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New Hampshire Veterans Home

139 Winter Street
Tilton, NH 03276



Margaret D. LaBrecque
Commandant

Telephone: (603) 527-4400
Fax : (603) 527-4402

May 2, 2013

Her Excellency, Governor Margaret Wood Hassan
And the Honorable Council
State House
Concord, New Hampshire 03301

retroactive

REQUESTED ACTION

Authorize the New Hampshire Veterans Home to enter into a **retroactive** contract with Technical Gas Products Inc., (VC#), 966 Leonardo Drive, North Haven CT 06473 in the amount of \$ 119,340 to provide Oxygen and Respiratory services to the Homes residents from December 1, 2012 through January 31, 2016.

Funding Source 38% Federal, 44 % Agency Incomes, 18% General Fund.

Funds are available in account titled 05-43-43-430010-5359, New Hampshire Veterans Home, Professional Services, as follows with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified.

	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY2015</u>
#-020-500271 Other Medical Services	\$ 39,720	\$39,720	\$39,900

EXPLANATION

This contract is retroactive due to an Administrative oversight. The Home did not recognize that the contract had come to an end and that the contract had to follow the RFP process.

This contract provides for oxygen and respiratory at the New Hampshire Veterans Home. In December 2012, the New Hampshire Veterans Home advertised for bids on the New Hampshire Veterans Home web site as well as the State of NH, Purchase and Property web site for oxygen and respiratory services. One vendor responded to the proposal, Technical Gas Products Inc., which is the Home current provider. Technical Gas Products Inc. has continued to provide life saving oxygen to the residents of the Home and as such the Home wishes to request that the contract be retroactive back to the date when the other contract ended. The New Hampshire Veterans Home is pleased with the reliability of this contractor and as such feels comfortable awarding this contract. This contract includes a two-year extension option that may be exercised at the end of the three year term with Governor and Council approval.

This contract has been approved by the Attorney General's Office as to form, substance and execution. Your favorable action on this request would be appreciated.

Respectfully Submitted,

Margaret D LaBrecque

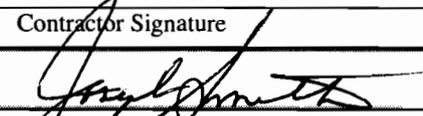
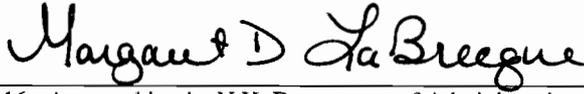
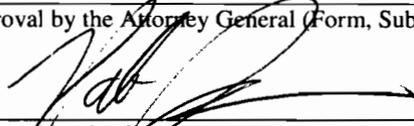
Margaret D. LaBrecque
Commandant

Subject: Provide Oxygen and Respiratory service to the NHVH FORM NUMBER P-37 (version 1/09)

AGREEMENT
The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name <u>NEW HAMPSHIRE VETERANS HOME</u>		1.2 State Agency Address <u>139 WINTER STREET, TILTON, NH 03276</u>	
1.3 Contractor Name <u>Technical Gas Products, Inc.</u>		1.4 Contractor Address <u>66 Leonardo Drive North Haven CT 06473</u>	
1.5 Contractor Phone Number <u>203-239-1002</u>	1.6 Account Number <u>010-043-5359-020-500271</u>	1.7 Completion Date <u>01/31/2016</u>	1.8 Price Limitation <u>119,340.00</u>
1.9 Contracting Officer for State Agency <u>Margaret D. LaBrecque</u>		1.10 State Agency Telephone Number <u>603-527-4840</u>	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory <u>Joseph Smith, CEO</u>	
1.13 Acknowledgement: State of <u>CT</u> , County of <u>Fairfield</u> On <u>March 26, 2013</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Maria D. Cajigas, Notary</u> MARIA D. CAJIGAS NOTARY PUBLIC State of Connecticut My Commission Expires March 31, 2018			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory <u>Margaret D. LaBrecque, Commandant</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>4/15/13</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT. Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8: EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder (“Event of Default”):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word “data” shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report (“Termination Report”) describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR’S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers’ compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

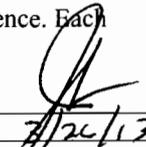
14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each

Contractor Initials: 
Date: 7/26/17

certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("Workers' Compensation").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.


