



Contract Number

20-604

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	William L. Gilbert
Telephone Number	(909) 580-6150
Contractor	Avita Medical Americas, LLC
Contractor Representative	Luke Spak
Telephone Number	(661) 904-5556
Contract Term	February 11, 2020 to February 10, 2021
Original Contract Amount	\$330,000
Amendment Amount	
Total Contract Amount	\$330,000
Cost Center	9174214200

Briefly describe the general nature of the contract: Approve the Agreement with Avita Medical Americas, LLC. for the purchase of RECELL Autologous Cell Harvesting Devices in an amount not to exceed \$330,000 for the one year period of February 11, 2020 to February 10, 2021, with the option to renew for four additional one-year periods.

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ *Bonnie Uphold*
Bonnie Uphold, County Counsel

Date 2-4-20

Reviewed for Contract Compliance

▶

Date _____

Reviewed/Approved by Department

▶ *William L. Gilbert*
William L. Gilbert, Director

Date 1/31/2020

SUPPLY AGREEMENT

THIS SUPPLY AGREEMENT (the “Agreement”) entered into as of this 11th day of February, 2020 (the “Effective Date”) by and between Avita Medical Americas LLC, a limited liability company, having its principal place of business at 28159 Avenue Stanford, Suite 220, Valencia, CA 91355 (“Avita Medical”) and County of San Bernardino, a political subdivision organized and existing under the constitution and the laws of the State of California, on behalf of Arrowhead Regional Medical Center. The County of San Bernardino is a political subdivision of the State of California operating a hospital or surgery center having a facility at 400 North Pepper Avenue, Colton, California 92324-1819 (the “Purchaser”). Purchaser and Avita Medical are referred to herein individually as “Party” or collectively as “Parties.”

BACKGROUND

Avita Medical is engaged in the business of manufacturing and supplying the Product (as defined below);

Purchaser wishes to purchase Product from Avita Medical for use with End-Users.

In consideration of their mutual covenants and other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties intending to be legally bound agree as follows:

1. DEFINITIONS

11 “Affiliate” means any corporation, firm, partnership or other entity that directly or indirectly controls, is controlled by or is under common control with a party. For purposes of this definition, the word “control” means the ownership of fifty percent (50%) or more, of the voting share capital of such entity or any other comparable equity or ownership interest.

12 “Confidential Information” means and includes all know-how, trade secrets, designs, intellectual property, drawings, specifications, catalogs, data sheets, sales and technical bulletins, customers and all other business and proprietary information, whether or not reduced to writing, relating to the design, manufacture, use, marketing, and sale of the Product, as well as any other information relating to the business of a Party that may be divulged to the other Party in the course of its performance of this Agreement and that is not generally known in the trade.

13 “End-Users” means Purchaser’s patients for whom Purchaser is ordering and using the Product in Purchaser’s facility.

14 “**Laws**” means all applicable laws, statutes, rules, regulations, ordinances, orders and other applicable pronouncements having the effect of law of any federal, national, multinational, state, provincial, county, city or other political subdivision, domestic or foreign which pertain to and are applicable in the Territory.

15 “**Product**” means the product(s) listed on Exhibit A. The Parties from time to time during the Term (as defined below) may confirm in writing product(s) that may be added to this definition of Product.

16 “**Territory**” means the United States of America.

2. PURCHASE AND SUPPLY

21 **Purchase.** Purchaser shall purchase from Avita Medical and Avita Medical shall sell to Purchaser the Product in the Territory from the Effective Date until the expiration or termination of this Agreement.

22 **Restrictions.** Purchaser acknowledges and agrees that the Product is not intended for re-sale and will only be used with its End-Users in the Territory.

3. PRICING; TERMS AND CONDITIONS OF SALE

3.1. Product and Pricing. The Products together with the initial prices charged to Purchaser for each such Product are set forth in **Exhibit A** to this Agreement.

3.2. Pricing Changes. Avita Medical shall keep such prices in effect during the Initial Term. After such date, Avita Medical may, at any time, change any the price by providing at least sixty (60) days’ prior written notice of the proposed change. No such change shall be more than three percent (3%) year-over-year. Thereafter, such new price shall apply to all orders subsequently received by Avita Medical and all delivery of Products thereunder.

