



ACCOUNT NAME: COUNTY OF SAN BERNARDINO on
Behalf of Arrowhead Regional Medical Center
ADDRESS: ATTN A/P, 400 N PEPPER AVE
CITY, STATE, ZIP: COLTON, CA, 92324-1801

Baxter Healthcare Corporation
Renal Division
One Baxter Parkway, DF6-4E
Deerfield, Illinois 60015

Hereinafter “Purchaser”

EQUIPMENT PURCHASE AGREEMENT

The following “Purchase Agreement” is for the supply of Baxter Healthcare Corporation (“Baxter”) “Equipment” as listed on Schedule A (defined as durable medical equipment including devices, hardware, instruments, and instrumentation, sold by Baxter) and “Parts” (defined as a component manufactured or sold by Baxter for Equipment). **Equipment shall be installed by Baxter.**

THIS PURCHASE AGREEMENT IS SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE TERMS BELOW, WHICH ARE ACCEPTED BY, AND SHALL BE DEEMED BINDING ON, THE PURCHASER UPON PLACING AN ORDER FOR EQUIPMENT.

1. Pricing: The pricing on Schedule A is effective Jun 5, 2020 through Dec 31, 2020. This Purchase Agreement supersedes all previous purchase agreements, pricing quotations, and proposals for similar Equipment. Pricing is not retroactive.
2. Availability: **All Equipment is subject to availability based upon Baxter’s current product portfolio.**
3. Anti-Kickback Statutes: Purchaser and Baxter intend that this Purchase Agreement shall be administered in accordance with the provisions of the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) (“AKS”). To the extent that any discounts and/or rebates are issued by Baxter and received by Purchaser with respect to Equipment under this Purchase Agreement, such discounts and/or rebates may be considered “discounts or other reductions in price” under 42 U.S.C. § 1320a-7b(b)(3)(A) of the AKS. To the extent required by the AKS or the Discount Safe Harbor regulations, 42 C.F.R § 1001.952(h) et seq., Purchaser shall fully and accurately disclose such discounts and other reductions in price in accordance with the applicable state or federal cost reporting requirements. Baxter will provide Purchaser with sales and discount information to allow Purchaser to comply with this Section and the Discount Safe Harbor, including sufficient discount, rebate, and/or other pricing information that may be applicable to enable Purchaser to accurately report its costs for all purchases of Equipment made pursuant to this Purchase Agreement.
4. Own Use: Purchaser agrees that all Equipment purchased from Baxter is for use in the United States. All Equipment is to be used by Purchaser or Purchaser’s Member Unit (defined as those facilities or units in which Purchaser has at least 60% ownership interest and control and for which Purchaser can provide written documentation to support such ownership) and is not to be resold. Purchaser will not knowingly use, resell, transfer, or distribute any Equipment directly or indirectly for the development, production, or proliferation of weapons of mass destruction or missile delivery systems, and/or for any terrorist activities whatsoever. Baxter reserves the right to discontinue the sale of Equipment at Baxter’s sole discretion.
5. Purchase Order Requirements: A valid written purchase order from the Purchaser is required prior to shipment of all Equipment, and must include, and not be limited to, the following information: (a) complete Bill To and Ship To address(es); (b) product number, description, and quantity of items being purchased; and (c) price per item.

All purchase orders must be generated to: Baxter Healthcare Corporation/One Baxter Parkway, Deerfield, Illinois 60015/Attention: Commercial Operations - U.S. Renal Division.

Any attempts to modify this Purchase Agreement through a purchase order or other means shall not be effective. Purchaser hereby waives any rights it may have to enforce any additional or conflicting purchase order terms. The parties agree that either of them may utilize a copy of this provision as written evidence of the knowing, voluntary, and bargained for agreement between the parties to waive the right of Purchaser to enforce such additional or conflicting purchase order terms.

