

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement), effective _____, 200__ (Effective Date), is entered into by and between DME SERVICES OF TEXAS, INC. with an address at 2144 N. Belt Line Road, Suite H, Mesquite, Texas 75150, and _____ (the Provider), with an address at _____

(each a Party and collectively the Parties)

WITNESSETH:

WHEREAS, the U.S. Department of Health and Human Services (HHS) has issued final regulations, pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), governing the privacy of individually identifiable health information obtained, created or maintained by certain entities, including health care providers (the HIPAA Privacy Rule); and

WHEREAS, the HIPAA Privacy Rule requires that the Provider enter into this Agreement with Contractor in order to protect the privacy of individually identifiable health information maintained by the Provider (Protected Health Information , or PHI); and

WHEREAS, Contractor and its employees, affiliates, agents or representatives may access paper and/or electronic records containing PHI in carrying out their obligations to the Provider pursuant to either an existing or contemporaneously executed agreement for services (Services Agreement); and

WHEREAS, the Parties desire to enter into this Agreement to protect PHI, and to amend any agreements between them, whether oral or written, with the execution of this Agreement;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements contained herein the parties agree as follows:

1. **Services Agreements.**

1.1. Existing Services Agreements. Provider and Contractor are parties to the following Services Agreements executed prior to the Effective Date and currently in effect (if any):

Agreement:	Services:	Date of Agreement:
Billing Service	Billing Services	

All existing Services Agreements between the Parties are incorporated herein by reference and are hereby amended by this Agreement. In the event of conflict

between the terms of any Services Agreement and this Agreement, the terms and conditions of this Agreement shall govern.

1.2 Contemporaneous Services Agreement. In the event that Provider and Contractor are not parties to a Services Agreement existing prior to the Effective Date, but instead enter into a Services Agreement contemporaneously with the execution of this Agreement, such agreement shall be attached hereto as Exhibit A, and incorporated herein by reference. In the event of conflict between the terms of the Services Agreement and this Agreement, the terms and conditions of this Agreement shall govern.

1.3 Use and Disclosure of PHI to Provide Services. The Contractor will not use or further disclose PHI (as such term is defined in the HIPAA Privacy Rule) other than as permitted or required by the terms of the Service Agreement or as required by law. Except as otherwise provided herein, the Contractor may make any and all uses of PHI necessary to perform its obligations under the applicable Services Agreement. All other uses not authorized by this Agreement are prohibited.

2. **Additional Contractor Activities.** Except as otherwise provided in this Agreement, the Contractor may also:

2.1 Use the PHI in its possession for its proper management and Administration and/or to fulfill any present or future legal responsibilities of the Contractor, provided that such uses are permitted under state and federal confidentiality laws.

2.2 Disclose the PHI in its possession for the purpose of its proper management and administration and/or to fulfill any present or future legal responsibilities of the Contractor. Contractor represents to Provider that (i) any disclosure it makes will be permitted under applicable laws, and (ii) the Contractor will obtain reasonable written assurances from any person to whom the PHI will be disclosed that the PHI will be held confidentially and used or further disclosed only as required and permitted under the HIPAA Privacy Rule and other applicable laws, that any such person agrees to be governed by the same restrictions and conditions contained in this Agreement, and that such person will notify the Contractor of any instances of which it is aware in which the confidentiality of the PHI has been breached.

2.3 Aggregate the Provider's PHI in Contractor's possession with the PHI of other covered entities that the Contractor has in its possession through its capacity as a contractor to such other covered entities, provided that the purpose of such aggregation is to provide Provider with data analyses relating to its Health Care Operations, as such term is defined in the HIPAA Privacy Rule. The Contractor may disclose the PHI obtained from Provider to another covered entity for the purposes of completing services as referred to in Section 1.

2.4 De-identify any and all PHI provided that the de-identification conforms to the requirements of applicable law as provided for in 42 C.F.R. § 164.514(b) and that Contractor maintains such documentation as required by applicable law, as provided for in 42 C.F.R. § 164.514(b). The Parties understand that properly de-identified information is not PHI under the terms of this Agreement.