3.3. Rebate. Based upon the volume of Product purchased by Purchaser in a calendar year, Purchaser shall be entitled to the rebates as set forth in **Exhibit A** to this Agreement.

a. Standard Terms and Conditions. Avita Medical’s current standard terms and conditions of sale set forth in **Exhibit B**, attached hereto. Avita Medical may revise such Terms and Conditions from time to time with the prior written approval from both parties.

3.4. Conflict. If any terms and conditions contained in Purchaser's purchase order or other documentation conflict with the terms of this Agreement, the terms and conditions of this Agreement shall apply to the transaction.

4. ORDER AND DELIVERY

4.1. Purchase Order. Purchaser shall order Product under this Agreement via email at customerservice@avitamedical.com or by phone at 1-833-GO-AVITA. Each purchase order shall indicate the desired shipment date(s) and the quantity being ordered. All purchase orders shall constitute binding commitments to accept and pay for the number of Product stated therein, in accordance with the terms and conditions hereof. Any terms or conditions contained in Purchaser's orders other than the number of Product that Purchaser is ordering shall not be binding. Any conflict between the terms and conditions of this Agreement and the terms and conditions of any order or other communication submitted by Purchaser to Avita Medical shall be resolved in favor of the terms and conditions of this Agreement.

4.2. Acknowledgment. Avita Medical shall promptly acknowledge to Purchaser each purchase order issued by Purchaser and confirm delivery dates to destinations specified by Purchaser in accordance with Avita Medical's normal lead times.

4.3. Changes. Purchaser may cancel or amend an order only with the prior written approval of an authorized representative of Avita Medical and must be set forth in a written amended purchase order. Any such changes may add to the delivery timeline.

4.4. Shipment and Packing. Unless otherwise agreed, Avita Medical shall package and ship the Product in accordance with Avita Medical's customary procedures and terms and conditions. Purchaser shall bear sole responsibility for all other costs and expenses associated with shipment of the Product to the extent not paid by the End-User. Shipment shall be by a carrier selected by Avita Medical. Product shall be shipped F.O.B. point of shipment.

4.5. Invoices. Avita Medical shall invoice Purchaser for Product at the time of shipment.

5. CONFIDENTIALITY AND PROPRIETARY RIGHT

5.1. Confidential Information. Each Party acknowledges that the Confidential Information of the other Party may be valuable trade secrets and proprietary to the other Party. Each Party shall hold the Confidential Information of the other Party in strict confidence and shall not disclose it to any other person, firm, or corporation, except as reasonably required to perform its obligations under the Agreement. The foregoing obligation shall not extend to: (a) information that is or becomes public through no fault of a Party; (b) information that is known to the general public; (c) information that was

known by a Party prior to its execution of this Agreement; (d) information that becomes available to the Party from a source other than from the other Party which source has rightfully obtained the same information and has no obligation of confidentiality with respect to it; or (e) information that is required to be disclosed under applicable law.

52. Use of Confidential Information. Neither Party shall use for any purpose other than implementation of this Agreement any portion of the Confidential Information supplied by the other Party or any patent, trademark, or other intellectual property right of the other Party. Acknowledging that the damages sustainable by a Party as a consequence of any breach of the other Party's obligations under this Section 5 may be difficult to measure in monetary terms, the Parties agree that the damaged Party shall be entitled to seek to have the continuation of any breach permanently enjoined. Avita Medical acknowledges that this Agreement is subject to the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 6250) (collectively, "Regulations"). Avita Medical represents that it has a good faith belief that its Confidential Information is exempt from disclosure under the Regulations and agrees to reimburse Purchaser for, and to indemnify, defend, and hold harmless Purchaser, its officers, employees, and agents, from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses, including without limitation, attorneys' fees, expenses, and court costs of any nature arising from or relating to Purchaser's non-disclosure of any such information. If the receiving Party receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the other Party, it will, to the extent legally permissible, promptly notify the other Party and, if requested by the other Party, tender to the other Party the defense of the subpoena or process. Unless the subpoena, process, or request is timely limited, quashed or extended, the receiving Party will be entitled to comply with the request to the extent permitted by law.

