoice Pro to the Homechoice Claria. Other patients may contact HomeCare and request a guide to be sent to them.

<b>Name of Patient</b>			
<b>New Patient Status</b>	<i>(answer only if appropriate for your patient)</i> <input type="checkbox"/> New to APD		
<b>Address for Delivery</b>			
<b>Delivery Date Required</b>			
<b>Signature of Customer Representative</b>		<b>Contact Number</b>	
<b>Name</b>		<b>Date</b>	
<b>Position</b>			
<b>Full Name of Hospital or Clinic</b>			

**Terms and Conditions**

The Customer, by its authorised representative, requests (as relevant) Baxter Healthcare Pty Limited or Baxter Healthcare Limited (each "Baxter"):

- a. where 'Loan' is designated, to loan that Equipment listed above for use by the Patient subject to and in accordance with the Equipment loan terms and conditions accessible electronically on



Baxter's web site at <https://www.baxterhealthcare.com.au/partners-suppliers> and clicking on the 'Equipment Loan Terms' tab for Australia and New Zealand; or

- b. where 'Purchase' is designated, to purchase that Equipment listed above for use by the Patient subject to and in accordance with the standard terms and conditions of sale accessible electronically on Baxter's web site at <https://www.baxterhealthcare.com.au/partners-suppliers>.

Your provision of this Request constitutes acceptance of those terms and conditions by the Customer. If the Customer has a separate Supply or Service Agreement signed by Baxter and currently governing these arrangements, the terms and conditions contained in that other agreement applicable to the supply of this Equipment will prevail to the extent of any inconsistency.

*Baxter Use Only*

Patient status verified

Homechoice Claria PAHG O719001432C1ENG ordered

## SCHEDULE 2 NUTRITION TREATMENT

(excluding Equipment on loan for HCO use only)

### 2.1 ADDITIONAL DEFINITIONS:

In this Schedule, unless the context otherwise requires:

(a) Available Equipment includes:

Item Number	Description	Availability
CE999600BAX1	BodyGuard CV Pump ADULT	ANZ
CE999600BAX2	BodyGuard CV Pump PAED	ANZ
CE100510PXSE	BodyGuard Mono Pump ADULT	ANZ
CE100510PXSEPD	BodyGuard Mono Pump PAED	ANZ
CE999603EN	Bodyguard 323 Colourvision Pump V3	ANZ
CE999603ENPD	Bodyguard 323 Colourvision Pump PAED V3	ANZ
KP5041711	MICREL MINI RYTHMIC PN + PUMP	ANZ
KS5040175	MICREL POLE CLAMP MINI RYTHMIC	ANZ

- (b) **Deliverables** means only those pharmacy products identified by the Contract, excluding any analgesic, antibiotic or chemotherapy products.
- (c) **Request** includes a Home Parenteral Nutrition New Patient Request Form substantially in the form of Annexure A to this Schedule 2, or any other written request from the Customer that is not inconsistent with the Contract.

### 2.2 SPECIFIC CUSTOMER RESPONSIBILITIES

Without limiting clause 8, the Customer will:

- (a) operate the Equipment in accordance with the operating instructions issued by the manufacturer;
- (b) ensure that its insurance covers any loss of or damage to the Equipment; and
- (c) except where the item of Equipment is a pump, at its own expense ensure that the Equipment remains in good working order and condition throughout the term of this Agreement.

For the avoidance of doubt and despite clause 7, Baxter will not have any responsibility under this Schedule for repair and maintenance of the Equipment except where the item of Equipment is a pump.

### 2.3 WARRANTIES FOR LOAN

The Customer warrants that a loan of the Equipment can reasonably be expected to lead to both an increase in and better use of Deliverables by the Customer at the rates provided by the Contract.

## **2.4 EARLY TERMINATION OF LOAN**

If either party:

- (a) is in material breach of any of its obligations under this Agreement and, if the breach is capable of remedy, does not rectify the breach within 14 days after receiving notice in writing from the other party requiring it to do so; or
- (b) becomes insolvent, enters into a scheme or other arrangement with its creditors or any other form of insolvency administration (including voluntary administration);

then the other party may immediately terminate this Agreement, and Baxter may repossess the Equipment.

