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**Contract Number**

21-302 **A2**

**SAP Number**

4400005501

## Arrowhead Regional Medical Center

**Department Contract Representative**  
**Telephone Number**

William L. Gilbert

(909) 580-6150

**Contractor**  
**Contractor Representative**  
**Telephone Number**  
**Contract Term**

Praxair Distribution Inc.

Marilee Carlow

(602) 885-4996

August 22, 2017 through May 17,  
2024

**Original Contract Amount**  
**Amendment Amount**  
**Total Contract Amount**  
**Cost Center**

\$1,930,000

\$1,930,000

**Briefly describe the general nature of the contract:** A Rider to Product Supply Agreement No. 21-302 with Praxair Distribution Inc. for the provision of INOtherapy services, extending the contract period to May 17, 2024, for a total contract period of August 22, 2017 through May 17, 2024, with no change to the not to exceed amount of \$1,930,000.

**FOR COUNTY USE ONLY**

Approved as to Legal Form

  
Charles Phan, Deputy County Counsel

Date 5/6/2021

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

  
William L. Gilbert, Director

Date

5/7/21



## Nitric Oxide Product Supply Rider

**THIS RIDER** ("Rider") numbered 51702 and dated as of the last date executed by the parties (the "Effective Date"), is made a part of the Product Supply Agreement numbered 71340933 and dated as of August 22, 2017 (the "Agreement"), by and between PRAXAIR DISTRIBUTION, INC., a Delaware corporation, having an office at 10 Riverview Drive, Danbury, Connecticut 06810-5113 ("Seller") and the Buyer set forth below. To the extent that there is any conflict between the terms of this Rider and the Agreement, the terms of this Rider shall govern with regard to the supply of Product and Equipment, as defined below.

### 1. As to this Rider, the following words and terms shall have the following meanings:

"Buyer" means:

<b>Name:</b> County of San Bernardino on behalf of Arrowhead Regional Medical Center	
<b>Address:</b> 400 N. Pepper Avenue	
<b>City:</b> Colton	
<b>State:</b> CA	<b>Zip:</b> 92324
<b>Title:</b> Mark Connolly, Director of Respiratory Care Services	
<b>Phone/E-mail:</b> 909-580-3236 Email: <a href="mailto:ConnollyM@armc.sbcounty.gov">ConnollyM@armc.sbcounty.gov</a>	

"Basic Term" means the period commencing on the Effective Date and continuing for a period of 3 years following the date of First Delivery.

"Product" means Noxivent® (Nitric Oxide) gas, for inhalation, for the indication identified on the Prescribing Information or Package Insert.

"Equipment" means the NOxBOXi® nitric oxide delivery device (Rx only) and its associated accessories and consumables.

"Buyer's Location(s)" are: See Attachment A.

Prices are: See Attachment B.

"Specifications" means the Product specification set forth under the column so indicated in the table in Attachment B or listed in the Product Information Sheet(s) attached hereto or available on [www.praxair.com](http://www.praxair.com).

**BY SIGNING BELOW, BUYER AND SELLER EACH ACKNOWLEDGE AND AGREE THAT THIS RIDER IS CONDITIONAL UPON THE ADDITIONAL TERMS AND CONDITIONS CONTAINED ON THE BACK OR ATTACHED HERETO.** Buyer and Seller intending to be legally bound have by the signatures of their authorized representatives executed this Rider as of the date first above written.

COUNTY OF SAN BERNARDINO ON BEHALF OF  
ARROWHEAD REGIONAL MEDICAL CENTER

Submitted by: Curt Hagman  
By: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: **Chairman, Board of Supervisors**  
Date: **MAY 18 2021**

PRAXAIR DISTRIBUTION, INC.

Submitted by: Marilee Carlow  
By: M Chris Carter  
Signature: Chris Carter  
Title: General Sales Manager Clinical  
Date: 5/07/2021

Digitally signed by Chris Carter  
DN: cn=Chris Carter, o=Praxair, ou=General Sales Manager Clinical,  
email=chris\_carter@praxair.com, c=US  
Date: 2021.05.07 14:45:18 -0800

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)

## ADDITIONAL TERMS AND CONDITIONS

### 2. PRODUCT

Seller will sell to Buyer, and Buyer will purchase from Seller, on the terms and conditions hereinafter set forth, Buyer's total present and future requirements of Product for use at Buyer's Location(s). Unless otherwise agreed in writing by Seller, Buyer shall not permit any person other than Seller's representatives or providers authorized by Seller to use, adjust, alter, service, repair or examine the Product or Equipment. Product supplied hereunder in cylinders shall be used by Buyer only with the Equipment. All Product and Equipment provided by Seller under this Rider are solely for Buyer's use at Buyer's Locations and shall not be resold or otherwise supplied by Buyer to any third-party. Buyer is not obligated under the terms of any other contract that would restrict its ability to purchase the Product or Equipment as contemplated hereby.

### 3. PRICES AND PAYMENT

Buyer will pay Seller the Prices for Product, Equipment, items and/or services supplied hereunder as set forth on Attachment B.

### 4. DELIVERY AND RETURN

Product and Equipment will be supplied by Seller to Buyer at Buyer's Locations. Risk of loss of the Product will pass to Buyer upon delivery and title to Product will pass upon receipt of payment in full. In the event that any Product, Equipment or cylinders are or must be returned to Seller by Buyer pursuant to this Rider, such returns shall take place solely in accordance with Seller's instructions.

### 5. TERM; TERMINATION

(a) This Rider will be in effect from the date hereof and will continue in effect thereafter for the period of the Basic Term set forth on the facing page hereof.

(b) Upon termination, Buyer will promptly redeliver the Equipment and cylinders to Seller in prepaid packaging provided by Seller in as good a condition as when received by Buyer. Buyer will cooperate with Seller to protect, locate and recover all Equipment and cylinders furnished to Buyer hereunder. If the Equipment is damaged, contaminated, lost or destroyed from any cause whatsoever prior to redelivery to Seller, Buyer will reimburse Seller all cost incurred by Seller associated therewith, including but not limited to the replacement cost of the Equipment.

(c) The Term provision in the Agreement shall not apply to this Rider.

(d) Upon any material breach or default of this Agreement by either party, the non-breaching/default party shall have the right to terminate this Rider upon giving thirty (30) days notice to the breaching/defaulting party. Such termination shall become effective upon the expiration of such thirty (30)-day period unless the breaching party shall have cured any such breach or default to the reasonable satisfaction of the non-breaching/default party.

### 6. MANUALS AND DOCUMENTATION

The following manuals/materials shall be provided by Seller at no charge to the Buyer and shipped with the Product and/or Equipment: (i) the Prescribing Information and Package Insert, Medication Guide and Patient Package Inserts (to the extent there are any), as applicable for Noxivent, and (ii) the manufacturer's NOxBOXi User's Manual and Technical Guide for the NOxBOXi Delivery Device. Any software, documentation, or written materials accompanying the Noxivent or the NOxBOXi Delivery Device that is provided by Seller to Buyer under this Rider are, and will remain, the copyrighted and exclusive property of Seller. Unauthorized copying, distribution or making derivative works of such materials is expressly forbidden, except that Buyer may make a limited number of copies of the software, documentation, or written materials for backup or archival purposes only.

### 7. TRAINING AND TECHNICAL SUPPORT

Seller shall provide to the Buyer the Seller specified training at the Delivery Address at the time of installation. Seller shall provide to Buyer technical support for the operation of the Equipment. Buyer and its healthcare providers shall ensure that the mode and make of mechanical ventilation or other equipment utilized to administer the Product or use the Equipment are device compatible and that those administering the Product and using the Equipment are duly qualified, properly trained and familiar with the instructions for use of the Product and Equipment. Seller shall not be responsible for connecting the Product and Equipment to any ventilation or other equipment utilized to administer the Product.

### 8. PRODUCT ASSISTANCE

Seller will make available a contact number that can be reached 24 hours per day, 7 days per week for Buyer to request technical assistance with Seller's equipment and products. Within forty-eight (48) hours of receiving a Seller request, Buyer will provide information and support to Seller concerning the Product and/or Equipment, including, but not limited to the Product, Equipment, information and support requested by Seller to investigate any Product or Equipment incidents, problem reports, or related issues and access to the Product and Equipment for investigation.

### 9. EQUIPMENT

Equipment (excluding accessories and consumables) and cylinders will remain the property of Seller at all times. Risk of loss of Equipment and cylinders shall pass to Buyer upon delivery. Buyer shall return all such Equipment and cylinders in good condition, complete with cylinder caps and fittings and shall pay Seller at Seller's then current published price for any Equipment or cylinders lost or damaged beyond normal wear and tear. Buyer will not permit the filling or refilling of any cylinders by any third party with any substance. Buyer will promptly remove any liens and claims against the Product or Equipment due to its location at Buyer's facilities or possession by Buyer.

### 10. INSURANCE

Seller shall maintain the following insurance coverage at the following minimum limits for the term of this Rider:

- 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.
- Commercial/General Liability Insurance – General Liability Insurance covering all operations performed by or on behalf of Seller providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include: Products and completed operations, Broad form property damage (including completed operations), Personal injury, Contractual liability, and a \$2,000,000 general aggregate limit.
- 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.

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

Seller shall require the carriers of required coverages to waive all rights of subrogation against the Buyer, its officers, employees, and volunteers. All general or auto liability insurance coverage provided shall not prohibit Seller and Seller's employees or agents from waiving the right of subrogation prior to a loss or claim. Seller hereby waives all rights of subrogation against Buyer.

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

Seller 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 Seller and Buyer or between Buyer and any other insured or additional insured under the policy.