53. Public Announcement. Neither Party shall make any public announcement concerning the existence of this Agreement or its terms unless such Party receives prior written approval from the other Party.

54. Intellectual Property Rights. This Agreement shall not be construed to grant to Purchaser any right, title, or interest in Avita Medical's Intellectual Property (as defined below), embodied in or associated with, the Product or any right to copy or modify the Product. Purchaser shall be authorized only to use the Product with End Users in the form and packaging as delivered by Avita Medical. Purchaser shall not use any of Avita Medical trademarks, service marks, logos, or slogans in any manner likely to confuse, mislead, or deceive the public, or adverse to the best interests of Avita Medical.

55. Ownership. Except as provided in this Agreement, Avita Medical shall retain sole ownership of, and all rights, title, and interest to, any Intellectual Property of any kind owned by the Party as of the Effective Date and during the Term of the Agreement.

5.6 Intellectual Property. “Intellectual Property” shall mean, whether or not reduced to writing, all discoveries, inventions, patents, designs, trademarks, trade names, trade dresses, service marks, copyright, know-how, scientific, medical and other information, licenses, technology, analytical reference materials, and all other rights, proprietary information and intellectual property, relating to the Product, or to the sale or distribution of the Product in the Territory, or any uses or processes pertaining thereto, now or hereafter owned, used or held by Avita Medical during the Term hereof.

6. TERM AND TERMINATION

6.1 Term. The term of this Agreement (the “Term”) shall commence as of the Effective Date and continue for an initial period of one (1) year (the “Initial Term”). Thereafter, the Parties may mutually agree to renew this Agreement for up to four (4) additional periods of one (1) year (each a “Renewal Term”) unless terminated by either Party as provided herein.

6.2 Termination for Cause. Either Party may terminate this Agreement if the other party commits a material breach of any of the terms of this Agreement by providing the other Party with ten (10) days written notice of such termination, including the nature of the breach upon which such notice is based. If the Party receiving such notice cures the alleged breach within the ten (10) day period, the notice shall be deemed null and void.

6.3 Termination for Convenience. The Parties each reserve the right to terminate this Agreement, for any reason, with a thirty (30) day written notice of termination. Upon such termination, payment will be made to Avita Medical for services rendered and expenses reasonably incurred prior to the effective date of termination.

6.4 Effects of Termination. In the event of termination of this Agreement:

6.4.1. Each Party shall return to the other Party and immediately cease all use of Confidential Information previously furnished by the other Party and then in its possession, unless otherwise required by Law to retain a copy. The obligations of Section 5 will continue to apply to Confidential Information so retained.

6.4.2. Each Party shall immediately discontinue all use, directly or indirectly, of trademarks owned or controlled, now or after the Effective Date, by the other Party.

65. Continuing Obligations. Notwithstanding termination or expiration in the Agreement, Purchaser's obligation to pay for all Products provided hereunder shall continue. Any obligations, duties, or rights that by their nature extend beyond the expiration or termination of this Agreement shall survive any expiration or termination and remain in effect.

7. **LIMITED WARRANTY; LIMITATION OF LIABILITIES AND REMEDIES**

71. Scope of Warranty. Avita Medical warrants, solely for the benefit of Purchaser for the term and in accordance with this Section 7, that the Product shall, upon delivery to Purchaser, will conform to and will have been manufactured in conformance with the specifications, in each case, as in effect at the time of manufacture; provided, however, that the foregoing warranties are expressly contingent (and shall otherwise be void) upon use of the Product strictly in accordance with such specifications and without misuse, damage, alteration, or modification thereto. Purchaser shall not in any way alter the Product without the prior written authorization of Avita Medical, nor extend any warranty nor make any representations regarding the Product other than as provided in this Section 7.

