

**Dake Foundation for Children  
Equipment Donation / Loan  
Equipment Waiver and Agreement for Use**

**1. Commencement Date and Parties**

This agreement, effective as of the 20 day of October in the year 2020 between the Dake Foundation for Children, a New York State not-for-profit corporation with its place of operation located at P.O. Box 3575, Saratoga Springs, NY 12866 (hereafter referred as DF) and Hudson Area, (hereafter referred to as the Recipient).

DF's principle activity is providing grants and equipment donations and loans to children with disabilities. DF and the Recipient have entered into this agreement voluntarily with the hope and expectation that the loan or donation of this equipment will benefit the user through increased mobility and independence. To this end, DF and the Recipient have agreed to the following:

**2. Loan or Donation of Durable Medical Equipment**

Recipient hereby agrees to accept equipment loaned or donated by DF in accordance with the terms and conditions of this Agreement. Recipient shall not sell, donate or otherwise loan equipment described below to any other party or individual.

The following is a description of the LOANED or DONATED (Circle one) equipment or device including manufacturer's serial number:

MacLaren Motor Gate Pool Chair

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**3. Term & Renewal**

The term of this agreement (hereafter referred to as "Term") shall begin on the Commencement Date and shall continue in full force and effect for one (1) calendar year after the Commencement Date, unless sooner terminated in accordance with this agreement. This term may be renewed by a vote of the Board of Directors of the Dake Foundation for Children. Request for renewal must be made in writing by the Recipient and received at the Foundation (PO Box 3575, Saratoga Springs, NY 12866) thirty (30) days in advance of the expiration of the term in effect.

**4. Acceptance of Equipment**

The Recipient accepts the equipment and affirms, by signing this agreement, that the equipment was received "as is," with no warranty whatsoever and understands and agrees that the items are Lent or Donated with the express understanding that the Recipient accepts them in "as is" condition and assumes sole responsibility for their safety, operation, and maintenance. The Recipient agrees to use the donated or loaned equipment strictly for the intended purpose. Should such equipment be utilized in a manner not suitable for the products design resulting in damage to the equipment, the Recipient agrees to assume the cost of repair, or retail cost reimbursement if damage to the equipment amounts to a total loss. Recipient shall be responsible for the pick-up and return arrangements for said loaned or donated equipment/devices – unless otherwise agreed upon by the parties.

**5. Best Efforts to Maintain**

The Recipient agrees to maintain the equipment supplied by DF to the best of the Recipient's ability. If for any reason, the Recipient cannot comply with this requirement, the equipment should be returned to DF. Shipping and handling costs related to the return of equipment not maintained in a favorable condition by the Recipient shall be the sole responsibility of the Recipient.

## **6. Termination**

DF may terminate this Agreement with ten (10) business day's written notice in the event that the Recipient materially breaches any term or condition of this Agreement. Upon termination or expiration of this Agreement, the Recipient shall immediately cease to utilize the equipment loaned by DF and shall return such property to DF within ten (10) working days.

## **7. Failure to Return Loaned Equipment/Devices**

The equipment/devices which are the subject of this agreement must be accounted for by the Recipient. Failure to arrange for its return shall be deemed detrimental by DF and to other prospective Recipients. Non-compliance with this return shall be deemed a violation of the Agreement and the Recipient shall be responsible for all monetary damages incurred in the replacement or loss of the equipment or device.

## **8. Amendment**

No amendment, alteration or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties.

## **9. Previous Agreements; Binding Effect**

The Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the subject matter hereof. The terms of this Agreement shall be binding on the parties and upon their heirs, administrators, executors, successors and assigns.

## **10. Insurance**

DF may request proof of homeowners/renters insurance from Recipients. Recipients must provide a copy of policy coverage acceptable to DF acceptable *if requested by DF*. Examples include homeowner's owners/renters insurance proof of policy requested or a certificate of insurance naming DF as an additional insured.

## **11. Liability**

Waiver and Release of Liability. With full knowledge and appreciation of the dangers inherent in the use of the DF--provided/loaned equipment, all users, (and their representatives successors and assigns) voluntarily agree to waive any and all rights to sue and hereby releases the DF, Board members, Medical Advisory Panel, staff and volunteers from all liability, loss, claims, damages (actual and consequential) for injury, death, expenses, or damage to person or property resulting use of the equipment, or resulting from any action or inaction by the DF. This waiver and release is effective even if the injury, death or damage to person or property is caused by, or contributed to by, actions or failure to act of DF and which actions or inactions constitute ordinary negligence or a violation of any applicable law. It survives all terms of loan or equipment transfer agreement.

## **12. Miscellaneous**

This document is intended to be as broad and inclusive as applicable state law permits. If any clause conflicts with applicable law, only that clause will be void but the remainder shall stay in full force and effect.

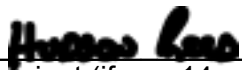
I HAVE READ THIS ASSUMPTION OF RISK, WAIVER AND RELEASE OF LIABILITY. I UNDERSTAND THAT IT IS A RELEASE OF ALL CLAIMS AS DESCRIBED ABOVE AND THAT I AM ASSUMING ALL RISKS INHERENT TO MY USE OF DF EQUIPMENT AND I AGREE TO BE FULLY BOUND BY ITS TERMS THIS AGREEMENT TO THE RECIPIENT TO THE DEGREE PERMITTED BY NEW YORK LAW.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of the day and year first above written.

Dake Foundation for Children

Recipient

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

By:   
Recipient (if age 14 or older)

Its: Executive Director

and By:   
Parent/Guardian

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

Date: 10/20/2020