3/26/13

EXHIBIT A
SCOPE OF SERVICES

A. Scope Of Services:

The New Hampshire Veterans Home proposes to enter into an agreement with a contractor to provide oxygen and respiratory services to include respiratory assessments and consultation on all residents within the facility.

1. The Contractor shall provide consultation and assessments when requested on all residents that have been prescribed oxygen therapy.
2. The Contractor shall provide and maintain oxygen concentrators and any other durable medical equipment as related to oxygen therapy services provided along with all ancillary supplies and devices necessary to assure proper operation of such; provide and maintain a par supply of liquid oxygen at facilities' expense, clinically monitor all residents receiving respiratory care in conjunction with facilities' nursing staff.
3. The Contractor shall provide service, maintenance and inspection to the Home's concentrators.
4. The Contractor shall meet with residents' inter-disciplinary team to discuss relevant clinical issues and approaches to strengthen the care plan and meet the needs of the resident when required.
5. The Contractor shall provide set up and instructions for all respiratory equipment – ie: BiPAP and C-Pap.
6. The Contractor shall in collaboration with staff development provide relevant in-service training to resident care staff to increase the knowledge base and skills related to respiratory care of older adults to better serve the needs of the residents.
7. The Contractor shall provide extra portable devices (approximately 20) to be available in the event of a power outage.
8. The Contractor shall provide emergency oxygen cylinders, which are not liquid oxygen in the event that they are needed.
9. The Contractor shall conduct his work so as to interfere as little as possible with State business, determine the State's normal working conditions and activities in progress and shall conduct the work in the least disruptive manner.
10. The Contractor shall secure and pay for all permits, inspections and licenses necessary for the execution of his work.
11. The Contractor shall do all the work and furnish all the materials, tools, equipment and safety devices necessary to perform in the manner within the time specified. The Contractor shall complete the entire work to the satisfaction of the State and in accordance with the specifications herein mentioned, at the price herein agreed upon. All the work, labor, and equipment to be done and furnished under this contract, shall be done and finished strictly pursuant to, and in conformity with the specifications described herein and any directions of the State representatives as given from time to time during the progress of the work, under the terms of this contract.
12. The Contractor shall at his own expense, wherever necessary or required, furnish safety devices and take such other precautions as may be necessary to protect life and property.
13. The Contractor shall bear all losses resulting to him or to the NHVH on account of the amount or character of the work, or because of the nature of the area in or on which the work being done is different from what was estimated or expected, or account of the weather, elements or other causes.
14. Unsatisfactory response to any or all of the listed services or requirements will be a basis for immediate termination of the contract.

EXHIBIT A
SCOPE OF SERVICES

15. The NHVH reserves the right to terminate this contract at any given time with a 30 day written notice.
16. The term of the contract shall be effective upon Governor and Executive Council approval through January 31, 2016. At the completion, this contract may be extended for a period of two (2) years upon written request of the Contractor and approval by the NHVH with further approval of the Governor and Executive Council.

EXHIBIT B
BUDGET AND METHOD OF PAYMENT

A. Invoicing:

1. The Contractor shall invoice the NHVH as service is performed and product delivered. All invoices must include detail of work performed, dates and location of service and prices. Please include one original invoice and one copy. Payment will not be due until thirty (30) days after the invoice has been received at the NHVH business office.
2. The Contractor is authorized to receive third party payments for services rendered to residents to the extent of any applicable insurance coverage. Residents that are not covered by insurance and non-covered co-payments will be invoiced to the NHVH.

B. Payment:

Payment may be withheld if work is not performed as described under SCOPE OF SERVICES, and the immediate termination of this contract could occur.

Unless otherwise noted on the proposal, payment will be due thirty (30) days after invoicing. A check will be issued through the State Treasurer and forwarded to the Vendor within fourteen (14) days after processing begins at the agency level. Payments will be for only what has been agreed to in the contract. The NHVH does not pay late charges or interest.

C. Other:

To receive proper payment, all invoicing for services must be sent to the agency's business office at:

NH Veterans Home
139 Winter Street
Tilton, NH 03276

EXHIBIT C
SPECIAL PROVISIONS

1. The Contractor represents and warrants that they have obtained and will maintain in force all licenses and permits required by federal, state and local authorities for the performance of the specifications.
2. This agreement may be cancelled by either party at any time without cause by giving a 30 day notice in writing to the other party.
3. Contractor is aware of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH ACT) and agrees to comply with its regulations concerning privacy and security.
4. The Contractor shall insure that malpractice insurance is maintained in the amount of \$1 million/\$3 million minimum for the term of this contract and shall supply an updated certificate stating such.
5. The Contractor agrees to service the facility as an independent contractor and comply with any and all standards of professional practice.
6. The Home assumes responsibility for any missing equipment and/or cylinders that have been provided by the Contractor for the use of those residents to which services are provided.

STANDARD EXHIBIT D

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164. As defined herein, "Business Associate" shall mean the Contractor and sub contractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the New Hampshire Veterans Home.

BUSINESS ASSOCIATE AGREEMENT

(1) Definitions.

- a. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- b. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- c. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- d. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

"HITECH ACT means the Health Information Technology for Economic and Clinical Health. Regulations announced in Federal Register August 24, 2009 in effect as of September 23, 2009.
- e. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- f. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
- g. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- h. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.501.
- i. "Secretary" shall mean the Secretary of the New Hampshire Veterans Home or his/her designee.
- j. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time.

(2) Use and Disclosure of Protected Health Information.

- a. Business Associate shall not use or disclose PHI except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, the Business Associate shall not, and shall ensure that its directors, officers, employees and agents, do not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if so used by Covered Entity.
- b. Business Associate may use or disclose PHI:
- (i) for the proper management and administration of the Business Associate;
 - (ii) as required by law, pursuant to the terms set forth in paragraph d. below; or
 - (iii) for data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to immediately notify Business Associate of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying covered entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.
- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of PHI pursuant to the Privacy Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions.

(3) Obligations and Activities of Business Associate.

- a. Business Associate shall report to the designated Privacy Officer of Covered Entity, in writing, any use or disclosure of PHI in violation of the Agreement, of which it becomes aware, within two (2) business days of becoming aware of such unauthorized use or disclosure.
- b. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted by the Agreement.
- c. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy Rule and HITECH ACT and the Security Rule.
- d. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and

conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section (3)k. herein. The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's business associates, who will be receiving PHI pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard provision #13 of this agreement for the purpose of use and disclosure of protected health information.

e. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.

f. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a designated record set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.

g. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.

h. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

i. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.

j. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy Rule or HITECH ACT and the Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.

k. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity; all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so

long as Business Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

(4) Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(5) Termination for Cause

In addition to standard provision #10 of this agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit D. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(6) Miscellaneous

- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy Rule and Security Rule, as amended from time to time. A reference in the Agreement, as amended to include this Exhibit D, to a Section in the Privacy Rule and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy Rule, HITECH ACT, the Security Rule and applicable federal and state law.
- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, HITECH ACT and the Privacy Rule and Security Rule.
- e. Segregation. If any term or condition of this Exhibit D or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions

which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit D are declared severable.

f. Survival. Provisions in this Exhibit D regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section 3 k., the defense and indemnification provisions of section 3 d. and standard contract provision #13, shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit D.

NH VETERANS HOME
The State

Margaret D LaBreeque
Signature of Authorized Representative

MARGARET D LABREEQUE
Name of Authorized Representative

COMMANDANT
Title of Authorized Representative

4/9/13
Date

Technical Gas Products IN
Name of the Contractor

[Signature]
Signature of Authorized Representative

Joseph SMITH
Name of Authorized Representative

CEO
Title of Authorized Representative

3/26/2013
Date

CERTIFICATE OF VOTE
(Corporation Without Seal)

I, Richard M. Horowitz, do hereby certify that:
(Name of Clerk of the Corporation; cannot be contract signatory)

1. I am a duly elected Clerk of Technical Gas Products, Inc.
(Corporation Name)

2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors of the Corporation duly held on July 11, 2012:
(Date)

RESOLVED: That this Corporation enter into a contract with the State of New Hampshire, acting through its Department of Health and Human Services, Glenclyff Home, for the provision of

Oxygen Concentrator services.

RESOLVED: That the CEO
(Title of Contract Signatory)

is hereby authorized on behalf of this Corporation to enter into the said contract with the State and to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, as he/she may deem necessary, desirable or appropriate.

3. The forgoing resolutions have not been amended or revoked, and remain in full force and effect as of the 21 day of MARCH, 2013.
(Date Contract Signed)

4. Joseph Smith is(is/are) the duly elected
CEO
(Name of Contract Signatory) (Title of Contract Signatory)

of the Corporation.

[Signature]
(Signature of the Clerk of the Corporation)

Connecticut
STATE OF ~~NEW HAMPSHIRE~~

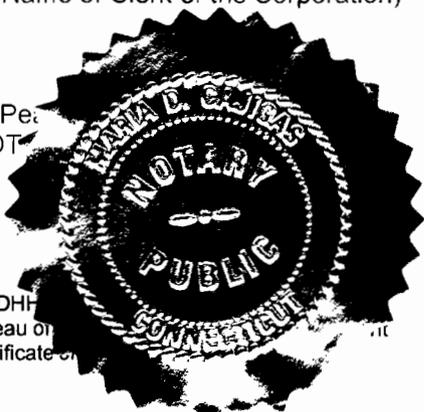
County of Fairfield

The forgoing instrument was acknowledged before me this 26 day of MARCH, 2013.

by Richard M Horowitz.
(Name of Clerk of the Corporation)

[Signature]
(Notary Public/Justice of

the Pe.
(NOT)



Commission Expires: 3-31-2018

NH DHP
Bureau of
Certificate of

MARIA D. CAJIGAS
NOTARY PUBLIC
State of Connecticut, My Commission Expires March 31, 2018

State of New Hampshire Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Technical Gas Products, Inc. a(n) Pennsylvania corporation, is authorized to transact business in New Hampshire and qualified on July 25, 2006. I further certify that all fees and annual reports required by the Secretary of State's office have been received.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 3rd day of April, A.D. 2013

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

3/29/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Willis of Pennsylvania, Inc. c/o 26 Century Blvd. P.O. Box 305191 Nashville, TN 37230-5191	CONTACT NAME: PHONE (A/C, No, Ext): (877) 945-7378		FAX (A/C, No): (888) 467-2378
	E-MAIL ADDRESS:		
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: National Union Fire Insurance Company of Pittsbu	NAIC # 19445
		INSURER B: Insurance Company of the State of Pennsylvania	19429
		INSURER C: First Mercury Insurance Company	10657
		INSURER D:	
		INSURER E:	
		INSURER F:	

INSURED Technical Gas Products, Inc. 66 Leonardo Drive North Haven, CT 06473		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> GENERAL LIABILITY		GL4572157	4/1/2013	4/1/2014	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person)	\$ 15,000
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COMP/OP AGG	\$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						\$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						\$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY		CA939806	4/1/2013	4/1/2014	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO					BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (PER ACCIDENT)	\$
							\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR	BE011501978	4/1/2013	4/1/2014	EACH OCCURRENCE	\$ 25,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE	\$ 25,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000						\$
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		WC1556774	4/1/2013	4/1/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	<input type="checkbox"/> OTHER
	<input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y / N				E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
C	Business Auto Buffer		NY-EX-0000026052-01	4/1/2013	4/1/2014	Each Occurrence	4,000,000
A	Workers Compensation		WC1558205	4/1/2013	4/1/2014	See Attached	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Evidence of Coverage Only

CERTIFICATE HOLDER**CANCELLATION**

New Hampshire Veterans Home 139 Winter Street Tilton, NH 03276-0000	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Donna F. Weimant</i>