6. Confidentiality: Except as may be required by law, Purchaser and Baxter shall not use or disclose any confidential or proprietary information, including but not limited to pricing and agreement terms, disclosed by one party to another in connection with this Agreement (“Confidential Information”). Notwithstanding the foregoing, Purchaser and Baxter may use or disclose Confidential Information as reasonably required to conduct their business provided that the third party receiving the Confidential Information is bound by confidentiality provisions as least as strong as those in this Agreement and provided the party to whom the Confidential Information is disclosed is prohibited from disclosing, divulging, or using any disclosed Confidential Information for any purposes other than to benefit the party’s performance improvement initiatives. Further, the receiving party may not store or keep the Confidential Information longer than is necessary to fulfill the party’s immediate business need. The foregoing confidentiality obligations shall not apply to any information which (i) is generally available to the public; (ii) was made available to other third persons on a non-confidential basis prior to the executed of the Agreement; (iii) is available on a non-confidential basis from a third person, which third

person was not itself under an obligation to maintain the confidentiality of such information or (iv) is required by law, subpoena or court order to be disclosed, including but not limited to the California Public Records Act. A party disclosing Confidential Information pursuant to subsection (iv) must notify the other party as soon as reasonably practicable of such requirement to disclose and cooperate with the other party in protecting against disclosure or obtaining a protective order. Notwithstanding the foregoing, Baxter understands that the Purchaser is a public entity subject to, among other laws, decisions, rules and statutes, the Ralph M. Brown Act, the California Public Records Act, and the Sunshine Ordinance in its Purchaser Code and Baxter understands that this Purchase Agreement will be made public as part of Purchaser's approval process to enter into the Purchase Agreement. Notwithstanding the foregoing, pricing shall remain confidential to the greatest extent allowable by law.

7. Software: With respect to any software products incorporated in or forming a part of the Equipment hereunder ("Software"), Baxter and Purchaser expressly agree that such Software are being licensed and not sold and that the words "purchase," "sell," or similar or derivative words are understood and agreed to mean "license," and that the word "Purchaser" or similar or derivative words are understood and agreed to mean "licensee." Notwithstanding anything to the contrary contained herein, Baxter or its licensor, as the case may be, retains all rights and interest in Software provided hereunder.

Unless otherwise required by law, Purchaser shall hold in confidence and not sell, transfer, license, loan, or otherwise make available in any form to third parties the Software and related documentation provided hereunder. Purchaser may not disassemble, decompile, or reverse engineer, copy, modify, enhance, or otherwise change or supplement the Software provided hereunder without Baxter's prior written consent. Baxter will be entitled to terminate this license if Purchaser fails to comply with any term or condition herein. Purchaser shall, upon termination of this license, immediately return to Baxter all Software and related documentation provided hereunder and all copies and portions thereof.

Certain of the Software provided by Baxter may be owned by one or more third parties and licensed to Baxter. Accordingly, Baxter and Purchaser expressly agree that such third parties retain ownership of and title to such Software. The warranty and indemnification provisions set forth herein shall not apply to Software owned by third parties and provided hereunder.

The Equipment and/or Software may incorporate multiple layers of encryption and authentication technologies and/or other security controls (e.g., passwords, security logging, and/or certificates). These technologies and/or controls may be able to be configured (or reconfigured) by Purchaser to provide the level of security Purchaser deems appropriate. For example, Purchaser may be able to configure such security technologies and/or controls by choosing not to use some or all such security technologies and/or controls, to leave such security technologies and/or controls in their default settings, to leave ports open unnecessarily, or to apply or not apply available updates and Upgrades to the Equipment or Software that affect its security. Purchaser acknowledges that how Purchaser configures (including any configuration that fails to use) such security technologies and controls could impact the operation of the Equipment and/or Software, or the security, confidentiality, integrity, or availability of the Equipment, Software, and/or data. Notwithstanding anything herein to the contrary, including section 16.1 (Baxter Indemnity), Purchaser assumes all risks associated with, and liability resulting from, Purchaser's configuration of such security technologies and/or security controls. Further, to the maximum extent permitted by law, Purchaser bears all responsibility associated with, and liability resulting from, security incidents arising from Purchaser's use of the Equipment and/or Software, except solely to the extent such security incident arises from the failure of the security technologies and/or security controls implemented by Purchaser to perform in accordance with their specifications.

