

Massachusetts Department of Public Health
Office of Preparedness and Emergency Management

EQUIPMENT LOAN AGREEMENT

THIS EQUIPMENT LOAN AGREEMENT (Agreement) is made as of the date of the last signature below by and between the Massachusetts Department of Public Health (the Department) and _____ (Borrower). The Department and Borrower may be referenced collectively in this Agreement as the Parties or each individually as a Party.

1. Equipment. Subject to all terms and conditions of this Agreement, the Department will loan to Borrower the materials or equipment specified on the attached Exhibit A (the “Equipment”), which Exhibit A is included herein by reference as if fully set out. In the event that the Equipment includes one or more items of durable medical equipment (DME), Exhibit B shall be completed with respect to the DME, and the terms of Exhibit B shall be further included herein as if fully set out. Equipment shall also include DME where applicable. DME is Equipment that is primarily and/or customarily used to serve a medical purpose and that can withstand repeated use (an example of DME for the purposes of this Agreement is a ventilator).

2. Term. The term (“Term”) of this Agreement begins upon the later of the two signatures below and expires five (5) years from that date, unless the Agreement is either sooner terminated or extended in accordance with the Termination paragraph below.

3. Permitted Use. The Equipment shall be used for the sole purpose of directly supporting the operational needs of the Borrower consistent with the manufacturer's intended use of the Equipment. Borrower shall assume all responsibility for the use of the Equipment, including but not limited to proper training, certification, and/or licensure of staff, and use of the Equipment in accordance with the manufacturer’s recommendations.

At the end of the Term, Borrower shall return the Equipment in its original condition, ordinary wear and tear excepted. The Equipment is provided to the Borrower solely for the Borrower’s use as permitted by this Agreement. Borrower may not loan, sell, or otherwise allow use of the Equipment by another entity. Nothing in the Agreement shall alleviate any licensure, certification, or other legal obligations of Borrower.

4. Preparation of Equipment. The Department agrees to prepare the Equipment for Borrower to pick up at a Department identified location or for delivery by the Department. Upon the termination or expiration of this Agreement, Borrower shall bear the full cost of dismantling, packing, insuring, and transporting or shipping the Equipment back to the Department. At its discretion, the Department may elect to arrange delivery of the Equipment at the Department’s expense.

5. Responsibility for Loss or Damage. Borrower is responsible for any loss or damage to the Equipment from the time Borrower takes possession of it until it is returned to the possession of the Department. This includes the Borrower being responsible for repairs using a manufacturer authorized service provider, or replacement of the Equipment (as determined needed by the Department). Borrower will be responsible for all costs of repair or replacement of the Equipment.

6. Department Labels. The Department may affix labels, including but not limited to bar codes or asset tags, to the Equipment. To the extent the Equipment is provided to the Borrower with such Department labels, the Borrower shall maintain the label and may not modify, cover, or otherwise render the labels unreadable.

7. Indemnification. Borrower accepts all risks to itself and to any third parties that may result or arise out of the possession or use of the Equipment and agrees to indemnify and save harmless the Department, its officers, agents, and employees from all loss, cost, and expense arising out of any liability or claim of liability for damages to person or property arising out of its possession or use of the Equipment.

8. No Warranty. Borrower accepts the Equipment "As Is". The Department makes no warranty of any kind including that the Equipment is suitable for the use for which it is designed.

9. Logos and Marks. Borrower may not use the name of the Department or its seal, logos, or other identifying symbols in any way associated with the Equipment that is not expressly authorized in writing by the Department.

10. Termination. Either Party may terminate this Agreement at any time by giving 30 calendar days' written notice to the other Party. In addition, the Department may terminate this Agreement immediately in the event of Borrower's failure to comply with any of the terms and conditions of this Agreement or due to emergency need, as determined by the Department. Upon termination of this Agreement, Borrower shall return all Equipment to the Department as soon as possible but not later than 5 calendar days.

11. Assignment. This Agreement is personal, and Borrower shall not assign this Agreement, or any privileges granted hereunder without the prior written consent of the Department.

12. Notices. All notices shall be sent electronically by e-mail at the address indicated below, and may also be hand delivered, sent by private overnight mail service, sent by registered or certified U.S. mail and addressed to the Party to receive such notice at the address given below as may be applicable, or such other address as may hereafter be designated by notice in writing:

If to the Department:

By Mail:

MDPH / OPEM

Attn: Resource Unit

20 Forge Parkway

Franklin MA 02038

By Email:

dph.resource.request@mass.gov

If to Borrower: _____

13. Entire Agreement. This Agreement contains the entire agreement of the Parties and there are no representations, inducements, or other provisions other than those expressed herein. All changes, additions or deletions to this Agreement shall be in writing and executed by the authorized representatives of both Parties.

14. No Waiver. The waiver by the Department of any agreement, condition, or provision contained in this Agreement will not be deemed a waiver of any subsequent breach or any other agreement, condition, or provision contained in this Agreement, nor will any custom or practice that may develop between the Parties in the administration of the terms of this Agreement be construed to waive or lessen the right of the Department to insist upon Borrower's performance in strict accordance with the terms of this Agreement.

15. Governing Law. This Agreement and the rights and obligations of the Parties hereto shall be interpreted, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, which shall be the exclusive venue for any legal proceedings arising from or incident to this Agreement.

16. Severability. Should any provision of this Agreement be declared illegal, void, or unenforceable under Massachusetts law, or shall be considered severable, the Agreement shall remain in force and be binding upon the Parties hereto as though the said provision had never been included.

17. No Funding. No funding is associated with this Agreement.

18. Site Visits. The Department may conduct site visits to conduct a physical examination and inventory of the Equipment, upon 3 calendar days' notice to the Borrower or immediately due to emergency need, as determined by the Department.

IN WITNESS WHEREOF, the Department and Borrower have executed this Agreement as of the date of the last signature below as indicated by the signatures of their authorized representatives.

Massachusetts Department of Public Health

Borrower

By:
Title:
Date:

By:
Title:
Date:

**Massachusetts Department of Public Health
Office of Preparedness and Emergency Management
EQUIPMENT LOAN AGREEMENT
EXHIBIT A**

Borrower: _____

Exhibit Date: _____

Non-DME Equipment to be Loaned

Equipment Description	Manufacturer Serial Number	Manufacturer Model Number

**Massachusetts Department of Public Health
Office of Preparedness and Emergency Management
EQUIPMENT LOAN AGREEMENT
Exhibit B**

Borrower: _____

Exhibit Date: _____

Durable Medical Equipment (DME) to be Loaned and Additional Applicable Terms

DME Description	Manufacturer Serial Number	Manufacturer Model Number

1. Upon receipt of DME, either pick up or delivery, Borrower shall confirm the accuracy of the information listed on this Exhibit B.
2. Borrower shall conduct routine preventative maintenance and calibration and/or certification for each DME received per the manufacturer's required schedules and conduct necessary repairs or parts replacement needed for proper operation of the DME for the duration of this Agreement and while the DME is in the Borrower's possession.
3. Borrower shall send all documents evidencing the any maintenance for the DME to the Department at dph.resource.request@mass.gov within two weeks of servicing.
4. Borrower shall be responsible for obtaining all supplies necessary for proper maintenance and operation of the DME, such as consumable, or patient specific items needed for use of the DME or preventative maintenance supplies. Supplies used will be manufacturer approved for use with the DME.
5. At all times during its possession of the DME, Borrower shall maintain all-risk insurance coverage against loss or damage of the DME up to its fair market value.