72. Disclaimer. **EXCEPT AS EXPRESSLY PROVIDED HEREIN, AVITA MEDICAL DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

73. Claims Procedures; Exclusive Remedy. In accordance with the terms set forth in this Agreement, Avita Medical, at its option, either (i) replace, at its expense, all Product that does not comply with the specifications ("Non-Conforming Product") or (ii) credit Purchaser for any payment previously made for such Non-Conforming Product. The obligation of Avita Medical to replace Non-Conforming Product in accordance with the specifications or credit Purchaser for such Non-Conforming Product shall be Purchaser's sole and exclusive remedy under this Agreement for Non-Conforming Product and is in lieu of any other warranty, express or implied.

74. Returns. All Non-Conforming Product so returned shall be shipped prepaid to Avita Medical's facility. All returns require a Return Material Authorization (RMA) from Avita Medical.

75. Limitation of Liability. The liability of Avita Medical to Purchaser related to the Product or this Agreement shall not exceed the total amount of payments made to Avita Medical hereunder in the two-year period preceding the claim. The foregoing limitation will not apply to Avita Medical's indemnity obligations, violations of law, gross negligence or willful misconduct. **REGARDLESS OF ANY OTHER BREACH**

HEREUNDER OR ANY OTHER CLAIM BY PURCHASER AGAINST AVITA MEDICAL, AVITA MEDICAL IN NO EVENT SHALL BE LIABLE TO PURCHASER FOR ANY LOSS OF PROFITS; ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES; OR ANY CLAIMS OR DEMANDS BROUGHT AGAINST PURCHASER BY ANY OTHER PARTY, REGARDLESS OF WHETHER AVITA MEDICAL HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS OR PROFITS, OR BUSINESS INTERRUPTION. The foregoing limitations will not apply to claims arising under Avita Medical's indemnity obligations, strict liability, gross negligence, willful misconduct, or violation of law.

8. PURCHASER'S OBLIGATIONS

81 Licenses and Other Governmental Approvals; Compliance. Purchaser shall comply with any and all Laws that may be applicable to Purchaser by reason of its execution of this Agreement, including any and all Laws that govern or affect the ordering, purchasing, storage, possession or use, including possible adverse events or complaints of Product in the Territory. Each Party shall comply with all applicable Laws in the Territory.

82 Questionable Payments. Avita Medical shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of Purchaser in an attempt to secure favorable treatment regarding this Agreement. Purchaser, by written notice, may immediately terminate this Agreement if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of Purchaser with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded. Avita Medical shall immediately report any attempt by an officer, employee or agent of Purchaser to solicit (either directly or through an intermediary) improper consideration from Avita Medical. The report shall be made to the supervisor or manager charged with supervision of the employee or the County of San Bernardino Administrative Office. In the event of a termination under this provision, Purchaser is entitled to pursue any available legal remedies.

83 Debarment. Purchaser represents and warrants that in connection with this Agreement that its employees (i) has not been debarred by the FDA pursuant to its authority under Section 306; (ii) of the Food, Drug, Cosmetic Act (21 U.S.C. §335(a) or (iii) is the subject of any investigation or proceeding which may result in debarment by the FDA. In addition, neither it or any of its employees is included in the List of Excluded Individuals/Entities (maintained by the U.S. Department of Health and Human Services Office of Inspector General) or the List of Parties Excluded from

Federal Procurement and Nonprocurement maintained by the U.S. General Services Administration, or is the subject of any investigation or proceeding which may result in inclusion in any such list. Purchaser agrees to immediately notify Avita Medical if it becomes aware of any such debarment, exclusion, investigation or proceeding of it or, to the extent applicable, any of its employees. Avita Medical certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Avita Medical further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

84 Compliance with Laws.

8.4.1 The dollar value of the Product and rebates, if any, provided pursuant to this Agreement, and any other products and services not specifically paid for by Purchaser and received from Avita Medical under this Agreement are "discounts or other reductions in price" to Purchaser under Section 1128B(b)(3)(A) of the Social Security Act, 42 U.S.C.1320a-7b(b)(3)(A).

8.4.2 Upon request of Purchaser, Avita Medical shall disclose, per the applicable regulations, the specified dollar value of discounts or reductions in price.

8.4.3 Purchaser shall disclose the specified dollar value of discounts or reductions in price under any state or federal program which provides cost or charge based on reimbursement to Purchaser for the Product and any services covered by this Agreement in accordance with applicable regulations.

8.4.4 Each Party agrees that it will account fully and accurately for, and report the total value of, the discounts, rebates, promotional and administrative fees paid pursuant to this Agreement on applicable cost reports in compliance with all applicable federal, state and local laws and regulations, including but not limited to the Medicare and Medicaid "anti-kickback" laws and "safe harbor" regulations for discounts.

9. REGULATORY MATTERS

9.1 Exchange of Safety Information; Adverse Reaction Reporting. Purchaser shall ensure that it will record and promptly report to Avita Medical when becoming aware of the event, any and all serious and non-serious adverse events regarding Product, whether expected or unexpected in accordance with applicable Laws.

92 Reporting. Avita Medical shall be solely responsible for communications with the FDA regarding Product, including but not limited to, reporting on adverse events and product complaints.

93 Records and Compliance. The Parties agree throughout the Term to maintain records and otherwise establish procedures to assure compliance with all Laws which apply to the sales and use of the Product.

10. DISCONTINUANCE OF SALES; PRODUCT RECALL

101 Discontinuance of Sales. Either Party, at any time, shall be entitled to cease, permanently or temporarily, the sale of any Product in the Territory if continued sale of such Product in the Territory would be in violation of any Law, or, with reasonable prior consultation with the other Party, if such Party, in good faith, believes that it has an ethically valid reason based on medical or scientific concerns relating to such Product.

102 Recalls or other Corrective Action. Avita Medical shall promptly notify Purchaser of any material actions to be taken by Avita Medical with respect to any recall or market withdrawal or other corrective action related to Product in the Territory prior to such action so as to permit Purchaser a reasonable opportunity to consult with Avita Medical with respect thereto; provided, however, nothing in this Section is intended to limit Avita Medical's ability to recall, withdraw or take any other corrective action relating to Product. At Avita Medical's request, Purchaser shall provide reasonable assistance to Avita Medical in conducting such recall, market withdrawal or other corrective action in the Territory. In accordance with the foregoing, Avita Medical shall make all decisions with respect to any recall, market withdrawals or any other corrective action related to Product.

103 Notice. Each Party shall, as soon as practicable, notify the other Party of any recall information received by it in sufficient detail to allow the Parties to comply with any and all applicable Laws.

104 Costs and Expenses of Recalls. Avita Medical shall pay for reasonable documented, direct, out-of-pocket costs paid or accrued by Purchaser with respect to participating in such recall, market withdrawal or other corrective action in the Territory; provided, however, that if such recall, market withdrawal or other corrective action was not caused by Purchaser's gross negligence or willful misconduct occurring while the Product was under Purchaser's control (e.g., mishandling or adulteration of the Product in Purchaser's warehouse).

11. INDEMNIFICATION AND INSURANCE

11.1 Purchaser's Obligation. Purchaser agrees to be responsible for any and all claims for wrongful death, personal injury, and property loss caused by the negligent acts or omissions or willful misconduct or breach of the Agreement.

11.2 Indemnification. Avita Medical will indemnify, defend, and hold harmless Purchaser and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any Product. Avita Medical further agrees to indemnify, defend (with counsel reasonably approved by Purchaser) and hold harmless Purchaser and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Agreement from personal injury, death, or property damage and for any costs or expenses incurred by Purchaser on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees.

11.3 RESERVED.

11.4 Procedure. . If a credible claim is made or threatened, including without limitation, the filing of a lawsuit against Purchaser, or Purchaser receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, Purchaser will notify Avita Medical promptly of such lawsuit, claim or election. However, Purchaser's failure to provide or delay in providing such notice will relieve Avita Medical of its obligations only if and to the extent that such delay or failure materially prejudices Avita Medical's ability to defend such lawsuit or claim. Purchaser will give Avita Medical sole control of the defense (with counsel reasonably acceptable to Purchaser) and settlement of such claim; provided that Avita Medical may not settle the claim or suit absent the written consent of Purchaser unless such settlement (a) includes a release of all claims pending against Purchaser, (b) contains no admission of liability or wrongdoing by Purchaser, and (c) imposes no obligations upon Purchaser other than an obligation to stop using the Product that is the subject of the claim. This shall not apply to any judgment or settlement amount, which amounts Purchaser shall be entitled to notify, invoice or debit Avita Medical's account at any time; and Purchaser, at its sole discretion, may settle the claim or suit.

11.5 Insurance. Purchaser is an authorized self-insured public entity for purposes of General Liability and warrants that through its program of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement. Avita Medical agrees to provide insurance as set forth in accordance with Exhibit C, attached hereto and incorporated herein.

12. INFORMAL DISPUTE RESOLUTION

121 In the event of any dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the Parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement in good faith. To this effect, the Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

13. GENERAL PROVISIONS

131 Assignment. Neither Avita Medical nor Purchaser shall assign this Agreement in whole or in part without the prior written consent of the other. Avita Medical may assign this Agreement, in whole as part of a corporate reorganization, consolidation, merger, or sale of all of its assets, provided that Avita Medical 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. Subject to the foregoing, all of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the Parties.

132 Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and terminates and supersedes any existing Agreement pertaining to the same subject matter between the Parties. This Agreement, as executed and approved, shall not be modified unless in writing, expressly stating its intent to modify the terms of this Agreement, and signed by an authorized representative of the parties hereto.

133 Severability. If any term or provision of this Agreement, or any application thereof to any circumstances, shall, to any extent and for any reason, be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is held invalid or enforceable, shall not be affected thereby and shall be construed as if such invalid or unenforceable provision had never been contained herein and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

134 Governing Law and Venue. This Agreement and the performance of the parties hereunder shall be controlled and governed by the laws of the State of California without regard to the principles of conflict of laws. The Parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action

or claim concerning this Agreement is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance.

135 Independent Contractor. Nothing contained in this Agreement shall be construed as creating a joint venture, agency, franchise, partnership, employment arrangement or other similar legal relationship between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

136 Force Majeure. The obligations of either Party to perform under this Agreement will be excused during each period of delay caused by acts of God, terrorism, shortages of power or materials or government orders or another event which is beyond the reasonable control of the Party obligated to perform ("Force Majeure Event"). In the event that a party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, such Party shall: (a) immediately notify the other party in writing of such Force Majeure Event and its expected duration; and (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible. In the event that any Force Majeure Event delays a party's performance for more than sixty (60) days following notice by such Party pursuant to this Agreement, the other Party may terminate this Agreement immediately upon written notice to such Party.

137 Waiver. No waiver by either Party or any breach of the term or condition of this Agreement shall be construed as a waiver of any succeeding breach of any term or condition.

138 Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed to be an original but when taken together shall constitute one and the same agreement and shall become effective when a counterpart has been signed by each of the parties hereto and delivered to the other (by facsimile or otherwise).

139 Notice. Any notice required or permitted to be given hereunder to either party hereunder shall be in writing and shall be deemed given on the date received if delivered personally or by reputable overnight delivery service, or three days after the date postmarked if sent by registered or certified mail, return receipt requested, postage prepaid to the following addresses:

If to Purchaser:



LGL003 Rev 1
Date Issued:
24 OCT 2018
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Attn: Materials Management
400 N. Pepper Avenue
Colton, CA 92324


If to Avita Medical:
Attn: General Counsel
28159 Avenue Stanford
Suite 220
Valencia, California 91355

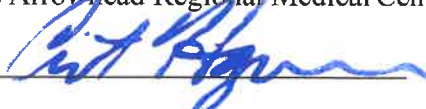
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Supply Agreement to be executed by their respective duly authorized officers as of the date first above written.

AVITA MEDICAL AMERICAS, LLC

COUNTY OF SAN BERNARDINO
For its Arrowhead Regional Medical Center

By: 

By: 

Title: GENERAL COUNSEL

Title: Chairman, Board of Supervisors

Date: 01/24/2020

Date: FEB 11 2020

APPROVED
By Legal (SN) at 12:40 pm, Jan 24, 2020

This Agreement is to be executed in duplicate.
Please return one fully executed copy to Avita Medical at the address above.