Unless otherwise approved by Buyer's Department of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

### 11. GENERAL

This Rider, made part of the Agreement, sets forth the entire agreement of the parties and supersedes all prior and contemporaneous agreements, understandings, and communication, both written and oral, between the

parties relating to the subject matter hereof. There are no other promises, representations or warranties affecting this Rider, and any other or different terms or conditions in any purchase orders, Buyer's website agreements (including any terms or conditions subject to an accept button or other similar means of indicating acceptance) or other documents issued or accepted hereunder will be deemed null and void. No modification or waiver of this Rider will bind either party unless expressly set forth in writing and manually signed and accepted by an authorized representative of the party sought to be bound by such writing. A waiver of any of the terms and conditions hereof will not be deemed a continuing waiver, but will apply solely to the instance to which the waiver is directed. Any headings contained in this Rider are used only as a matter of convenience and reference, and are in no way intended to define, limit, expand or describe the scope of this Rider. This Rider will be governed by the laws of the State of California, without reference to its conflict of laws provisions which would render applicable the laws or any other jurisdiction. This Rider 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 Rider. The parties shall be entitled to sign and transmit an electronic signature of this Rider (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 Rider upon request.

## **12. LIMITATION OF LIABILITY**

Except for defense costs (including reasonable attorney's fees court costs), settlement and damages awarded by a Court as to any third party claims based on indemnification under the Agreement, Seller's total liability under this Rider shall not exceed five times the purchase price paid by Buyer to Seller for the Product upon which the claim is based.

## **Attachment A: Buyer Locations**

Buyer's Location(s) consist of the following locations and any new locations for which Buyer has requirements of Product and which the parties mutually agree in writing to supplement this Attachment A. Seller will allocate up to 2 NOxBOXi devices to Buyer as set forth on Attachment B, with the minimum number of devices per site listed below.

Arrowhead Regional Medical Center  
400 N. Pepper Avenue  
Colton, CA 92324  
Start Date: 5-18-21

## Attachment B: Products and Pricing

Prices for Product and Equipment fees are set forth in the table below. Pricing will be fixed for the first year of the Basic Term to supply Product requirements at Buyer's Location. The fee will be invoiced at the beginning of each month. Thereafter, price escalations will not exceed 3% in any year.

Part Number	Description of Product	Price (ea)
MM NO800N-AQ	Noxivent <sup>®</sup> (Nitric Oxide) gas, for inhalation 800 ppm, size AQ	\$8,500
MM NO800N-AD	Noxivent <sup>®</sup> (Nitric Oxide) gas, for inhalation 800 ppm, size AD	\$1,000
<b>Equipment</b>		
Part Number	Description of Equipment	Price (ea)
RENNOXBOX-I	NOxBOXi Intelligent Delivery and Monitor - 2 units	Arrowhead Regional Medical Center: 2 primary NOxBOXi <sup>™</sup> with \$1,150 monthly rental fee per device
<b>Accessories and Consumables</b>		
Part Number	Description of Accessories and Consumables	Price (ea)
NXBREG081	Regulator for use with NOxBOXi - CGA626	Included
NXBNOXKIT-2-22	Single use 22mm delivery and sampling kit	Included
NXBNOXKIT-2-15	Single use 15mm delivery and sampling kit	Included
NXBNOXKIT-1-10	Single use 10mm delivery and sampling kit	Included
NXBNOXKIT-2-12	Single use 12mm delivery and sampling kit	Included
NXBFXS555	Single use 22mm one-way valve for use with Sensor Medics 3100A/B HFO ventilators	Included
NXBNOXKIT-EMER	Single use tubing for connection between NOxMixer and NOxflow during back up mode	Included
NXBFIL063	Single use 25mm Disk Filter for water trap	Included
NXBFIL064	Single use 50mm Nebuliser filter	Included
NXBCON158	Single use connector 22M/15F-15M Gas Sampling Port	Included
NXBNOXKIT-HFJV	Single use connections kit for Bunnell Jet ventilator	Included
NXBNOXBOXI-TEST	System Test kit	Included
NXBFXS569	Water trap bowl	Included
NXBWT-DRAIN	Water trap drainage syringe	Included
NXBFXS543	Pack of 2 NO hoses	Included
NXBNOXAIR-NO-V	Small gas detector alarm monitor for NO 0-250ppm	Included
NXBNOXAIR-NO2-V	Small gas detector alarm monitor for NO2 0-20ppm	Included
NXBPUMP-FLO-MTR	Flow Meter for calibrating pump flow	Included
NXB34-18-00520-V	Calibration gas NO	Included
NXB34-20-01010-V	Calibration Gas NO2	Included
NXBSCCG	Calibration kit bag	Included
NXBREGSS-1.0-V	Stainless steel calibration regulator	Included
NXBNOX-Y-CAL	Calibration tube assembly	Included