Further, Purchaser assumes all risks and full responsibility for maintaining the physical security of the Equipment and/or Software, including with respect to preventing physical tampering that would enable the compromise of security technologies and/or controls, ensuring that only authorized personnel of Purchaser have access to the Equipment and/or Software.

8. Warranties and Limitation of Liability:

8.1 Equipment Warranty: Baxter will, at its option, replace or repair, at no charge to Purchaser, any Part of the Baxter Prismax Dialysis Control Unit, including any TherMax Blood Warmer that is found to be defective in factory material or workmanship during the twelve (12) months from date of installation or six thousand (6,000) hours of operation, whichever comes first.

Baxter will, at its option, replace or repair, at no charge to Purchaser, any Part of other Equipment not listed above which is found to be defective as a result of manufacturing defects only. Performance of scheduled preventive maintenance procedures, as described in the operator's manual, is the responsibility of Purchaser and is not covered by this Equipment warranty. In no event shall this warranty apply should Baxter determine in good faith that Parts or Equipment have been abused, misused, neglected, tampered with, damaged intentionally, failure to use and maintain the unit in accordance with instructions provided in the applicable operator's manual, or because of alterations made by other than Baxter authorized service personnel or if Purchaser fails to perform preventative maintenance procedures. Repairs to the Parts or Equipment required as a result of any of the foregoing, as determined by Baxter in good faith, will be charged to the Purchaser.

Optional feature components that are installed after Equipment has been placed in service are subject to a separate warranty applicable to such components. Certain components, such as fuses, bulbs, and filters, which are subject to normal wear, are not covered by this limited Equipment warranty.

Baxter provides no warranty for Equipment and/or Parts not manufactured by or purchased from Baxter. For Equipment and/or Parts

not manufactured by or purchased from Baxter, the applicable manufacturer may provide warranty coverage under their manufacturer's warranty.

To request service under this Equipment warranty, please call the Technical Service Response Center at 1-800-525-2623. The caller should be ready to provide the name, model number and serial number of the Equipment.

82 EXTENDED WARRANTY OPTIONS :

PRISMAXEW2PM: Baxter will provide purchaser an additional twelve (12) months of warranty covering repairs, labor, and Parts for the Equipment purchased pursuant to this Purchase Agreement, and includes one (1) Preventive Maintenance check after the initial twelve (12) months of warranty and one (1) Preventive Maintenance check after the additional twelve (12) months of warranty.

83 No Additional Warranties: EXCEPT FOR ANY LIMITED WARRANTIES THAT MAY BE PROVIDED PURSUANT TO THIS PURCHASE AGREEMENT OR ANY LIMITED WARRANTIES THAT MAY BE PROVIDED PURSUANT TO THE APPLICABLE EULA, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BAXTER AND ITS LICENSORS DISCLAIM ANY AND ALL OTHER WARRANTIES WITH RESPECT TO THE EQUIPMENT, SOFTWARE, PARTS, OR OTHER OFFERINGS, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE. BAXTER DOES NOT WARRANT THAT THE EQUIPMENT, SOFTWARE, OR OTHER OFFERING(S) OR THE FUNCTIONS CONTAINED THEREIN, WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR-FREE. **IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM THIS PURCHASE AGREEMENT.** Some states may not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to Purchaser. This warranty gives Purchaser specific legal rights and Purchaser may also have other rights, which vary from state to state.

9. Force Majeure Event: Neither party shall be liable for non-performance or delays to the extent such failure or delay is caused by or results from acts beyond the impacted party's reasonable control, including, without limitation, the following force majeure events ("Force Majeure Events"): (a) strikes, lockouts, concerted acts of workers or other industrial disturbances; (b) fires, explosions, floods, or other natural catastrophes; (c) civil disturbances, riots, terrorist threats or acts, or armed conflict (whether war is declared or undeclared); (d) curtailment, shortages of power or raw materials, rationing, or allocation of normal sources of supply, labor, materials, transportation, energy, or utilities; (e) accidents, epidemics, or acts of God; (f) sufferance of or voluntary compliance with acts of government or governmental regulation (whether or not valid); (g) embargoes or blockades; (h) discontinuation of Equipment; or (i) any other cause beyond the commercially reasonable control of either party. Notwithstanding the foregoing, this Section shall not apply to either party's obligations to make payments to the other party hereunder.

10. Tax, Tax-Exempt Status and Other Fees: Purchaser agrees to pay all applicable federal, state, and local taxes (including property taxes); license and registration fees; and all other fees and costs based on Purchaser's purchase, possession, or use of Equipment. A Purchaser that is exempt from taxation is required to provide valid certification of its tax-exempt status to Baxter's Master Data Center of Excellence. (Phone: 1-877-329-0003; Fax: 1-847-948-2540). Purchaser represents and warrants that it is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Baxter or on any taxes levied on employee wages. Purchaser shall only pay for any State or local sales or use taxes on the services rendered or Equipment and/or parts supplied to Purchaser pursuant to the Purchase Agreement.

11. Proof of Delivery: The Baxter invoice and packing list must be retained as proof of delivery. Subject to availability and within thirty (30) days following the date of shipment, requests for additional documentation of delivery (e.g., carrier delivery logs) will be subject to a service charge of forty dollars (\$40.00).

12. Freight and Distribution: Prices for Equipment and Parts do not include delivery, handling, and installation. These charges will be arranged and billed separately, if applicable. All shipments are considered "contiguous USA only" unless otherwise mutually agreed to in writing by Purchaser and Baxter. Standalone warmer purchases are subject to an additional \$295.00 installation fee for each warmer. An additional purchase order will be required and the service will be invoiced after the installation. If Purchaser would like for Baxter to install the warmer, please call 1-800-525-2623 to request an installation and select option 2.

13. Shipping Terms and Risk of Loss: Equipment is shipped FOB Destination (freight charges are prepaid by Baxter and shall be added to Purchaser's invoice as separate line item charges). The risk of loss on Equipment passes to Purchaser upon Purchaser's receipt of Equipment. Purchaser agrees, at Purchaser's own cost and expense, to keep the Equipment fully insured against destruction and loss from the date of receipt of the Equipment until the amounts owed are paid in full. Upon Baxter's request, Purchaser will provide Baxter with proof of such insurance. Title to Equipment shall pass to Purchaser upon full payment of all applicable fees under this Purchase Agreement.

14. Billing and Payment:

14.1 **Terms of Sale:** All orders placed pursuant to this Purchase Agreement are subject to credit approval and acceptance by Baxter. Payment terms are net thirty (30) days from the date of invoice. Payment is made to the “remit to” address indicated on the invoice. All invoices issued by Baxter under this Purchase Agreement shall reflect the corresponding Purchase Order number.

A service charge of one and one-half percent (1 1/2 %) per month (or the highest amount allowed by applicable law, if lower) shall be added to all amounts past due. Additionally, Baxter reserves the right to require payment in advance of shipment.

14.2 **Prices:** Equipment is priced at the amount indicated for the selling unit of measure ordered. Equipment prices are exclusive of all taxes, discounts, or rebates.

14.3 **Credit and Disputes:** Only amounts that are disputed in good faith within thirty (30) days from the date of invoice may be withheld from payment pending resolution. All disputes or rights are waived unless the Purchaser’s complaint has been received by Baxter within such thirty (30) day period.