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

By: 
Deputy

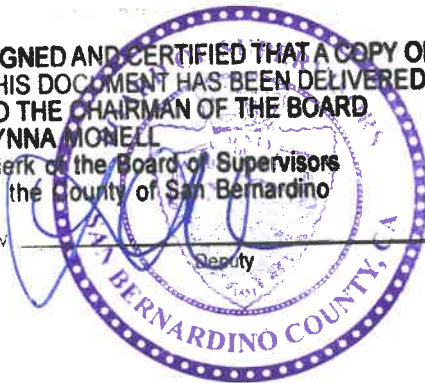


EXHIBIT A

Products and Pricing Schedule

<i>Product</i>	<i>Pricing</i>
ReCell®	\$6,500 per unit of Product

Rebate Schedule

<i>Amount of Product Purchased and Paid in Calendar Year</i>	<i>Rebate Percentage</i>
\$250,000 +	2%
\$500,000 +	4%
\$1,000,000 +	8%

Earned rebates will be provided within sixty (60) days of the end of each calendar year. All rebates earned by the Purchaser will be provided by Avita Medical in the form of credit memos to be applied by Purchaser against open invoices.

EXHIBIT B

Terms and Conditions of Sale

- A. All invoices are due and payable Net 60 days from date of Purchaser's receipt of invoice.
- B. Avita Medical shall accept all payments from Purchaser via electronic funds transfer (EFT) directly deposited into the Avita Medical's designated checking or other bank account. Avita Medical shall promptly comply with directions and accurately complete forms provided by Purhcaser required to process EFT payments.
- C. Purchaser is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Avita Medical 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 Purhcaser pursuant to the Agreement.
- D. All returns require a Return Material Authorization (RMA) from Avita Medical which can be obtained via email at customerservice@avitamedical.com or by phone at 1-833-GO-AVITA. Returns will not be accepted more than thirty (30) days from invoice date. No product returns will be approved or accepted for Product damaged after delivery or for Product not purchased directly from Avita Medical, including diverted Product, Product not in original packaging, and any Product with non-US packaging.

EXHIBIT C INSURANCE REQUIREMENTS

Avita Medical agrees to provide insurance set forth in accordance with the requirements herein. If Avita Medical uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Avita Medical agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, Avita Medical shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- i. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Avita Medical and all risks to such persons under this contract. If Avita Medical has no employees, it may certify or warrant to Purchaser that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by Purchaser's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
- ii. Commercial/General Liability Insurance – Avita Medical shall carry General Liability Insurance covering all operations performed by or on behalf of Avita Medical providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - a. Premises operations and mobile equipment.
 - b. Products and completed operations.
 - c. Broad form property damage (including completed operations).
 - d. Explosion, collapse and underground hazards.
 - e. Personal injury.
 - f. Contractual liability.
 - g. \$2,000,000 general aggregate limit.
- iii. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If Avita Medical is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of

two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If Avita Medical owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- iv. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

Additional Insured – All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming Purchaser and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for Purchaser to vicarious liability but shall allow coverage for Purchaser to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

Waiver of Subrogation Rights – Avita Medical shall require the carriers of required coverages to waive all rights of subrogation against Purchaser, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Avita Medical and Avita Medical’s employees or agents from waiving the right of subrogation prior to a loss or claim. Avita Medical hereby waives all rights of subrogation against Purchaser.

Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Purchaser.

Severability of Interests – Avita Medical agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Avita Medical and Purchaser or between Purchaser and any other insured or additional insured under the policy.

Proof of Coverage – Avita Medical shall furnish Certificates of Insurance to Purchaser’s Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the

commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Avita Medical shall maintain such insurance from the time Avita Medical commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, Avita Medical shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

Acceptability of Insurance Carrier – Unless otherwise approved by Purchaser’s Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A- VII”.

Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

Failure to Procure Coverage – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, Purchaser has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by Purchaser will be promptly reimbursed by Avita Medical or Purchaser payments to Avita Medical will be reduced to pay for Purchaser purchased insurance.

Insurance Review – Insurance requirements are subject to periodic review by Purchaser. Purchaser’s Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of Purchaser. In addition, if Purchaser’s Director of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against Purchaser, inflation, or any other item reasonably related to Purchaser’s risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Avita Medical agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of Purchaser to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of Purchaser.