

## **Amended and Restated Terms and Conditions for Participation in the DVR**

These Amended and Restated Terms and Conditions in the DVR amend and replace the original Terms and Conditions for Participation in the DVR as follows:

In response to the unprecedented circumstances arising due to the COVID-19 outbreak, Health Research and Educational Trust, an Illinois trust and an affiliate of the American Hospital Association (“**HRET**”) created and formalized a collaborative Dynamic Ventilator Reserve to address potential shortages in ventilator resources (the “**DVR**”). The DVR will facilitate reallocation of ventilator resources among hospitals that agree to participate in the DVR (each, a “**Participating Hospital**”).

WHEREAS the DVR is an innovative solution to ensure the best care for patients across the United States by facilitating the exchange of available ventilator fleets among hospitals and health systems to address shortages where needed.

WHEREAS the federal government has recognized the importance of the program as a backup to the Strategic National Stockpile, and the leadership of several hospitals and health care systems, acknowledging the significance of the DVR program, have stepped forward to work with the American Hospital Association (“**AHA**”) by offering on behalf of their organizations participation in the program.

WHEREAS, the AHA is pleased to announce it has been able to put together a program that automates the exchange through a digital tool and that the AHA will absorb the management and transportation costs of the program, making participation in the program available to Participating Hospitals at no cost, subject to the Terms and Conditions (“**Terms and Conditions**”) below.

NOW THEREFORE As a condition to participation in the DVR, each Participating Hospital agrees to be subject to these Terms and Conditions, as the same may be amended from time to time by mutual written agreement of the parties.

Unless context requires otherwise, for purposes of these Terms and Conditions, the term “ventilator” is contemplated to include the ventilator equipment, all accessories/components necessary to operate the ventilator in its normal course and in accordance with its specifications, and the term “**Consumables**” means for each ventilator the consumable items needed to operate the ventilator based on that ventilator’s make and model, assuming constant use on one patient for one week. The required consumable items may include without limitation depending on the make and model, new condition patient breathing circuits and any proprietary filters.

1. **Term & Termination.** For the DVR to function in an optimal manner, each Participating Hospital commits to participate in the program for a meaningful period of time, with a goal of participating at least until the earlier of (a) the date when a COVID 19 vaccine is available and has been widely deployed across the United States or (b) June 30, 2021. Notwithstanding the foregoing, each Participating Hospital shall use its best efforts to ensure its continued participation within the DVR for a minimum of six (6) months following either (a) registration of ventilators within the DVR or (b) receipt of ventilators

borrowed through the DVR. Further, in all instances, each Participating Hospital agrees to provide if possible at least thirty (30) days prior notice of its intent to exit the DVR program. For the avoidance of doubt, terminating from the DVR program includes terminating as a party to these Terms and Conditions. Subject to the foregoing, a Participating Hospital's discontinuation is subject to subsection 8(ix) below.

2. **Participation Criteria.**

- a. **Participation Threshold.** It is recommended that each Participating Hospital identify and register a minimum of 20 ventilators for use in the DVR. It is not required that all registered ventilators be idle at the time of registration, but each Participating Hospital must make good faith efforts to have all or substantially all of the ventilators be available for deployment through the DVR.
- b. **Borrowing Threshold.** A Participating Hospital may request to receive ventilators from the DVR if the hospital has previously met the Participation Threshold and is now experiencing a surge in demand and is in need of ventilators beyond those it has in its inventory. To the extent possible, HRET will prioritize deployment of the DVR ventilators to Participating Hospitals which have ventilators on loan to other Participating Hospitals.

3. **Ventilator Data Entry.** Each Participating Hospital agrees to submit data regarding the ventilators it is registering to the DVR program into the web-based inventory visualization tool made available by Cohealo, Inc. in connection with the DVR ("**Cohealo IVT**") as follows: (a) The Participating Hospital's American Hospital Association identification number (assigned by the AHA), (b) the Participating Hospital's principal contacts for purposes of DVR-related questions and activity, (c) all of the Participating Hospital's physical sites that are relevant to the loaning and borrowing of ventilators through the DVR program, including physical addresses, (d) the locations of the ventilators the Participating Hospital is registering with the DVR, (e) the availability status of the ventilators it is registering (using best efforts to registered ventilators that are, as of the registration date, idle and available for deployment), and, (f) for Participating Hospital's DVR-registered inventory of ventilators, the (i) make and model of such ventilators, and (ii) the serial number or Participating Hospital equipment ID. Each Participating Hospital represents and warrants that all data entered into the Cohealo IVT is, to the best of its knowledge, accurate and complete in all material respects and that it is authorized to loan the ventilators contributed to the DVR to other Participating Hospitals. Each Participating Hospital agrees to update the data that is uploaded in the Cohealo IVT so that at any given time, such data accurately reflects its then-current registered ventilator inventory and availability for contribution to the DVR (*e.g.*, update when ventilators are added or removed and when a registered ventilator becomes idle or put into use). Further, by participating in the DVR, each Participating Hospital acknowledges, understands and agrees that HRET will use the data collected through the Cohealo IVT and such other non-PHI information as may be reasonably requested by and provided to HRET from time to time, such as number of patients cared for using a loaned ventilator, to determine whether ventilators should be relocated from one facility to another based on objective measures and criteria applied by HRET. Non-PHI means information not containing any personal health information as that

term is defined under the Health Insurance Portability And Accountability Act (HIPAA) of 1996 as amended.

4. **Ventilator Loan Program.** Through the DVR, HRET will be able to monitor ventilator reserves among its Participating Hospitals. Participating Hospital agrees to make good faith efforts to have available the number of ventilators designated in the DVR and will, when requested by HRET, loan such availability ventilators to other Participating Hospitals as outlined herein. Only Participating Hospitals will be eligible to loan, request or borrow ventilators through the DVR.
  - a. Loan Duration. Each loaned ventilator will be made available to a Participating Hospital (“**Borrowing Hospital**”) for a period not to exceed four weeks. If needs and circumstances dictate, a Borrowing Hospital may request an extension by giving written notice to HRET prior to the end of the four-week period. HRET will consult with the Loaning Hospital (defined below) and assess extension request and promptly respond. There is no guarantee that any requested extension will be granted.
  - b. Transport of Ventilators. If a Participating Hospital requests ventilator assistance and HRET determines that the request is appropriate and that ventilators are available, HRET will contact a Participating Hospital with available ventilators (“**Loaning Hospital**”) to confirm the availability of ventilator(s), the number of ventilators to be loaned, and the timing of the loan. The Loaning Hospital will respond promptly. The Loaning Hospital will prepare each ventilator for transport by ensuring that each ventilator: is appropriately marked or labeled to denote the Loaning Hospital’s ownership of the ventilator, is sanitized and is, to its knowledge, in good working order and condition, and is moved to a location that is easily and safely accessible by the vendor responsible for transporting the ventilator(s) to the Borrowing Hospital (the “**Transport Vendor**”). Upon transferring control of the ventilator(s) to the Transport Vendor, the Loaning Hospital agrees to update its data in the Cohealo IVT and, by doing so, represents and warrants that each ventilator is sanitized and is, to its knowledge, in good working order and condition, reasonable wear and tear excepted, and that the required supply of Consumables (as defined above) are included. Each Borrowing Hospital understands that any ventilators and Consumables loaned under these Terms and Conditions are intended only as a short-term measure, and that each Borrowing Hospital should procure for itself any additional Consumables it may need for the ongoing operation of borrowed ventilators. Other than providing the required Consumables outlined above, Loaning Hospitals will have no obligation to supply Consumables to meet Borrowing Hospital’s ongoing Consumables needs. The Transport Vendor will confirm the condition of each ventilator, confirm that all accessories and Consumables for each ventilator are present, pack each ventilator for transport, update the Cohealo IVT and transport the ventilator(s) to the Borrowing Hospital.
  - c. Delivery of Ventilators. The Transport Vendor will be responsible for delivering the ventilator(s) to the Borrowing Hospital. HRET will be responsible for engaging a Transport Vendor and directing the Transport Vendor to the location provided by the Borrowing Hospital. The Borrowing Hospital will provide the Transport

Vendor with reasonable space and facilities to unpack the ventilator and confirm that the ventilator is in good working order and condition, reasonable wear and tear excepted, and confirm that all required accessories and Consumables are present. Upon such confirmation, the Transport Vendor will transfer control of the ventilator(s) to the Borrowing Hospital and update the Cohealo IVT to indicate that such transfer has occurred. Thereafter, the Borrowing Hospital will confirm that each ventilator is in good working order and condition, reasonable wear and tear excepted, confirm that all accessories and Consumables are present, and update the Cohealo IVT to confirm the Borrowing Hospital's receipt of the ventilators. The Borrowing Hospital will be responsible for ensuring that the ventilator is properly sanitized and functioning at an appropriate site within the Borrowing Hospital prior to using the ventilator for patient care.