If the Customer, or an institution or hospital controlled by the Customer

- (i) terminates the Contract for any reason;
- (ii) breaches a requirement of the Contract relating to any obligation upon the Customer to purchase Deliverables on an exclusive or preferential basis from Baxter; or
- (iii) ceases to purchase Deliverables under the Contract (and no alternative agreement for the purchase of Deliverables is entered into with Baxter),

then:

- (A) the Customer must immediately notify Baxter in writing of the occurrence of any such event (where Baxter is not already aware of the matter); and
- (B) Baxter may immediately or at any time thereafter by written notice to the Customer terminate this Agreement and repossess the Equipment.

Where a loan of Equipment is provided to a Patient at the direction of the Customer, Baxter may (in its absolute discretion) at any time terminate the loan of an item Equipment then in the possession of that Patient without requiring the return of that Equipment. Any such election to terminate may be effected by Baxter by notice to or otherwise advising the Customer. If Baxter so elects to terminate any such loan, title and risk in that Equipment then passes to the Patient without requirement for any further action by either Baxter or the Customer.

## **2.5 NEW TECHNOLOGY**

Baxter and the Customer will meet to review this Agreement in the event that any new technology becomes available that is registered in Australia or New Zealand (as relevant) and compares more favourably against the Equipment.



parenteral  
nutrition

## Home Parenteral Nutrition Patient Registration Form

Complete and send to Baxter 14 days prior to expected discharge to allow for account set up & hardware deliveries.

New Home PN Patient

Change to Existing Patient Account

Patient Details		
First Name:	Last Name:	
Gender:	Date of Birth:	
Address:		
Suburb:	State:	Post Code:
Home Phone:	Mobile Number:	
Email Address:		
DHB of Domicile (NZ):	NHI Number: (NZ):	

Alternative Contact Information		
Name:	Relationship to patient:	
Home Phone:	Mobile Number:	
Email:		

Hospital Details	
Hospital Address:	
Discharging Unit/Ward:	
Name of Primary Contact:	
Title:	Phone:
Mobile:	Email:

Billing Information for HPN Solutions	
Charge TPN to:	Purchase Order Number: <i>(not required in NZ)</i>
Contact Person:	Phone:
Email:	

Billing Information for Ancillaries <i>(if different to billing for PN solution)</i>	
Charge Ancillaries to:	Purchase Order Number:
Contact Person:	Phone:
Email:	



It should be noted that if an IV Pole, Back Pack or Trolley are included in this Request, they will not be supplied under the Equipment loan terms and conditions and title will be transferred to the Hospital as free of charge Deliverables under the terms of the Contract (unless the Contract provides for a charge).

Authorised By:

Signature:

Date:

July 2019

## **SCHEDULE 3 HCO USE EQUIPMENT**

**(including Calorimeters & Portable RO machines)**

### **3.1 ADDITIONAL DEFINITIONS:**

In this Schedule, unless the context otherwise requires:

- (a) **Authorised Service Provider** means the repairer specified in Annexure A to this Schedule 3 as the authorised service provider in the relevant region for a specific item or type of Equipment and, if no such repairer is identified, a repairer notified by Baxter to the Customer upon request by the Customer.
- (b) **Available Equipment** includes those items of Equipment listed in Annexure B to this Schedule 3.
- (c) **Deliverables** means only those products identified by the Contract.
- (d) **Early Exit Fee** means, in respect of:
  - (i) a Calorimeter, the average cost to Baxter to remove, return and recommission the Equipment, being \$3,500.00; and
  - (ii) a Rollex Refrigerator, an amount determined by Baxter as recompensing it for all expenses to remove, return and recommission or otherwise write-off the Equipment, up to a maximum amount of \$3,600.
- (e) **Request** includes an Equipment Request substantially in the form of Annexure B to this Schedule 2, or any other written request from the Customer that is not inconsistent with the Contract,

### **3.2 SPECIFIC CUSTOMER RESPONSIBILITIES**

Without limiting clause 8, the Customer will:

- (a) operate the Equipment in accordance with the operating instructions issued by the manufacturer;
- (b) ensure that its insurance covers any loss of or damage to the Equipment;
- (c) despite clause 7, at its own expense ensure that the Equipment remains in good working order and condition throughout the term of this Agreement; and
- (d) without limiting paragraph (c), at its own expense, engage the Authorised Service Provider by written contract, as needed, to:
  - (i) provide installation services for the Equipment;
  - (ii) provide all necessary training in relation to use of the Equipment, including initial training and any further training required during the term of this Agreement;
  - (iii) provide all consumables and ancillaries required for the Equipment;
  - (iv) carry out all necessary testing of the Equipment;
  - (v) carry out all preventative maintenance on the Equipment; and

- (vi) carrying out all other repairs and maintenance as may be required from time to time.

