TO BE COMPLETED BY BAXTER HOME OFFICE:

Lease Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Commencement Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_



Baxter Healthcare Corporation

1 Baxter Parkway, DF 3-2

Deerfield, Illinois 60015

**Sigma Spectrum**

**Equipment Rental Agreement**

**Customer Name:**

**Term: Month to Month**

**Organized under the laws of the State of** **beginning on the Commencement Date**

***Group Purchasing Organization*** **Billing Account Number:**

**Billing Address:**

**Shipping Account Number:**

(List attached if multiple locations)

**P.O. Number:**

**Attention:**

This SIGMA Spectrum Equipment Rental Agreement (the “Agreement”) is between Baxter Healthcare Corporation, a Delaware corporation (“Baxter”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Customer”). Subject to the provisions of this Agreement, Baxter shall rent to Customer the equipment in type and quantity as listed below (“Equipment”), license the associated Software (as defined herein) and provide any related services as may be described in this Agreement (collectively, “Rental”).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Equipment Description | Product Code | Number of Units | Monthly Fee per Unit | Monthly Fee for All Units |
| Spectrum V6 Rental Pump | 35700BAXRP |  |  | 0 |
| Spectrum V8 Rental Pump | 35700BAX2RP |  |  | 0 |
| Spectrum Rental Wireless Battery (B/G Band) | 35162RP |  |  | 0 |
| Spectrum Standard Battery | 35724 |  |  | 0 |
| Spectrum Wireless Battery (A/B/G/N Band) | 35195RP |  |  | 0 |
|  | Total Monthly Fee\* | | | 0 |

\*May not reflect all charges due hereunder. Please see Additional Provisions for any additional charges that may apply

**1. TERM.** This Agreement shall become binding on the parties effective as of the date five (5) business days after the date on which Baxter countersigns the Agreement (“Effective Date”). Customer shall rent the Equipment for a minimum of three (3) months (“Initial Term”), after which the Agreement will automatically be renewed on a month-to-month basis and may be terminated at any time by either party with thirty (30) days prior written notice and in accordance with Section 17, Return of Equipment (collectively, “Term”). In the event Customer cancels this Agreement before the completion of the Initial Term, Customer shall be invoiced a cancellation fee equal to the Total Monthly Fee (as defined herein) for the remaining period of the Initial Term. Notwithstanding anything to the contrary, Baxter shall have the right to immediately terminate this Agreement in the event of any voluntary or involuntary bankruptcy, insolvency or assignment for the benefits of creditors by Customer.

Notwithstanding the Effective Date, the provisions relating to Payment, Warranty, Insurance, Software/Hardware Updates, Loss or Damage of Equipment, and Taxes terms will commence on the date of shipment (“Commencement Date”).

**2. PAYMENTS.** Beginning on the Commencement Date and for each month thereafter, Customer shall pay to Baxter the Total Monthly Fee listed above for the Rental (“Total Monthly Fee”) for the Term. Payment terms for Customer subject to approved credit are net thirty (30) days from the date of the invoice from Baxter. Customer agrees to pay a late payment fee equal to the lesser of (i) one and one-half percent (1.5%) per month of the amount of the payment which is overdue, and (ii) the highest amount allowed by applicable law.

**3. SOFTWARE LICENSE.** Customer acknowledges that, in connection with the Equipment provided by Baxter to Customer, (i) the Equipment includes certain embedded software and (ii) Baxter is or may be providing Customer with certain other software related to the use or operation of the Equipment (all such software, together with any updates, upgrades, enhancements or modifications provided by Baxter to Customer from time to time, being collectively, the “Software”) The Software (including embedded software), and all documentation related thereto, whether on disk, in read only memory, on any other media or in any other form, is licensed, and not sold, to Customer by Baxter for use only under this Agreement. Baxter licenses all the Software to Customer for use only under the following terms and conditions solely during the Term and Baxter reserves all rights not expressly granted herein to Customer. The rights granted herein are limited to the use of Baxter’s intellectual property rights in the Software and does not include other patents or intellectual property rights. The license granted herein allows Customer to use the Software only in connection with the Equipment and not for any other purpose, and is non-exclusive and non-transferable. Customer shall not copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Software, or any part thereof and any attempt to do so is a violation of the rights of Baxter and its licensors. Customer shall not rent, lease, lend or sublicense the Software or any of the rights granted to Customer with respect thereto and any such attempted rental, lease, lending or sublicense is null and void. Customer's rights hereunder will terminate automatically without notice from Baxter if Customer fails to comply with any term(s) of this license and upon any such termination Customer shall cease all use of the Software.