15 **New Technology:** In the event that Baxter launches new therapy delivery technologies, Baxter and Purchaser may, in Baxter’s discretion, meet in good faith to discuss and agree upon terms for purchase of such new technologies. The parties further may discuss terms for a potential exchange of existing Equipment for such new technologies, which may include, but not be limited to, a rebate or discount on new technology purchases.

16 Indemnification:

161. **Baxter Indemnity:** Baxter shall protect, indemnify, defend, and hold harmless Purchaser and its members, directors, agents, and employees (the “Purchaser Indemnified Parties”) from and against any and all claims, demands, actions, damages, expenses, costs, claims, judgments, and liabilities (including, without limitation, interest, penalties, and reasonable attorneys’ fees and investigative costs, and including claims for personal injury, death, or property damage) (together, “Claims”) that the Purchaser Indemnified Parties may hereinafter suffer or incur as a result of any actions, claims, or demands by third parties, but only to the extent the Claims arise from bodily injury or tangible property damage caused by the failure of the Equipment or Parts manufactured by Baxter and sold to Purchaser under this Purchase Agreement to perform in accordance with their published specifications and any specific warranty provided by Baxter under this Purchase Agreement. Baxter shall have no obligation under this Section if a Claim arises from the (i) improper storage, handling, or use by a Purchaser Indemnified Party that is otherwise contrary to Baxter’s labeling and instructions for use; (ii) modification of Baxter Equipment or Parts; or (iii) combination of the Equipment or Parts with third party products (except to the extent such Claim arises out of the failure of the Equipment or Parts to meet Baxter’s express warranties). Further, Baxter shall not be obligated hereunder to defend, indemnify, or hold harmless any Purchaser Indemnified Party from any such Claims to the extent arising from the Purchaser Indemnified Party’s sole negligence or willful misconduct or any actions taken that constitute the unauthorized practice of medicine.

162. **Purchaser Indemnity:** Purchaser shall protect, indemnify, hold harmless, and, if requested, defend Baxter, and its officers, directors, agents, and employees (collectively, the “Baxter Indemnified Parties”), from and against any Claims that the Baxter Indemnified Parties may hereinafter suffer or incur as a result of any actions, claims, or demands, but only to the extent the Claims arise from or are caused in any part by breach of any (i) representation, warranty, covenant, or obligation of Purchaser contained in this Purchase Agreement or (ii) the storage, handling, or use of the Equipment or Parts by Purchaser, or modification or combination of the Equipment or Parts with third party products (except to the extent such Claim arises out of the failure of the Equipment or Parts to meet Baxter’s express warranties). Purchaser shall not be obligated hereunder to defend, indemnify, or hold harmless any Baxter Indemnitees from any such Claims to the extent arising from the Baxter Indemnitees’ negligence or willful misconduct.

163. **Intellectual Property Indemnification:** Baxter will defend and indemnify at its own expense any action against Purchaser brought by a third party to the extent that the action is based upon the Equipment, Parts, or Software infringing upon any U.S. patents or any copyrights or misappropriation of any trade secrets of a third party, and Baxter will pay those costs and damages finally awarded against Purchaser in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action (“Payment of Costs and Damages”). Payment of Costs and Damages is conditioned upon Purchaser: (a) notifying Baxter promptly in writing of such action, (b) giving Baxter sole control of the defense thereof and any related settlement negotiations, and (c) cooperating and, at Baxter’s request and expense, assisting in such defense. If the Equipment, Part or Software becomes, or in Baxter’s opinion is likely to become, the subject of an infringement claim, Baxter may, at its option and expense, either (a) procure for Purchaser the right to continue using the Equipment, Part, or Software, (b) replace or modify the Equipment, Part or Software so that it becomes non-infringing without substantially compromising its principal functions, or (c) terminate this Purchase Agreement upon notice to Purchaser and refund to Purchaser any prepaid fees, if applicable, pro-rated for the remainder of prepaid period. Notwithstanding the foregoing, Baxter shall not be obligated to defend or otherwise be liable under this Section 16 to the extent the infringement asserted arises out of (a) any use of the Equipment or Software not in accordance with the terms of the Purchase Agreement or for purposes not intended by Baxter, (b) any use of the Equipment or Software in combination with other products,

equipment, software, or data not intended by Baxter to be used with the Equipment or Software, (c) any use of any release of the Software other than the most current release made available to Purchaser, or (d) any modification of the Equipment or Software by any person other than Baxter or its authorized agents or subcontractors. THESE INDEMNIFICATION PROVISIONS CONSTITUTE BAXTER'S SOLE LIABILITY AND PURCHASER'S SOLE RECOURSE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS BY THE EQUIPMENT OR SOFTWARE.

17 **Insurance:** Baxter shall maintain insurance policies or a self-insurance program during the Term of the Agreement to cover product liability, general public liability, and property damage risks against any insurable claim or claims, which might or could arise regarding Products purchased from Baxter. General liability will contain a minimum combined single limit of liability for bodily injury and property damage in the amounts of not less than One Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. Upon request, Baxter shall provide Purchaser a certificate of insurance. Baxter shall also maintain insurance policies or a program of self-insurance for: (i) Workers Compensation in accordance with limits imposed by applicable state law; and (ii) Business Automobile Liability, with not less than One Million Dollars (\$1,000,000) per occurrence.

18 **Assignment:** This Agreement is not assignable by either party hereto (whether by operation of law or otherwise) without the prior written consent of the other party, which shall not be unreasonably withheld or delayed. Baxter may assign this Agreement, in whole as part of a corporate reorganization, consolidation, merger, or sale of all of its assets, provided that Baxter provides Purchaser with ten (10) days' prior written notice of such assignment and Purchaser has the right to terminate this Agreement, if required by applicable law.

19. **Governing Law:** This Purchase Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to any rules governing conflicts of laws.

20. **Debarment and Suspension:** Baxter hereby represents and warrants that it is not 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.

21. **Signatures:** This Purchase 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 Purchase Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Purchase 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 Purchase Agreement upon request.

22. **Entire Agreement:** This Purchase Agreement (including the documents referred to herein) constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they related in any way to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned duly authorized representatives of the parties have executed this Purchase Agreement on the date below. The parties agree any modifications by Purchaser to the Agreement after Baxter's signature shall render Baxter's obligations under this Agreement void and of no force or effect.

**Baxter Healthcare Corporation
U.S. Renal Division ("Baxter")**

**COUNTY OF SAN BERNARDINO on behalf of Arrowhead
Regional Medical Center ("Purchaser")**

Signature: 
Authorized Representative

Signature: _____
Authorized Representative

Printed Name: Kathy Ratliff
Title: Sr. Sales Contract Analyst

Printed Name: Curt Hagman
Title: Chairman, Board of Supervisors

Date: 10/8/2020

Date: _____

Email: _____

Email: _____

SCHEDULE A

PRICE LIST

Product No	Description	Minimum Quantity per Order	Each Price	Extended Price
955630	THERMAX US	1	\$4,500.00	\$4,500.00
955626	PRISMAX V2 US	1	\$32,000.00	\$32,000.00
SC6192	PRISMAX V2 WARMER ARM KIT	1	\$425.00	\$425.00
PRISMAXEW2PM	PRISMAX EXT WARRANTY 2 PM	1	\$5,800.00	\$5,800.00

Parts and Equipment Service

1-800-553-6898

On-site Service

Hours: 8:00 am - 5:00 pm local time

Emergency On-site Service (7 days a week)

Hours: 8:00 am -10:00 pm EST

SCHEDULE B

Member Units

The Member Units to be supplied under this Purchase Agreement are as follows:

Customer	Customer Name	City	State
34227002	ARROWHEAD REGL MED CTR	COLTON	CA