### **3.3 WARRANTIES FOR LOAN**

The Customer warrants that a loan of the Equipment can reasonably be expected to lead to both an increase in and better use of Deliverables by the Customer at the rates provided by the Contract.

### **3.4 AUDIT RIGHTS**

Baxter may at its discretion, either directly or via an agent, audit any Equipment at the Customer's premises to confirm location of the Equipment and that the Equipment is in good working condition. An Equipment audit may only be carried out during standard business hours for the Customer. Baxter will provide the Customer with a minimum of 7 days' notice in writing prior to conducting any Equipment audit. The Customer will provide Baxter or its agent with reasonable assistance in the conduct of any Equipment audit, including providing access to the Customer's premises and guidance as to the location of the Equipment.

### **3.5 EARLY TERMINATION OF LOAN**

The Equipment may be made for a set Loan Period (as that may be extended by Baxter, in its discretion). If:

- (a) either party is in material breach of any of its obligations under this Agreement and, if the breach is capable of remedy, does not rectify the breach within 14 days after receiving notice in writing from the other party requiring it to do so;
- (b) either party becomes insolvent, enters into a scheme or other arrangement with its creditors or any other form of insolvency administration (including voluntary administration),

then the other party may immediately terminate this Agreement, and Baxter may repossess the Equipment. Where Baxter terminates the Agreement and the Equipment is a Calorimeter, upon demand, the Customer must pay the Early Exit Fee to Baxter.

If the Customer, or an institution or hospital controlled by the Customer:

- (i) terminates the Contract for any reason;
- (ii) breaches a requirement of the Contract relating to any obligation upon the Customer to purchase Deliverables on an exclusive or preferential basis from Baxter; or
- (iii) ceases to purchase Deliverables under the Contract (and no alternative agreement for the purchase of Deliverables is entered into with Baxter),

then:

- (A) the Customer must immediately notify Baxter in writing of the occurrence of any such event (where Baxter is not already aware of the matter);
- (B) Baxter may immediately or at any time thereafter by written notice to the Customer terminate this Agreement and repossess the Equipment and may enter the premises of the Customer for that purpose; and
- (C) where the Equipment is a Calorimeter, upon demand (which may be by Baxter's notice under paragraph (B)), the Customer must pay the Early Exit Fee to Baxter.



### **3.6 NEW TECHNOLOGY**

Baxter and the Customer will meet to review this Agreement in the event that any new technology becomes available that is registered in Australia or New Zealand (as relevant) and compares more favourably against the Equipment.

### **SCHEDULE: 3 ANNEXURE A – AUTHORISED SERVICE PROVIDER**

- A: For a Calorimeter: **COSMED Asia-Pacific Pty Ltd** ABN 57 164 890 555 (or an affiliate of that company approved by Baxter in writing)
  
- B: For a Portable RO Machine: **Baxter** (unless Baxter otherwise agrees that the Customer may carry out all preventative maintenance on the Equipment and otherwise satisfy the requirements of paragraph 3.2(d) of this Schedule 3 as may be required from time to time).

### SCHEDULE 3: ANNEXURE B – HCO EQUIPMENT REQUEST

## Equipment on Loan for HCO Use

### HOSPITAL REQUEST

(Australia & New Zealand)

**METRO AREAS** – Please allow up to 10 working days for delivery of equipment, subject to Supplier availability.

**REMOTE AREAS** - Please allow up to 15 working days for delivery of equipment, subject to Supplier availability.

Equipment required (tick appropriate boxes)	Item Number	Description	Serial Number
		<b>QNRG+ Metabolic Monitor</b>	
	LEC PGR273	Rollex Refrigerator	
	114780-WRO300H	Portable RO Machine	
	R5C8320	Homechoice ProTM	
	RIC8344	Nikkiso Bag Warmer	
	110635	Artis Physio Dialysis Monitor	

This Equipment is requested in connection with our current contractual arrangements with Baxter. Please deliver the Equipment in accordance with the delivery details below.

<b>Full Name of Customer:</b> (e.g. Hospital)			
<b>Address for delivery:</b>			
<b>Delivery date required:</b>		<b>Attention:</b>	

<b>Signature of Customer Representative:</b>		<b>Contact 'phone number:</b>	
<b>Name: (printed):</b>		<b>Date:</b>	
<b>Position:</b>		<b>Your ref (if any):</b>	

### Terms and conditions

The Customer, by its authorised representative, requests (as relevant) Baxter Healthcare Pty Limited or Baxter Healthcare Limited (each "Baxter") to loan that Equipment listed above for use by the Customer subject to and in accordance with the Equipment loan terms and conditions accessible electronically on Baxter's web site at [www.baxterhealthcare.com.au/healthcare\\_professionals/doing\\_business\\_with\\_us/index.html](http://www.baxterhealthcare.com.au/healthcare_professionals/doing_business_with_us/index.html) and clicking on the 'Equipment Loan Terms' tab for Australia and New Zealand.

The provision of this Request constitutes acceptance of those terms and conditions by the Customer. If the Customer has a separate Supply or Service Agreement signed by Baxter and currently governing these arrangements, the terms and conditions contained in that other agreement applicable to the supply of this Equipment will prevail to the extent of any inconsistency.

## SCHEDULE 4 ANAESTHETICS

### 4.1 ADDITIONAL DEFINITIONS:

In this Schedule, unless the context otherwise requires:

- (a) **Authorised Service Provider** means the repairer specified in Annexure A to this Schedule 4 as the authorised service provider in the relevant region for a specific item or type of Equipment and, if no such repairer is identified, a repairer notified by Baxter to the Customer upon request by the Customer.
- (b) **Available Equipment** includes those items of Equipment listed in Annexure B to this Schedule 4.
- (c) **Deliverables** means only those anaesthetic products identified by the Contract and consistent with the specific calibration of the Equipment.
- (d) **Early Exit Fee** means the amounts payable by the Customer in accordance with clause 4.4 of this Schedule 4.
- (e) **Request** includes an Anaesthetic Equipment Request Form substantially in the form of Annexure B to this Schedule 4, or any other written request from the Customer that is not inconsistent with the Contract.

### 4.2 SPECIFIC CUSTOMER RESPONSIBILITIES

Without limiting clause 8, the Customer will:

- (a) operate the Equipment in accordance with the operating instructions issued by the manufacturer, and ensure that it is kept and operated in a suitable environment;
- (b) ensure the Equipment is used solely with Baxter's inhaled anaesthetic agents consistent with its specific calibration;
- (c) ensure that its insurance covers any loss of or damage to the Equipment;
- (d) despite clause 7, at its own expense ensure that the Equipment remains in good working order and condition throughout the term of this Agreement and maintain appropriate records to document proper maintenance and servicing of the Equipment (such documents to be made available to Baxter upon written request);
- (e) without limiting paragraph (d), at its own expense, engage the Authorised Service Provider by written contract, as needed, to:
  - (i) provide installation services for the Equipment (unless (A) Baxter agrees in writing to provide an installation service; or (B) the Customer chooses to install the Equipment at its own risk and expense);
  - (ii) provide all necessary training in relation to use of the Equipment, including initial training and any further training required during the term of this Agreement;
  - (iii) carry out all necessary testing and inspection of the Equipment (including safety inspections, annual checks and output concentration checks); and
  - (iv) carry out all preventative maintenance on the Equipment; and

and promptly notify Baxter when an item of Equipment is faulty or is otherwise to be returned to Baxter; and

- (f) before returning any Equipment to Baxter, have the Equipment drained (or run until empty where the item of Equipment is a Tec6 Plus from GE) and decontaminated, and provide a certificate of draining and decontamination to Baxter upon request (or otherwise meet the cost of these processes if this responsibility is not properly fulfilled).

For the avoidance of doubt, Baxter will be responsible where, despite proper maintenance and operation by the Customer and in the absence of Improper Use, an item of Equipment ceases functioning or is otherwise faulty. In such circumstances, the Customer's sole remedy for faulty Equipment is the replacement of that unit with a functioning unit from Baxter. Baxter will not have any responsibility for repair or replacement of the Equipment except where the Customer has promptly notified Baxter of the fault in accordance with clause 7.

#### **4.3 WARRANTIES FOR LOAN**

The Customer warrants that:

- (a) a loan of the Equipment can reasonably be expected to lead to both an increase in and better use of Deliverables by the Customer at the rates provided by the Contract; and
- (b) unless otherwise advised to Baxter within 24 hours of delivery of the Equipment:
  - (i) the Equipment has been delivered and Customer has received it in good order;
  - (ii) the Customer has inspected the Equipment and confirmed it is complete and, insofar as it is able to ascertain, in good condition and working order; and
  - (iii) the Equipment corresponds to the required specifications.

To the maximum extent permitted by law, Baxter makes no warranties, written, oral, express or implied, with respect to any item of Equipment or as to any service performed by or on behalf of it in respect of an item of Equipment.

#### **4.4 EARLY TERMINATION OF LOAN**

If:

- (a) the Customer is in material breach of any of its obligations under this Agreement and, if the breach is capable of remedy, does not rectify the breach within 14 days after receiving notice in writing from Baxter requiring it to do so;
- (b) the Customer becomes insolvent, enters into a scheme or other arrangement with its creditors or any other form of insolvency administration (including voluntary administration); or
- (c) the Customer, or an institution or hospital controlled by the Customer:
  - (i) terminates the Contract for any reason;
  - (ii) breaches a requirement of the Contract relating to any obligation upon the Customer to purchase Deliverables on an exclusive or preferential basis from Baxter;
  - (iii) ceases to purchase Deliverables under the Contract (and no alternative agreement for the purchase of Deliverables is entered into with Baxter); or
  - (iv) ceases to regularly consume Deliverables in such quantities as justify (in Baxter's reasonable determination) a continuing loan of the aggregate amount of like Equipment then on loan to the Customer,

then:

- (A) the Customer must immediately notify Baxter in writing of the occurrence of any such event (where Baxter is not already aware of the matter);
- (B) Baxter may immediately or at any time thereafter by written notice to the Customer terminate this Agreement and repossess some or all of the Equipment and may enter the premises of the Customer for that purpose; and
- (C) upon demand (which may be by Baxter's notice under paragraph (B)), the Customer must pay the Early Exit Fee for that Equipment to Baxter applied as follows:

**Early Exit Fee**

<b>Termination date</b>	<b>Fee per item of Equipment</b>
Termination within Year 1 of Loan Period	\$4,200.00
Year 2	\$3,360.00
Year 3	\$2,520.00
Year 4	\$1,680.00
Year 5	\$840.00

- (i) The Early Exit Fee only applies to new Equipment supplied by Baxter after the date of this Agreement.
- (ii) Upon payment of the Early Exit Fee, which represents the written down value of each item of Equipment supplied by Baxter, ownership will pass from Baxter to the Customer.
- (iii) After Year 5, no Early Exit Fee is payable, however Baxter retains ownership of the Equipment and all items must be returned at the end of the Contract unless otherwise agreed.
- (iv) Baxter will not charge the Early Exit Fee if the Deliverables are no longer made available for supply by Baxter to the Customer following expiry of the current Contract term (which expiry may be earlier than 5 years), or any other circumstance where Baxter withdraws the Deliverables from supply, in which event the Customer may return the Equipment to Baxter.

**4.5 AUDIT RIGHTS**

Baxter may at its discretion, either directly or via an agent, audit any Equipment at the Customer's premises to confirm location of the Equipment and that the Equipment is in good working condition. An Equipment audit may only be carried out during standard business hours for the Customer. Baxter will provide the Customer with a minimum of 7 days' notice in writing prior to conducting any Equipment audit. The Customer will provide Baxter or its agent with reasonable assistance in the conduct of any Equipment audit, including providing access to the Customer's premises and guidance as to the location of the Equipment.

**4.6 TECHNICAL SUPPORT**

The Customer will permit Baxter, through its officers, employees or duly authorised representatives, to work with the Customer's anaesthetists to provide technical instruction in support of appropriate use of the proper inhaled anaesthetic agents, in consultation with the relevant theatre personnel and consistent with relevant hospital policies and procedures.