**4. SOFTWARE AND HARDWARE UPDATES.** Routine software updates, including software error corrections which are necessary to maintain compliance with Baxter’s published Equipment specifications and certain incidental software enhancements, are included in the Total Monthly Fee for the Term. In addition, and if and when available during the Term, Baxter may offer significant software upgrades and hardware enhancements that add new functionality to the Equipment at an additional charge to Customer.

**5. TAXES AND OTHER CHARGES.**  With the exception of any taxes based on Baxter’s income, Customer agrees to pay all federal, state, and local taxes (including any property taxes), use, excise, and/or gross receipt tax, license and registration fees, insurance and all similar costs based on Customer’s possession or use of the Equipment and Software resulting from transactions with Baxter regardless of legal liability for the tax. Shipping charges shall be borne by Baxter. In the event Baxter pays any taxes based on the Equipment, Customer shall reimburse Baxter for such payments promptly upon request. .

**6. MEDICAL DEVICES; DISCOUNT DISCLOSURE.** (a) **Devices Act.** Customer acknowledges that it is familiar with the Safe Medical Devices Act of 1990 (the “Devices Act”) and the reporting obligations imposed on device users thereunder. In this regard, Customer agrees to notify Baxter as soon as practicable, but in no event later than ten (10) days after the occurrence of any event identified in the Devices Act imposing a reporting obligation on Customer and/or Baxter (except for events that require notification to the United States Food and Drug Administration (the “FDA”) within a shorter period of time, in which case, such notice will be delivered to Baxter immediately). Customer shall maintain adequate tracking of the equipment to enable Baxter to meet the FDA requirements applicable to the tracking of medical devices.

(b) **Discount Disclosure.** Customer and Baxter intend that this Agreement shall be administered in accordance with the provisions of the federal Anti-Kickback Statute (42, U.S.C. § 1320a-7b(b)). Any discounts and rebates received by Customer with respect to the Equipment, Software and any services under this Agreement, may be considered "discounts or other reductions in price" under the Anti-Kickback Statute, Section 1128B(b)(3)(A) of the Social Security Act [42 U.S.C. § 1320a-7b(b)(3)(A)]. To the extent required by the Anti-Kickback Statute or the Discount Safe Harbor regulations, 42 C.F.R § 1001.952(h) et seq., Customer shall fully and accurately disclose such discounts and other reductions in price in accordance with the applicable state or federal cost reporting requirements, including, without limitation, disclosing and accurately reflecting where appropriate, and as appropriate, to the applicable reimbursement methodology. Baxter will provide Customer with sales and discount information to allow Customer to comply with this Section and the discount safe harbor, including sufficient rebate and pricing information to enable Customer to accurately report its actual costs for all purchases of Equipment, Software and services made pursuant to this Agreement. The total charges for the Equipment, Software and any services purchased under this Agreement shall be the contract price less any such discounts, including rebates.

**7. OWNERSHIP OF EQUIPMENT; SECURITY INTEREST.** Baxter is the owner of the Equipment and has title to the Equipment. Customer authorizes Baxter to make any public filing it reasonably believes necessary to protect its interest in the Equipment and ratifies any such filings made prior to the date hereof. Customer shall keep the Equipment free and clear of all liens and encumbrances other than those which result from the acts of Baxter.

**8. BAXTER’S WARRANTY.** The Equipment is subject to Baxter’s warranty set forth below.

(a) **Extended** **Warranty.** Baxter warrants to Customer that any hardware included in the Equipment shall be free from defects in material and workmanship under normal use and service during the Term. Baxter's warranty hereunder shall not apply if: (i) the Equipment is not used in accordance with its instructions or if it is used for a purpose not intended by Baxter; (ii) any repairs, alterations or other work has been performed by Customer or others on such item, other than work performed with Baxter's authorization and according to its approved procedures; or (iii) the alleged defect is a result of abuse, misuse, improper maintenance, accident or the negligence of any party other than Baxter. The warranty set forth herein is conditioned upon proper installation, use and maintenance in accordance with applicable written recommendations of Baxter. The warranty furnished hereunder does not extend to damage to items purchased hereunder resulting in whole or in part from the use of components, accessories, parts or supplies not furnished by Baxter. In the event of any breach of the warranty, Baxter's sole obligation shall be to repair or replace, at Baxter's option, any defective component or item and pay transportation expenses for such replacement. Customer shall bear all risk of loss or damage for returned goods while in transit. In the event no defect or breach of warranty is discovered by Baxter upon receipt of any returned item, the item will be returned to Customer at Customer's expense and Customer will reimburse Baxter for the transportation charges, labor and associated charges incurred in testing the allegedly defective item.

