

Equipment Loan Terms & Conditions

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) **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.
- (b) **APD** means Automated Peritoneal Dialysis.
- (c) **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.
- (d) **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).
- (e) **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).
- (f) **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)).
- (g) **Deliverable** means any products, services or other deliverables that may be manufactured, distributed or otherwise supplied by Baxter in connection with its business.
- (h) **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).
- (i) **Improper Use** means any unauthorised modification made to the Equipment, any failure by the Customer or a Patient to use the Equipment in accordance with the manufacturer's recommendations and any other improper act, error or omission of any Patient or the Customer (or its employees, agents, or other contractors or patients) in connection with the Equipment causing loss, damage, cost or expense to Baxter.

- (j) **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.
- (k) **Patient** means that person receiving medical care from the Customer as identified by a Request.
- (l) **Personal Information** has the same meaning as under *The Privacy Act 1988* (Cth) or the *Privacy Act 1993* (NZ), as relevant, and includes any sensitive information in connection with a Patient.
- (m) **PPSA** means the *Personal Property Securities Act 2009* (Cth) or the *Personal Property Securities Act 1999* (NZ), as relevant.
- (n) **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.
- (o) **Standard Sale Conditions** means Baxter's standard terms and conditions of sale accessible electronically on Baxter's website at www.baxterhealthcare.com.au and selecting the 'Terms and Conditions of Sale' link.
- (p) **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, 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. 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

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.

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 if not arising from Improper Use. Any such 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 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 Improper Use and, if requested by Baxter, will make good any loss, damage, cost or expense incurred by Baxter from such use.

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. AMENDMENT

Baxter may from time to time alter these Terms as it reasonably determines necessary and post those amended terms and conditions to this website. Such alteration will not affect any Contract that Baxter has entered into with the Customer prior to the alteration.

SCHEDULE 1: APD TREATMENT (including Claria & Sharesource)

1.1 ADDITIONAL DEFINITIONS:

In this Schedule, unless the context otherwise requires:

(a) **Available Equipment** includes:

Item Number	Description	Availability
5C6M10	Homechoice Claria™	ANZ
5H32401	Cellular modem	ANZ
5H33101	Universal modem power cord	ANZ
R5C8320	Homechoice Pro™	ANZ
RIC8344 / 1510WTP	CAPD Bag Warmer	ANZ
BXU006105	Hard Case for Homechoice Claria™	NZ only
16105	Hard Case for Homechoice Pro™	NZ only

- (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;

- (c) 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;
- (d) retains possession of the Equipment throughout the Loan Period; and
- (e) 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 Specific PD Equipment Request

(Australia & New Zealand)



Fax requests to Customer Support - **Homecare Fax: 1800 806 923 (Aus) 0800 229 329 (NZ)**

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 applicable box(es)]		Item Number	Description	Serial Number
Purchase	Loan			
		5C6M10	Homechoice Claria APD Cyclor	
		5H32401	Cellular modem	
		5H33101	Universal modem power cord	
		R5C8320	Homechoice Pro	
N/A		RIC8344 / 1510WTP	CAPD Bag Warmer	

Name of Patient	
Address for delivery	
Delivery date required	

Signature of Customer Representative		Contact Number	
Name		Date	
Position			
Full name of Customer (e.g. Hospital)			

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 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; 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 www.baxterhealthcare.com.au/downloads/about_baxter/corporate_governance/t_c_goods_service_aust.pdf.

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.

Email Form (Aus)

Email Form (NZ)

Print Form

Reset Form

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
CE100510PXSE	Bodyguard 323 Infusion pump - TPN	ANZ
CE100510PXSEPD	Bodyguard 323 Infusion pump Paediatric - TPN	ANZ
KP5041763	Mini Rhythmic PN+ Pump	NZ only
	Small Refrigerator	NZ only
2M8038	Pole	ANZ
CE160000X	Backpack 3 litre Bodyguard Carry Bag	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, Baxter will not have any responsibility 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:

- (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; 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.

Home Parenteral Nutrition New Patient Request Form

▶ Patient Information

* NZ Only

First Name: _____ Last Name: _____

Address: _____

Suburb: _____ State: _____ Postcode: _____

Email Address: _____ Home Phone: _____

Mobile Phone: _____ Date of birth: _____ Gender: _____

DHB of Domicile*: _____ NHI Number*: _____

▶ Alternative Patient Contact Information

First Name: _____ Last Name: _____

Relationship to patient: _____

Home Phone: _____ Mobile Phone: _____

▶ Hospital Details

Referring Hospital: _____

Hospital Address: _____

Discharging Unit/Ward: _____

Name of Primary Hospital Contact: _____

Job Title: _____

Phone Number: _____ Pager: _____

Mobile Number: _____ Email: _____

▶ Billing Information

Charge TPN to: _____

Charge Consumables to: _____

Consumable Purchase Order Number: _____ (Please specify DHB name*)

Hardware Order Details (Allow up to 5 working days for delivery)

Please <input checked="" type="checkbox"/> if required	Product code	Delivery address – Please <input checked="" type="checkbox"/>	
		Hospital**	Home
Bodyguard 323 Pump - TPN	CE100510PXSE	Hospital**	Home
IV Pole	2M8038	Hospital**	Home
Back Pack	CE160000X	Hospital**	Home
IV Set with Filter	CE120124XSFK	Hospital**	Home
IV Set without Filter	CE120124XSK	Hospital**	Home
Other		Hospital**	Home
Delivery Date:	**Please specify initial delivery address for if not to patients home: i.e. Ward, Level, Hospital Address		
Please Note: If a pump is ordered 1 box of giving sets will be ordered by Baxter and delivered to the address provided above.			

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 \$2,500.00; 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) 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) 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; 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
		Quark RMR Calorimeter	
	LEC PGR273	Rollex Refrigerator	
	114780-WRO300H	Portable RO Machine	
	R5C8320	Homechoice Pro™	
	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.

Full Name of Customer: (eg, Hospital)			
Address for delivery:			
Delivery date required:		Attention:	

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

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 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, in respect of an item of Equipment, the average cost to Baxter to remove, return and recommission the Equipment, being \$600.00 (or such lesser amount as Baxter may determine as its actual costs in such circumstance).
- (c) **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) 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;
 - (iv) carry out all necessary testing and inspection of the Equipment (including safety inspections, annual checks and output concentration checks); and
 - (v) 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.

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

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	
	V15KDBIHK	VAPORIZER FOR ISOFLURANE 5%	
	V15KSBIHK	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.**

Full Name of Customer: (eg, Hospital)			
Address for delivery:			
Delivery date required:		Attention:	

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

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 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.