#### **4.7 INDEMNITY**

To the maximum extent permissible by the law, the Customer indemnifies and must hold harmless Baxter, its related bodies corporate, and its and their personnel against any and all cost, expense, damage, judgment, liability or loss (including consequential loss, loss of profit and loss of expected profit) incurred directly or indirectly as a result of or in connection with any claim, demand or cause of action asserted or brought by a third party in relation to or arising from any breach of contract, negligent act or omission, unlawful conduct or other misconduct by the Customer or its personnel relating to this Agreement or otherwise relating (directly or indirectly) to the Customer's use of the Equipment.

#### **SCHEDULE 4: ANNEXURE A – AUTHORISED SERVICE PROVIDER**

**A: For a Vapouriser:**

- (a) supplied through GE Health – GE Healthcare Australia Pty Ltd ABN 32 001 408 402, trading as '**GE Healthcare**'
- (b) supplied through Draeger – **Draeger Medical Australia Pty Ltd** ABN 99 098 885 539
- (c) supplied through Baxter Lessines (for Isoflurane 5%) – Vet Quip Pty Ltd ABN 19 101 880, trading as '**GAS Australia**'

**B: For a Diva: – Draeger Medical Australia Pty Ltd** ABN 99 098 885 539



**SCHEDULE 4: ANNEXURE B – ANAESTHETICS EQUIPMENT REQUEST**

**Anaesthetics Equipment on Loan for HCO Use**

**HOSPITAL REQUEST**

**(Australia & New Zealand)**

**METRO AREAS** – Please allow up to 10 working days for delivery of equipment

**REMOTE AREAS** - Please allow up to 15 working days for delivery of equipment

Equipment required (tick appropriate boxes)	Item Number / Product Code	Description	Serial Number
	11009025000	ALADIN CASSETTE 2 EAC DESFLURANE	
	11009029000	ALADIN 2 CASSETTE ISOFLURANE	
	11009030000	ALADIN 2 CASSETTE SEVOFLURANE	
	11079615000 1107-9615-000 11079615000R	TEC6 PLUS AUSTRALIAN VARIENT 2	
	11759301000	TEC 7 VAPORISER	
	M35054	VAPOR 2000	
	M35054SEVOD	VAPOR 2000 SEVO VAP DRAGER	
	M35054SEVOS	VAPOR 2000 SEVO VAP SELECTATEC	
	M35054ISOS	VAPOR 2000 ISO SELECTATEC	
	M35500D	D-VAPOR DRAGER MOUNT	
	M35500S	D-VAPOR SELECTATEC	
	M36500SEVOD	D-VAPOR 3000 SEVOFLURANE	
	M36700	D-VAPOR 3000	
	MK01704	DIVA - DES	
	MK01703	DIVA - SEVO	
	MK01702	DIVA - ISO	
	VI5KDBIHK	VAPORIZER FOR ISOFLURANE 5%	
	VI5KSBIHK	VAPORIZER FOR ISOFLURANE 5%,	

**This Equipment is requested in connection with our current contractual arrangements with Baxter.  
Please deliver the Equipment in accordance with the delivery details below.**

<b>Full Name of Customer:</b> (e.g. Hospital)			
<b>Address for delivery:</b>			
<b>Delivery date required:</b>		<b>Attention:</b>	

<b>Signature of Customer Representative:</b>		<b>Contact 'phone number:</b>	
<b>Name: (printed):</b>		<b>Date:</b>	
<b>Position:</b>		<b>Your ref (if any):</b>	

**Terms and conditions**

The Customer, by its authorised representative, requests (as relevant) Baxter Healthcare Pty Limited or Baxter Healthcare Limited (each "Baxter") to loan that Equipment listed above for use by the Customer subject to and in accordance with the Equipment loan terms and conditions accessible electronically on Baxter's web site at <https://www.baxterhealthcare.com.au/partners-suppliers> and clicking on the 'Equipment Loan Terms' tab for Australia and New Zealand.

The provision of this Request constitutes acceptance of those terms and conditions by the Customer. If the Customer has a separate Supply or Service Agreement signed by Baxter and currently governing these arrangements, the terms and conditions contained in that other agreement applicable to the supply of this Equipment will prevail to the extent of any inconsistency.