(b) **Warranty Notice.** All Customer warranty notices, requests and other communications required or permitted to be given under this Agreement to Baxter shall be directed to Baxter at the phone number and/or address set forth below, or such other phone number/address as may be designated in writing:

Baxter Healthcare Corporation

711 Park Avenue

Medina, NY 14103

Baxter Customer Support

800-356-3454

info@sigmapumps.com

**9. NO OTHER WARRANTIES.** OTHER THAN THE EXPRESS WARRANTY SET FORTH ABOVE, BAXTER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT OR THE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**10. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING HEREIN OR OTHERWISE TO THE CONTRARY, BAXTER’S SOLE LIABILITY WITH RESPECT TO ANY CLAIM, WHETHER TORT, CONTRACT OR WARRANTY, SHALL BE LIMITED TO REIMBURSEMENT OF THE ACTUAL COST OF ANY DEFECTIVE EQUIPMENT OR SOFTWARE AND IN NO EVENT SHALL BAXTER BE LIABLE FOR INDEMNIFICATION OF CUSTOMER OR ANY THIRD PARTY ON ACCOUNT OF ANY CLAIM ASSERTED AGAINST CUSTOMER OR ANY THIRD PARTY OR FOR ANY OTHER FURTHER DAMAGES WHATSOEVER, WHETHER DIRECT OR INDIRECT.

**11. NO CONSEQUENTIAL DAMAGES.** NOTWITHSTANDING ANYTHING HEREIN OR ELSEWHERE TO THE CONTRARY, EXCEPT FOR ANY EXPRESS INDEMNITY OBLIGATIONS BY ANY PARTY UNDER THIS AGREEMENT, IN NO EVENT SHALL BAXTER BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND INCLUDING, BUT NOT LIMITED TO, ANY LOST PROFITS OR GOODWILL INDEMNITY, EVEN IF BAXTER HAVE BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSS OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

**12. USE AND LOCATION OF EQUIPMENT; SAFE OPERATION**.  (a) Customer shall not modify the Equipment or Software without Baxter’s prior written consent, and the Equipment will remain personal property owned by Baxter at all times, regardless of how it is attached or installed.  Except as otherwise provided below, Customer shall not move the Equipment outside its premises nor lend it to any party for which Customer does not have legal responsibility for its acts and obligations.

(b) Customer shall comply with, and require its employees to comply with, all directions set forth in all instructions and manuals furnished by Baxter and shall require its employees to follow such instructions and manuals and to use reasonable care in the use and maintenance of the Equipment.  Customer shall not remove or permit anyone to remove any warning or instruction signs on the Equipment or change, adulterate, obscure, remove or deface the Equipment or any trademarks, trade names or other appearing on the Equipment.

**13. LOSS OR DAMAGE OF EQUIPMENT.**  From the date of receipt of the Equipment, in the event of loss, theft, damage or destruction of a unit of Equipment, Customer will be charged a replacement cost equal to the then fair market value of such unit of Equipment as reasonably determined by Baxter. Customer shall pay the replacement cost and Baxter shall send a replacement pump for use until the end of the Term of this Agreement via next day air service within two business days of the notice to Baxter. Customer remains responsible for paying the Total Monthly Fee for the Rental during the replacement period. Any applicable costs and charges shall be paid as set forth in Section 2, *Payments*, above.

**14. INSURANCE.** Customer agrees, at Customer’s sole cost and expense, to keep the Equipment fully insured against destruction and loss from the date of shipment of the Equipment until the amounts owed under this Agreement are paid in full and the Equipment is returned as set forth herein and to have Baxter named as lender loss payee on all such policies. Upon request, Customer shall furnish Baxter with certificates of insurance evidencing appropriate coverage. All coverage shall be procured with carriers having an A.M. best rating of A-, VII or better. Certificates shall evidence Baxter, its subsidiaries and affiliates as a loss payee and shall require at least thirty (30) days written notice prior to any cancellation, non-renewal or material reduction in coverage. Failure to comply with the insurance requirements in this Agreement shall not relieve Customer of the obligation to provide the coverage types and amounts required herein.