3. **Contractor Covenants.** Contractor covenants to:

3.1 use or further disclose the minimum necessary PHI in performing the activities called for under the Services Agreement;

3.2 not to use or further disclose PHI except as permitted under this Agreement, the HIPAA Privacy Rule, and applicable State law, each as amended from time to time;

3.3 use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for in this Agreement;

3.4 maintain a log of any use or disclosure of the PHI not permitted by this Agreement of which it becomes aware; such report/log to be made in to Provider upon their written request (see section 3.6);

3.5 in conjunction with the requirements of **Section 2.2**, ensure that any subcontractors or agents to whom it provides PHI received from, or created or received by the Contractor on behalf of, Provider, agree to the same restrictions and conditions that apply to the Contractor with respect to such information;

3.6 within ten (10) days of a written request by Provider, report to Provider all disclosures of PHI to a third party for a purpose other than Treatment, Health Care Operations or Payment, as such terms are defined in the HIPAA Privacy Rule. The report to the Provider shall identify: (i) the subject of the PHI (i.e., patient name or identifier), (ii) the PHI disclosed, and (iii) the purpose of the disclosure in accordance with the accounting requirements of 45 C.F.R. § 164.528;

3.7 maintain the integrity of any PHI transmitted by or received from Provider;

3.8 comply with Provider policies and procedures with respect to the privacy and security of PHI and other Provider records, as well as policies and procedures with respect to access and use of Provider s' equipment and facilities;

3.9 provide the rights of access, amendment, and accounting as set forth in **Sections 5, 6 and 7.**

4. Provider Covenants. Provider covenants to notify Contractor of material limitations to the consents or authorizations as have been obtained by Provider from individuals and any other restrictions on the use or disclosure of PHI as agreed to by Provider. Such restrictions must be communicated to Contractor by Provider by the end of the following business day after Provider's receipt of such restriction(s).

5. Access to PHI. Within five (5) days of a request by Provider for access to PHI about an individual contained in a Designated Record Set, as such term is defined in the HIPAA Privacy Rule, the Contractor shall make available to Provider, or the individual to whom such PHI relates or his or her authorized representative, such PHI for so long as such information is maintained in the Designated Record Set as defined in 45 C.F.R. § 164.524. In the event any individual requests access to PHI directly from the Contractor, the Contractor shall, within five (5) days, forward such request to Provider. Any denials of access to the PHI requested shall be the responsibility of Provider.

6. Amendment of PHI. Within ten (10) days of receipt of a request from Provider for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set the Contractor shall, as required by 45 C.F.R. § 164.526, incorporate any such amendments in the PHI; provided, however, that Provider has made the determination that the amendment(s) is/are necessary because the PHI that is the subject of the amendment(s) has been, or foreseeably could be, relied upon by the Contractor or others to the detriment of the individual who is the subject of the PHI to be amended. The obligation in this **Section 6** shall apply only for so long as the PHI is maintained by Contractor in a Designated Record Set.

7. Accounting for Disclosures of PHI. Within thirty (30) days of notice by Provider to the Contractor that it has received a request for an accounting of disclosures of PHI regarding an individual, the Contractor shall make available to Provider such information as is in the Contractor's possession and is required for Provider to make the accounting required by 45 C.F.R. § 164.528. In the event the request for an accounting is delivered directly to the Contractor, the Contractor shall, within five (5) days, forward such request to Provider. It shall be Provider's responsibility to prepare and deliver any such accounting requested. In the event of an inordinate number of requests are received by the Contractor, the Contractor reserves the right to charge a fee for providing the information requested.

8. Access to Books and Records Regarding PHI. The Contractor will make its internal providers, books, and records relating to the use and disclosure of PHI received from, or created or received by the Contractor on behalf of, Provider available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining Provider compliance with the HIPAA Privacy Rule.

9. Disposition of PHI Upon Termination. The Contractor will, at termination or expiration of the Services Agreement, if feasible, return or destroy all PHI received from, or created or received by the Contractor on behalf of, Provider which the Contractor and/or its subcontractors or agents still maintain in any form, and will not retain any copies of such information. If such return or destruction is not feasible, the Contractor

will notify Provider of such event in writing, and will thereupon extend the protections of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.

10. Representations and Warranties

10.1 Mutual Representations and Warranties of the Parties.
Each Party represents and warrants to the other Party:

(a) that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this Agreement and to perform its obligations hereunder, and that the performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and that such performance will not violate any provision of any organizational charter or bylaws.

(b) that neither the execution of this Agreement, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder.

(c) that all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Agreement.

(d) that it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement.

11. Term. Unless otherwise terminated as provided in Section 12, this Agreement shall become effective on the Effective Date and shall have a term that shall run concurrently with that of the Services Agreement.

12. Termination

12.1 Generally. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Services Agreement; provided, however, certain provisions and requirements of this Agreement shall survive such expiration or termination in accordance with Section 13.

12.2 Termination by the Provider. As provided for under 45 C.F.R. § 164.504(e)(2)(iii), the Provider may immediately terminate this Agreement, the Services Agreement and any related agreements if the Provider makes the determination that Contractor has breached a material term of this Agreement. Alternatively, and in the sole discretion of Provider, Provider may choose to provide Contractor with written notice of the existence of the breach and provide Contractor with thirty (30) calendar days to cure said breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be reached within this thirty (30) day period, Contractor shall cure said breach to the satisfaction of the Provider within an additional fifteen (15) days. Failure by Contractor to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of the Services Agreement by the Provider. If termination is not feasible, Provider has the right to report the problem to the Secretary of the U.S. Department of Health and Human Services.

12.3 Termination by the Contractor. If Contractor determines that Provider has breached a material term of this Agreement, then the Contractor shall provide Provider with written notice of the existence of the breach and shall provide Provider with thirty (30) calendar days to cure said breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be reached within this thirty (30) day period, Provider shall cure said breach to the satisfaction of the Contractor within an additional fifteen (15) days. Failure by Provider to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of the Services Agreement by the Contractor.

13. Effect of Termination. Upon termination pursuant to Section 12, Contractor agrees to return or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(I), if it is feasible to do so. Prior to doing so, the Contractor further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the Contractor to return or destroy all PHI, the Contractor will notify the Provider in writing. Such notification shall include: (i) a statement that the Contractor has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. Contractor further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Contractor's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for the Contractor to obtain from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Contractor must provide a written explanation to the Provider and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

14. Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any third party beneficiary rights in any person.

15. Amendments; Waiver. 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. The failure of either Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or the right of either Party thereafter to enforce each and every such provision.

16. 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.

17. Notices. Any notice required or permitted under this Agreement shall be given in writing and delivered by hand, via a nationally recognized overnight delivery services (e.g., Federal Express), or via registered mail or certified mail, postage pre-paid and return receipt requested, to the following:

Provider: _____

Attn: _____

Contractor: DME Services of Texas, Inc.
2144 N. Belt Line Road Suite H
Mesquite, TX 75150
Attn: Terry D. Henderson

Notice of a change in address of one of the parties shall be given in writing to the other party as provided above.

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

19. Disputes. If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

20. LIMITATION OF LIABILITY. EXCEPT FOR FRAUD AND INTENTIONAL MISREPRESENTATIONS, NO PARTY SHALL BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR INDIRECT DAMAGES, COSTS, EXPENSES, CHARGES OR CLAIMS.

INTENDING TO BE LEGALLY BOUND, the Parties hereto have duly executed this Agreement as of the Effective Date.

Provider

Signed:_____

Print Name:

Title:

Date:

Contractor

Signed:_____

Print Name:

Title:

Date: