

Equipment Lease and Ancillary Services Agreement

This Equipment Lease and Ancillary Services Agreement ("Agreement") is by and between the facility named on the front side of this document ("Customer") and Sizewise Rentals, L.L.C. ("Sizewise") and is effective on the date signed by Customer. Customer and Sizewise agree to the following terms:

1. Rental, not Sale and Ownership of Equipment. This is a contract for the rental of the items of equipment described herein and this Agreement does not provide for the sale of those items. Any reference to "equipment" or "item(s)" herein shall mean all rented equipment including without limitation all parts, materials, digital media storage, including all information and data collected, stored, or generated from the equipment. The Customer agrees that Customer has rented the item(s) herein described upon the express conditions that such item(s) will at all times remain the property of Sizewise.

2. Term of Agreement. This Agreement provides equipment on an as needed basis and the Agreement shall be ongoing until the Customer notifies Sizewise to pick up the equipment.

3. Payment and Remittance. Customer will pay promptly when due, all charges which accrue because of this Agreement, including but not limited to rental, replacement or repair costs from damages to said item, and to the extent applicable Ancillary Services. All rental charges are based on the time item(s) is in Customer's possession until Customer provides notice to Sizewise to pick up the equipment, whether the equipment is in use or not. Sizewise shall have the right, at its discretion, to send invoices to Customer in any manner including without limitation via (a) password protected files sent electronically, (b) fax, or (c) mail to the bill to address, and Customer shall promptly pay when due. All payments shall be made in U.S. currency. Payments made by check shall be made to Sizewise Rentals, L.L.C., P.O. Box 320, Ellis, KS 67637 and electronic or credit card payments shall be made in accordance with Sizewise's instructions. Billing, invoice or credit questions should be directed to (800) 814-9389. Payment terms are net thirty (30) days from the date of invoice unless otherwise established through contract. If Customer fails to pay any amounts when due, Customer shall pay Sizewise interest thereon at a rate of one and one-half (1.5%) per month (or the highest rate permitted by law) together with all costs and expenses (including without limitation reasonable attorneys' fees and court costs) incurred by Sizewise in collecting such overdue amounts or otherwise enforcing Sizewise's rights.

4. Condition; Fit for Use and Ordinary Wear and Tear Excepted. All equipment, parts and Ancillary Services are provided "AS IS" WHERE IS WITH ALL FAULTS. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. Customer is solely responsible for determining whether the leased equipment offered by Sizewise is appropriate for Customer's intended use including use by Customer's employees, invitees, contractors, representatives, or any other persons Customer intends to use the leased equipment. Customer has examined the leased equipment, finds it to be in good condition, accepts the equipment as is and finds it fit for the Customer's purposes. Customer shall return equipment to Sizewise in as good condition as when received by Customer, ordinary wear and tear excepted.

5. Use of Equipment. Customer agrees to operate said equipment only in the manner for which it is intended and in compliance with manufacturer specification, any warning labels affixed to the equipment and other information supplied by Sizewise or the manufacturer. Customer further agrees not to re-deliver said equipment to any other person, firm, or company without the written consent of Sizewise. Customer further agrees (i) not to remove any digital media storage from said equipment, and (ii) not to remove said equipment from that address to which it was delivered without the written permission of Sizewise.

6. Maintenance, Repairs, Operation Expenses and Risk of Loss. Customer will return at once to Sizewise or its designee any item not functioning normally Customer shall not attempt to make any repairs of any nature whatsoever to the equipment, and in the event said equipment becomes inoperative, Customer shall notify Sizewise at once. Customer agrees to return said equipment to Sizewise promptly upon demand and will cooperate with Sizewise to make said equipment available for pickup by Sizewise. Customer is responsible for said equipment and agrees to use reasonable care to protect same from all loss and damage. Customer hereby assumes all risk of loss and damage to property leased while in the possession of Customer. In the event the equipment is damaged or destroyed while in the Customer's possession, the Customer shall be responsible for all parts and related services to repair or replace the equipment. In the event the equipment is lost while in the possession of Customer, Customer shall have thirty (30) days to recover the equipment. After said thirty (30) days, Sizewise will invoice Customer, and Customer shall pay upon receipt of invoice for the replacement cost of the lost equipment.

7. Infectious Diseases. In the event equipment leased hereunder comes into contact with a Nationally Notifiable Infectious Condition (as defined by the Center of Disease Control), Clostridium difficile, or MRSA, the Customer agrees that its agents or employees will notify Sizewise prior to making arrangements for pickup. Mattress systems, including without limitation the complete mattress, top cover, blowers and controllers which come in contact with said diseases/conditions including without limitation any that comes in contact with any person with suspected Viral Hemorrhagic Fever including without limitation Ebola will be deemed unusable, and Customer shall (i) first contact Sizewise to confirm which items are unusable and non-returnable to Sizewise, and for those such items dispose of them using Customer's standard protocols for such situation, (ii) promptly notify Sizewise confirming the items disposed of, and (iii) bear the replacement cost of all such items deemed unusable by Sizewise and promptly pay Sizewise upon invoice.

8. Alterations and additions to leased equipment. Customer promises not to tamper with, alter or modify the leased equipment in any manner whatsoever, including without limitation any digital media storage or any data therefrom, without the written permission from an authorized representative of Sizewise.

Customer understands and agrees that any alterations or modifications approved by Sizewise will become the property of Sizewise, as part of the leased equipment. Customer promises to pay all costs of restoring the leased equipment to its original condition in the event Customer tampers with, alters or modifies the leased equipment in any manner whatsoever without written permission from an authorized representative of Sizewise. Customer shall indemnify, defend and hold Sizewise harmless from and against any and all claims, actions, losses, damages (including special, indirect, punitive, incidental or consequential), liabilities and expenses arising from, caused by or related to, directly or indirectly, Customer's tampering, altering or modifying the equipment in any manner whatsoever, and whether Sizewise approved an alteration or modification.

9. Ancillary Services. For the purpose of this Agreement, "Ancillary Services" shall mean any service performed by Sizewise during, or subsequent to, the delivery of the equipment to Customer's location including without limitation equipment setup, installation, training, maintenance, in-service, or patient transfers in any manner. In the event Customer requests Sizewise to assist with the performance of Ancillary Services the following provision shall also apply. By requesting Sizewise to perform Ancillary Services, Customer authorizes Sizewise's representative to work with Customer, patient, and the equipment together to move current equipment out of the way as necessary to conduct the Ancillary Services. Notwithstanding however at all times Customer shall manage and be solely responsible for the patient and anything that is attached to the patient including without limitation managing all IVs, tubes, Foley's etc. **CUSTOMER AGREES TO RELEASE SIZEWISE, ITS SUBSIDIARIES, OFFICERS, MEMBERS, AGENTS, AND EMPLOYEES, FROM ANY AND ALL LIABILITY WITH RESPECT TO OR CONNECTED IN ANY WAY TO THE PERFORMANCE OF THE ANCILLARY SERVICES EXCEPT TO THE EXTENT DUE FROM THE SOLE GROSS NEGLIGENCE OF SIZEWISE.**

10. Assignment. Items included in this Agreement may not be assigned by Customer. There are no intended third party beneficiaries. Nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

11. Indemnification. To the fullest extent permitted by law, Customer agrees to indemnify and hold harmless Sizewise, its subsidiaries, officers, member-owners, agents, employees or any other person against loss or expense including attorneys' fees, by reason of any claim or liability imposed upon Sizewise or Customer for damage because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons, or on account of damage to property arising out of or in consequence of this agreement, or from any Ancillary Services or actions by Sizewise, whether such injuries to persons or damage to property are due or claim to be due to any passive negligence of Sizewise, its employees or agents or any other person except when caused by the sole negligence of Sizewise. It is understood and agreed that Customer shall defend Sizewise with counsel chosen by Sizewise and shall further bear all costs and expenses, including the expense of counsel, in the defense of any claim or suit arising hereunder. It is further understood and agreed that Customer shall hold Sizewise harmless from actions or inactions that could cause or contribute to Customer losing revenue or payments due to withholding or exclusion by the Centers for Medicare and Medicaid Services (CMS) or its affiliates. **IN NO EVENT WILL SIZEWISE BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS OR REVENUE) INCURRED BY CUSTOMER OR ANY OTHER PARTY, WHETHER SUCH DAMAGES ARE ALLEGED AS A RESULT OF TORTIOUS CONDUCT, BREACH OF CONTRACT, WARRANTY, OR OTHERWISE, EVEN IF SIZEWISE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IS NEGLIGENT. IF, NOTWITHSTANDING THE FOREGOING, LIABILITY CAN BE IMPOSED ON SIZEWISE, THEN CUSTOMER AGREES THAT SIZEWISE'S MAXIMUM TOTAL LIABILITY TO CUSTOMER SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER HEREUNDER.**

12. Safe Harbor Compliance. If Customer is a recipient of funds from a state or federal healthcare program, Customer acknowledges it has been informed of and agrees to accurately account for, and report, when applicable, the value of any discount, rebate or other compensation paid hereunder in a manner that complies with all federal, state and local laws and regulations providing a safe harbor for such discounts. To the extent Customer requires additional information from Sizewise in order to meet its safe harbor reporting requirements, Customer shall make a written request to Sizewise.

13. Miscellaneous. If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of the Agreement and the application of such provision to other persons or circumstances will not be affected thereby and will be enforced to the greatest extent permitted by law. This Agreement shall be governed by and will be construed in accordance with the laws of the State of Kansas (without application of principles of conflicts of law). Each party consents to the exclusive jurisdiction of the state and federal courts located in Johnson County, Kansas, in any action arising out of or relating to this Agreement. **Any action against Sizewise arising under or related to this Agreement or the subject matter hereof must be brought within one (1) year from the date that the cause of action arose. This one year period for any claims asserted by Customer against Sizewise shall have no effect on the ability of Sizewise to bring any claims against Customer, including but not limited to the enforcement of any rights or obligations created by this Agreement, within the time period(s) specified in any applicable statute(s) of limitation.**