**15. ASSIGNMENT.** Customer has no right to sell, transfer, assign, sublease or otherwise convey (i) the Equipment or (ii) this Agreement without Baxter’s prior written consent. Baxter may sell, assign, encumber, or transfer its rights and obligations under this Agreement to another party without consent from Customer.

**16. DEFAULT AND EARLY TERMINATION.** If Customer fails to perform any of its obligations under this Agreement and fails to promptly cure such default, Customer will be in default. If Customer defaults, Baxter can require that Customer pay, upon notice (such notice to be in the form of an invoice) the remaining unpaid Total Monthly Fee and return the Equipment to Baxter in accordance with Section 17, *Return of Equipment*, below, in addition to other remedies available to Baxter at law or in equity.

**17. RETURN OF EQUIPMENT.** At the end of the Term of this Agreement, or upon request or demand by Baxter pursuant to the terms of this Agreement, Customer shall promptly, but in no event longer than thirty (30) days of receipt of notice, return the Equipment to Baxter in the same condition as when it was delivered to Customer, allowing for normal wear and tear, to such place and/or on board such carrier, packed for shipping as Baxter may specify. Shipping charges shall be borne by Baxter. In the event Customer does not return a unit of Equipment as set forth in this Section, Customer will be charged a replacement cost equal to the then fair market value of such unit of Equipment as reasonably determined by Baxter.

**18. CUSTOMER AUTHORIZATION; RESPONSIBILITY.** Customer represents and warrants as follows: (i) the person who executes this Agreement on behalf of Customer is a corporate officer or otherwise has received full corporate authority to bind Customer to perform all of Customer’s obligations under this Agreement; and (ii) by entering into this Agreement, neither Customer nor Customer’s performance of any of its obligations hereunder is currently, or during the Term will be, in conflict with any legal, regulatory, contractual or other obligation applicable to Customer. In addition, Customer acknowledges that the selection, possession, operation and use of the Equipment are solely the Customer’s responsibility. Therefore, except for claims, damages or other liabilities arising as a result of Baxter’s negligence or misconduct, Customer shall be responsible for all claims, damages and/or other liabilities, costs and expenses (including, without limitation, lawsuits and claims for personal injury and property damage) arising out of Customer’s selection, possession, operation and/or use of the Equipment and Customer agrees to hold Baxter harmless against any and all such claims, damages or other liabilities associated with Customer’s selection, possession, operation or use of the Equipment.

**19. Necessary Acts; Further Assurances.** Customer agrees to execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement or to show the ability to carry out the intent and purposes of this Agreement.

**20.** **GOVERNING LAW.** This Agreement and performance hereunder will be governed by the laws of the State of Illinois, without regard for its conflicts of laws principles.

**21**. **EXPORT CONTROL.** Customer may not use or otherwise export any of the Equipment or Software except as authorized by United States law. In particular, but without limitation, neither the Equipment nor the Software may be exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. Customer also agrees that it will not use the Equipment or the Software for any purposes prohibited by applicable law.

**22. MISCELLANEOUS.** This Agreement is the entire agreement between Baxter and Customer relating to the Equipment and supersedes all prior agreements with respect thereto, and will supersede all purchase orders, acknowledgment forms or other written documents submitted by Customer. This Agreement will not be valid or binding unless executed by authorized representatives of Baxter at Baxter’s corporate headquarters in Northern Illinois. No amendment, modification or other changes to this Agreement, including any conflicting or additional terms contained in any purchase order, acknowledgement form or other document submitted by Customer, will be valid unless approved in writing by an authorized representative of Baxter at its corporate headquarters in Northern Illinois. Sections 9, 10, 11, 12 and 21 and all other provisions hereof that shall reasonably survive beyond the Term will survive the termination of this Agreement. Any additions and/or deletions made by Customer following the execution of this Agreement by Baxter will be null and void and of no force and effect.

By providing an electronic or handwritten signature, the individual signing the Agreement on behalf of the Customer represents and warrants they are authorized to sign this Agreement and have full authority to bind Customer to the terms and conditions herein.

IN WITNESS WHEREOF, the undersigned duly authorized representatives of the parties have executed this Agreement on the date below.

# [Customer - insert Customer’s Full Legal Name] Baxter Healthcare Corporation

By: By:

Print Name: Print Name:

Title: Title:

Date: Date: