

**AGREEMENT FOR THE PROVISION & MAINTENANCE OF  
DURABLE MEDICAL EQUIPMENT**

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*Tecumseh Oxygen & Medical Supply*

This agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2024, by and between **Tecumseh Oxygen & Medical Supply** (hereinafter referred to as “DME”) and \_\_\_\_\_ (hereinafter referred to as “CLIENT”). The following shall be deemed an agreement between CLIENT and DME for the provision of various items of durable medical equipment and maintenance specifically related to same.

WHEREAS, DME is a durable medical equipment provider, is willing to make services available to CLIENT patients;

NOW THEREFORE, in consideration of the agreement set forth herein, the parties hereby agree as follows:

**A. RESPONSIBILITIES OF DME.** DME shall:

1. Deliver equipment by next business day of the request.
2. Assure, on a continuing basis that all equipment is in good clean condition and working order.
3. Instruct the patient and/or caregiver(s) on the safe and intended use of such equipment.
4. Pickup the equipment according to arrangement made with the CLIENT.
5. Pro-rate charges on a daily basis, per patient, according to fee schedule.
6. Develop preventive maintenance in accordance with DME policy pertaining to the equipment.
7. Notify CLIENT if care conference is necessary concerning patient’s equipment.
8. Submit monthly statements to CLIENT for authorized patients at the end of each month. Include the patient’s name, equipment ordered, fee, delivery date and pick-up date, if applicable.
9. Provide services to all patients regardless of diagnosis, race, age, sex, religion, national origin, disability, sexual preference and marital status.
10. If services provided under this agreement have an aggregate value of \$10,000.00 or more over a twelve month period, DME shall, until the

expiration of four years after the furnishing of such services, make available upon written request by the Secretary of Health and Human Services, Comptroller General of the United States, or by any of the Secretaries of the Comptroller Generals duly authorized representative this agreement and books, documents and records of DME that are necessary to verify the nature and extent of the cost of services provided.

11. DME agrees to maintain high standards of confidentiality for information relating to this Agreement including, but not limited to, information concerning CLIENT patients, in accordance with federal and state laws and specifically as specified in "Addendum A". DME acknowledges that all material and information including; but not limited to, descriptions of the arrangements between DME and CLIENT hereunder and Plans of Care which have or will come into the possession of DME in connection with the performance of the terms and conditions of this Agreement, consist of confidential and proprietary data, whose disclosure to or use by third parties will be damaging to CLIENT. DME agrees to hold such material and information in strictest confidence, and not to make use thereof except as required by applicable Federal or State Law and as expressly set forth in this Agreement.
12. DME at all times shall maintain liability insurance, including products' liability coverage, in the amount of One Million and Noll 00 Dollars (\$1,000,000.00) per occurrence, and Three Million and Noll 00 Dollars (\$3,000,000) annual aggregate and will provide evidence of such insurance to CLIENT. CLIENT assumes no responsibility to maintain or provide general liability insurance or workers' compensation insurance for DME or its agents, servants, and employees. DME agrees to hold CLIENT harmless and to indemnify CLIENT from any and all liability, costs, expenses, including attorney's fees and court costs, which arise or are incurred by CLIENT because of any act or omission by CLIENT, its agents, servants, and employees. CLIENT shall furnish evidence satisfactory to DME that it has obtained comprehensive general liability insurance covering any negligence of CLIENT or its agents or employees in connection with its operation.
13. DME agrees to indemnify and hold harmless CLIENT from any and all liability, loss, expenses, including reasonable attorney's fees, and claims for damages or injury arising from negligence or intentional acts or omissions by DME, its agent, servants, employees, or arising from any breach of default on the part of DME in the performance of this Agreement. DME, upon reasonable notice from CLIENT, shall assume the defense, at the expense of DME, or such action or proceeding with counsel reasonably satisfactory to CLIENT.

**B. RESPONSIBILITIES OF CLIENT.** CLIENT shall:

1. Evaluate and assess CLIENT patient equipment needs.
2. Coordinate and supervise the care plans of the CLIENT patient.
3. Develop, review and revise the care plans of CLIENT patients.
4. Address care conferences by telephone on an as needed basis, since the majority of CLIENT patient's equipment needs are short-term.
5. Telephone equipment request to DME giving patient's name and other information only to the extent required to insure prompt and safe delivery of equipment/supplies, equipment needed, date and preferred time of delivery.
6. Record all equipment requests in CLIENT DME log.
7. Notify DME within 24 hours following a patient discharge for a pickup date and time. If discharge occurs on a weekend or holiday, CLIENT will notify DME by the end of the next regular business day.
8. Communicate any equipment problems promptly.
9. Pay DME within 30 days of receipt of invoice.
10. CLIENT agrees to indemnify and hold harmless DME from any and all liability, loss, expenses, including reasonable attorney's fees, and claims for damages or injury arising from the negligent or intentional acts or omissions by CLIENT, its agents, servants and employees, or arising from any breach of default on the part of CLIENT in the performance of this Agreement. CLIENT, upon reasonable notice from DME shall assume the defense, at the expense of CLIENT, of such action or proceeding with counsel reasonable satisfactory to CLIENT.

**C. JOINT RESPONSIBILITIES OF DME AND CLIENT.** DME and CLIENT also agree to the following:

1. All notices shall be deemed received on the day personally delivered, or on the second day after mailing, certified or registered. Return receipt requested, to the address reflected on the signature page, or to such other address as the parties shall respectively by notice designate.
2. DME and CLIENT are separate and independent entities. Except as specifically provided in this Agreement, neither party is granted any express or implied right or authority by the other party to assume or create any obligation or responsibility on behalf of or in the name of the other party or to bind the other party in any manner or thing whatsoever. Each

party retains its own authority and responsibility for its respective organizations. Nothing herein shall be construed as creating a partnership or joint venture between CLIENT and DME.

3. This Agreement shall be governed by and interpreted in accordance with, the laws of the State of Oklahoma, without giving effect to its conflict of laws provisions. \_\_\_\_\_ County, Oklahoma, shall be the sole and exclusive venue for any arbitration, litigation, special proceeding or other proceeding as between the parties that may be brought under, or arise out of, this agreement.

4. The initial term of this Agreement shall be one year from the effective date. After the completion of the initial one (1) year term, this Agreement shall continue automatically for additional one (1) year terms unless notice of termination is given by either party in writing on or before ninety (30) days prior to the termination date. The extended term shall be subject to the same terms and conditions as set forth in this Agreement except for any mutually agreed written amendments, including any change of hourly payments. Either party may terminate this Agreement at any time without cause by providing the other party with thirty (30) day advance written notice of intent to terminate.

5. This agreement embodies the entire agreement between the Parties and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof. and this Agreement may be amended only by and instrument in writing executed jointly by an officer duly authorized by the board of directors of the respective Parties.

6. This Agreement may not be assigned by either party without the prior written consent of the other party.

7. If any provision of this Agreement, or the application thereof to any person or circumstance, is held to be illegal, invalid, or unenforceable for any reason, such illegality, invalidity, or unenforceability shall not affect any other provision of this Agreement that can be given effect in the absence of the illegal, invalid, or unenforceable provision of application. To this end, all provisions of this Agreement are declared to be severable.

8. Until the expiration of four years after the furnishing of services pursuant to this Agreement, the DME and CLIENT shall make available, upon written request of the Secretary of the Department of Health and Human Services, the Comptroller General of the United States, or another duly authorized representative, this Agreement and the books, documents, and records that are necessary to certify the nature and the extent of the cost of services provided pursuant to this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective the date and year first mentioned in this Agreement.

\_\_\_\_\_

Tecumseh Oxygen & Medical Supply

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Addendum A**  
**Business Associates Agreement**

**BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is made as of the \_\_\_\_\_, 2024, ("Effective Date") by and between \_\_\_\_\_ ("Covered Entity") and \_\_\_\_\_, ("Business Associate").

**RECITALS**

A. Covered Entity and Business Associate are parties to an Agreement for the Provision & Maintenance of Durable Medical Equipment dated \_\_\_\_\_, 2024 (the "Agreement") pursuant to which Business Associate provides certain services to the Covered Entity and, in connection with those services, the Covered Entity discloses to Business Associate certain individually identifiable protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the American Recovery and Reinvestment Act of 2009 ("ARRA") and the associated regulations, 45 CFR Parts 160 and 164 (the "Privacy Rule"), as amended from time to time.

B. The parties desire to comply with the HIPAA standards for the privacy and security of PHI of patients of the Covered Entity.

NOW, THEREFORE, for and consideration of the recitals above and the mutual covenants and conditions contained herein, the parties enter into this Agreement to provide a full statement of their respective responsibilities.

**SECTION 1 - Definitions**

1.01 Reference to HIPAA Rules.

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

1.02 Specific definitions.

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean \_\_\_\_\_.

(b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean \_\_\_\_\_.

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

## **SECTION 2 - Obligations and Activities of Business Associate**

2.01 Performance of Services Agreement. Business Associate agrees to not use or disclose PHI other than as permitted or required by the Services Agreement or as required by law.

2.02 Safeguards for Protection of PHI. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Services Agreement and this Agreement.

2.03 Mitigation of Harm of Unauthorized Use or Disclosure. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.04 Reporting of Unauthorized Use or Disclosure. As soon as practicable, but in no event later than ten (10) days, Business Associate agrees to report to Covered Entity in writing any use or disclosure of PHI not provided for by the Services Agreement or this Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware. Such report shall contain:

(a) A brief description of what happened, including the date of the unauthorized access or use of PHI and the date of the discovery of the unauthorized access or use of PHI;

(b) A description of the type of unsecured PHI that was involved in the unauthorized access or use;

(c) Any recommended steps the individual whose PHI was inappropriately disclosed should take to protect themselves from the potential harm; and

(d) A brief description of what the Business Associate is doing to investigate the unauthorized access or use of PHI.

Business Associate will report such incidents to the Covered Entity's Privacy Officer. Business Associate will, subject to the approval of the Covered Entity, provide breach notifications to affected individuals, the HHS Office for Civil Rights (OCR), and potentially the media, on behalf of the Covered Entity. If the Covered Entity elects to be responsible for

all required notifications, the Business Associate shall reimburse the Covered Entity for the costs associated with the notifications. Such costs will be paid to Covered Entity by Business Associate within thirty (30) days of receipt of an itemized invoice from the Covered Entity.

2.05 Use of Subcontractors. Business Associate agrees, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to contract with any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate whereby such subcontractors agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

2.06 Access to PHI. Business Associate shall make available PHI in a designated record set to the Covered Entity, or as directed by the Covered Entity to an individual or the individual's designee, for inspection and copying within ten (10) days of a request by Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.524.

2.07 Amendment by Business Associate. Business Associate agrees to make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526, within thirty (30) days of receipt of a request from Covered Entity.

2.08 Documentation of Disclosures. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity, or as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528. Business Associate shall provide such information to the Covered Entity within ten (10) days of a request by Covered Entity.

2.09 Compliance with Patient Right Provisions of Privacy Rule. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

2.10 Opportunity to Object. Business Associate agrees that, if it has a legal obligation to disclose any PHI, it will notify the Covered Entity as soon as reasonably practical after it learns of such obligation, and in any event within a time sufficiently in advance of the proposed release date such that Covered Entity's rights would not be prejudiced, as to the legal requirement pursuant to which it believes the PHI must be released. If the Covered Entity objects to the release of such PHI, Business Associate will allow the Covered Entity to exercise any legal rights or remedies the Covered Entity might have to object to the release of PHI, and Business Associate agrees to provide such assistance to Covered Entity, at Covered Entity's expense, as Covered Entity may reasonably request in connection therewith.

2.11 Access to Books and Records. Business Associate agrees to make its internal practices, books, and records available to the Secretary for purposes of determining



compliance with the HIPAA Rules.

### **SECTION 3 - Permitted Uses and Disclosures by Business Associate**

3.01 Services Agreement. Business Associate may use or disclose PHI as necessary to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity.

3.02 Other Permitted Uses and Disclosures.

(a) Business Associate may use or disclose PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c).

(b) Business Associate may use or disclose PHI as required by law.

(c) Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.

(d) Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the Covered Entity, except for the specific uses and disclosures set forth below.

### **SECTION 4 – Obligations of Covered Entity**

4.01 Inform of NPP. The Covered Entity shall notify Business Associate of any limitation(s) in the Covered Entity's notice of privacy practices under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

4.02 Notification of Revocation. The Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

4.03 Notification of Restriction. The Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that the Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4.04 Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Regulations if done by Covered Entity, except as permitted pursuant to the provisions of Sections 2(b), 2(c), 2(d) and 2(e) of this BAA.

4.05 Notice of Amendments. Covered Entity shall notify Business Associate of any

amendments made by an Individual to Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.526, to the extent that Business Associate relies or could foreseeably rely on such amended Protected Health Information. Covered Entity shall provide such notice no later than fifteen (15) days prior to the effective date of the change.

4.06 Notice of Potential Problems. Covered Entity shall provide notice to Business Associate of any pattern of activity or practice of Business Associate that Covered Entity believes constitutes a material breach or violation of Business Associate's obligation under the Underlying Agreement or Agreement or other arrangement within five (5) calendar days of discovery and shall meet with Business Associate to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

4.07 Notification of Security Incidents. Covered Entity shall immediately notify Business Associate of any Security Incidents or other security issues/concerns with Covered Entity's environment, including, but not limited to, ransomware, where Business Associate performs services. Provided, however, that Covered Entity shall not be required to report an immaterial incident consisting solely of an unsuccessful attempt to improperly access Electronic PHI that is stored in an information system under its control.

4.08 Privacy/Security. Covered Entity shall ensure that it follows all generally accepted industry practices for privacy and security of its systems, including, but not limited to, the requirement for complex passwords, unique user ids, password resets, and the timely granting of systematic access and termination of said access when notified. Further, Covered Entity shall only provide to Business Associate access to the minimum necessary PHI required to perform the services under the Agreement.

## **SECTION 5 - Term and Termination**

5.01 Term. This Agreement shall become effective on the Effective Date and shall terminate on the same date that the Service Agreement terminates, or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with Section 7.04 herein.

5.02 Termination for Cause. The Covered Entity may immediately terminate this Agreement and any related Service Agreement if the Covered Entity makes the determination that the Business Associate has breached a material term of this Agreement, provided an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Service Agreement if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, except that the Covered Entity will immediately terminate this Agreement and the Service Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

5.03 Obligations of Business Associate Upon Termination. Upon termination of this

Agreement for any reason, Business Associate, with respect to PHI received from the Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

(a) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

(b) Return to the Covered Entity or, if agreed to by the Covered Entity, destroy, the remaining PHI that the Business Associate still maintains in any form;

(c) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;

(d) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section 3.02(e) and (f) above which applied prior to termination;

(e) Return to Covered Entity or, if agreed to by Covered Entity, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities; and;

(g) Obtain or ensure the destruction of PHI created, received, or maintained by any of the Business Associate's subcontractors.

## **SECTION 6 – Indemnification and Disclaimer**

6.01 Indemnification. Business Associate shall indemnify, defend and hold Covered Entity and its [parent corporation] and affiliates, their directors, officers, agents, servants, and employees (collectively "the Indemnitees") harmless from and against all claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, incurred by the Indemnitees and relating to or arising out of breach or alleged breach of the terms of this Agreement, or a violation of the HIPAA Rules, by Business Associate.

Covered Entity shall indemnify, defend and hold Business Associate and its parent corporation and affiliates, their directors, officers, agents, servants, and employees (collectively "the Indemnitees") harmless from and against all claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, incurred by the Indemnitees and relating to or arising out of breach or alleged breach of the terms of this Agreement, or a violation of the HIPAA Rules, by Covered Entity.

6.02 Disclaimer. COVERED ENTITY MAKES NO WARRANTY OR REPRESENTATION THAT COMPLIANCE BY BUSINESS ASSOCIATE WITH THIS AGREEMENT OR THE HIPAA RULES WILL BE ADEQUATE OR SATISFACTORY FOR BUSINESS ASSOCIATE'S OWN PURPOSES. BUSINESS ASSOCIATE IS SOLELY RESPONSIBLE FOR ALL DECISIONS MADE BY BUSINESS ASSOCIATE REGARDING THE SAFEGUARDING OF PHI.

## **SECTION 7 - Miscellaneous**

7.01 Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

7.02 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties.

7.03 Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

7.04 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 2.01, 2.02, 2.03, 2.04, 2.10, 5.03 and 6.01, to the extent applicable, shall survive termination of this Agreement indefinitely. In addition, Sections 2.06 and 2.07 shall survive termination of this Agreement, provided that the Covered Entity determines that the PHI being retained pursuant to Section 5.03 herein constitutes a Designated Record Set.

7.05 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

7.06 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

If to Covered Entity, to:

Each party named above may change its address and that of its representative for notice by the giving of notice of the change in the manner provided above.

7.07 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies of this document shall be deemed to be originals.

7.08 Governing Law. The laws of the State of Oklahoma shall govern the interpretation of this Agreement and shall apply in any lawsuit or other dispute arising out of this Agreement, without regard to conflict of laws provisions.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the Effective Date first above written.

COVERED ENTITY

BUSINESS ASSOCIATE

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_