- d. Use of Ventilators. The Borrowing Hospital agrees to use due care in its operation of the borrowed ventilators, including providing maintenance and upkeep in a manner consistent with the maintenance and upkeep that it provides on its own ventilators.
- e. Return of Ventilators. Upon the end of the loan term, the Borrowing Hospital will sanitize the ventilator equipment and accessories, confirm the condition of each ventilator, confirm that all accessories necessary to operate the ventilator(s) are present and move each ventilator (including an equivalent amount of Consumables received from the Lending Hospital) to a location that is easily and safely accessible by the Transport Vendor. HRET agrees to arrange for a Transport Vendor to pick up the ventilators and Consumables. Upon transferring control of the ventilator(s) to the Transport Vendor, the Borrowing Hospital agrees to update its data in the Cohealo IVT and, by doing so, represents and warrants that the ventilators are sanitized and, to its knowledge, in good working order and condition, reasonable wear and tear excepted, and confirm that all required accessories and Consumables are present. The Transport Vendor will confirm the condition of each ventilator, confirm that all required accessories and Consumables are present, pack each ventilator for transport, update the Cohealo IVT, and transport the ventilators to the Lending Hospital. The Lending Hospital will provide the Transport Vendor with reasonable space and facilities to unpack the ventilator, confirm the condition of the ventilator, and confirm that all required accessories and Consumables are present. Upon such confirmation, the Transport Vendor will transfer control of the ventilators to the Lending Hospital and update the Cohealo IVT to indicate that such transfer has occurred. Thereafter, the Lending Hospital will confirm that the ventilators are in good working order and condition, reasonable wear and tear excepted, confirm that all required accessories and Consumables are present and update the Cohealo IVT to confirm the Lending Hospital's receipt of the ventilators.
- f. Transport Vendor Fees. HRET will be responsible for payment of the Transport Vendor's fees.
- g. Risk of Loss in Transit. Risk of loss or damage to any and all ventilators in transit will be borne by the Transport Vendor and any amounts recovered by HRET from such Transport Vendor as reimbursement for any such loss or damage will be paid

by HRET to Loaning Hospital. HRET will not be held accountable for loss of, damage to or other failures in delivery of requested ventilators. HRET will require that all Transport Vendors maintain insurance consistent with market standards. *See also*, Section 9 below (Third Party Beneficiary).

- h. Damage to or Loss of Ventilators In Borrowing Hospital’s Possession. After the ventilators have been delivered and accepted by the Borrowing Hospital, loss of or damage to any and all ventilators borrowed by Borrowing Hospital will be the responsibility of Borrowing Hospital, and the costs to repair or replace same will be borne by Borrowing Hospital. Any amounts paid to HRET to cover such costs will be forwarded to the Loaning Hospital. HRET will not be held accountable for loss of, damage to, or other failures in connection with the use and return of loaned ventilators. *See also*, Section 9 below (Third Party Beneficiary).
  - i. Failure to Return Ventilators. In the event ventilators are not lost, but are not returned to the Loaning Hospital, the Loaning Hospital may, at its discretion, require Borrowing Hospital to pay either (a) an ongoing fair-market rental fee for such ventilators until they are returned, or (b) the then current fair-market value of the ventilators as determined by the Loaning Hospital and, upon payment of such amount, transfer title to such retained ventilators to the Borrowing Hospital. The foregoing shall be in addition to any rights and remedies the Loaning Hospital may have under these Terms and Conditions and applicable law.
5. **Access to Cohealo IVT.** Through Cohealo, each Participating Hospital will be provided with access to an interactive dashboard that provides Participating Hospitals with information at the state-level about (i) the number of DVR-registered ventilators in a specified state, including those that the DVR Data (defined below) shows as being available for lending; and (ii) the state-level location of DVR-registered ventilators by make and model. All information shared with Participating Hospitals will be on an aggregated and de-identified basis such that no specific Participating Hospital is able to be identified as the source of the information. In order to enter ventilator data necessary to participate in the DVR and access the Cohealo IVT, each Participating Hospital must agree to Cohealo’s terms of use [Terms & Conditions](#).
6. **DVR Data; Privacy.** Each Participating Hospital agrees and acknowledges that HRET owns all rights to the data entered into the Cohealo IVT by it or other Participating Hospitals (collectively, the “**DVR Data**”). HRET may use the DVR Data for any purposes that it deems appropriate for the operation and maintenance of the DVR. HRET may disclose through the IVT the DVR Data to Participating Hospitals in the manner set forth above in Section 5. HRET may use and disclose to third parties the DVR Data for any purpose but only if such data is aggregated and de-identified So that no specific Participating Hospital is able to be identified as the source of the information. Specifically with respect to the federal government and subject to Section 7 below, HRET agrees that only macro-level, aggregated, de-identified information will be used and disclosed in all reports HRET gives to the federal government, including to the Unified Coordination Group (UCG). Such reporting may consist of without limitation: (a) daily reports of the aggregate number of ventilators registered in the DVR and the total number of idle, available registered ventilators (which will not be reported on an individual Participating

Hospital basis); and (b) weekly reports summarizing the number of registered ventilators from the DVR that were deployed and were in use in the preceding week. HRET may maintain historical DVR Data upon termination of the DVR, but such information will remain subject to the terms of set forth herein.

7. **Inventory Deficiency.** Notwithstanding the foregoing, a Participating Hospital's request for ventilators through the DVR may be shared with and fulfilled by the federal government if, due to a deficiency in the DVR inventory, it is deemed necessary by HRET to ask the federal government to fulfill the request from the Strategic National Stockpile. In such case, the Participating Hospital's request, along with its location and contact information, will be shared with the federal government. The sharing of this data will not guarantee fulfillment by the federal government. Any fulfillment by the federal government will be subject to any terms and conditions that the federal government may set with the Participating Hospital, and neither HRET nor any of its affiliates shall have any liability in connection with same.
  
8. **Acknowledgements.** Each Participating Hospital acknowledges and agrees that (i) HRET or its affiliates will determine and control the terms of participation in the DVR and that, given the current uncertain circumstances, the terms of participation are subject to change but that any changes impacting participation will be agreed upon by HRET and the Participating Hospitals in writing; (ii) it will work collaboratively with any Transport Vendor; (iii) neither HRET, any of its affiliates or Cohealo is responsible for the collection, transportation or installation of any ventilators, nor for the condition of such ventilators (either as delivered to a Borrowing Hospital, or as returned to the Loaning Hospital); (iv) neither HRET nor any of its affiliates guarantees availability of ventilators and is not responsible for the failure of any attempt to re-allocate ventilators, (v) neither HRET, its affiliates nor any Loaning Hospital is responsible for Borrowing Hospital's use of ventilators or any medical decisions relating to that usage; (vi) Neither HRET nor any of its affiliates is responsible for any repair of, loss of or damage to a Participating Hospital's ventilator(s), (vii) Cohealo and HRET (including its affiliates) do not control the ventilators from the National Emergency Stockpile that may be provided by Department of Homeland Security, Federal Emergency Management Agency and U.S. Department of Health and Human Services and that neither HRET, its affiliates or Cohealo will be responsible for providing ventilators from the National Emergency Stockpile or be liable in any fashion if such ventilators are not provided, (viii) it will return the ventilators loaned through the DVR to the Loaning Hospital and HRET will use reasonable efforts to facilitate such return and will take into consideration as part of the borrowing criteria the failure to return ventilators; (ix) upon termination of its participation it will continue to abide by the applicable terms of these Term and Conditions, as applicable, until any loaned or borrowed ventilators are returned and any obligations arising prior to its termination of its participation will survive such termination, (x) it will hold HRET and its affiliates harmless from any damages that it incur in connection with its participation in the DVR or use of the Cohealo IVT, and (xi) HRET EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND RELATING TO COHEALO IVT, THE DVR, ANY VENTILATOR OWNED OR BORROWED THROUGH THE DVR AND RELATED SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

9. **Third Party Beneficiary.** Participating Hospitals will be explicitly deemed as third party beneficiaries under HRET’s agreements with Transport Vendors. Further, Participating Hospitals are deemed to be third party beneficiaries of other Participating Hospitals’ agreement to the Terms and Conditions for Participation in the DVR such that if a Loaning Hospital’s Equipment is lost or damaged by Transport Vendor or a Borrowing Hospital, the Loaning Hospital may pursue claims and collect damages for lost or damaged Equipment directly against the responsible party.
  
10. **Standards of Conduct.** HRET and Participating Hospitals acknowledge that each Participating Hospital operates subject to its own standards of conduct and HRET and Participating Hospitals further acknowledge that notwithstanding anything contained herein, no Participating Hospital will be required to engage in any conduct that may violate its standards of conduct. Moreover, HRET and the Participating Hospitals acknowledge that nothing in this Terms and Conditions will require any Participating Hospital or its affiliates to violate the United States Conference of Catholic Bishops’ Ethical and Religious Directives for Catholic Health Care Services, available at <http://www.usccb.org/>.
  
11. **Compliance with Law; Survival; Notices.** Each of the parties to these Terms and Conditions will fully comply will all laws, ordinances, accrediting agency standards, rules and regulations, which are applicable to its performance under these Terms and Conditions. The terms of this Terms and Conditions that, by their nature must survive the termination of the Terms and Conditions to protect the party in whose favor they run, survive the termination of this Agreement, including without limitation the terms in Sections 6-10 above. Notices to HRET required under these Terms and Conditions shall be sent via email to both of the following addresses, unless HRET indicates in writing to Participating Hospitals that these addresses have changed: Danny Delgado ([ddelgado@aha.org](mailto:ddelgado@aha.org)) and Michele Newkirk ([mnewkirk@aha.org](mailto:mnewkirk@aha.org)).
  
12. BY SIGNING BELOW, PARTICIPATING HOSPITAL HEREBY AGREES TO the ABOVE TERMS AND CONDITIONS.

**ACKNOWLEDGED AND AGREED:**

**INSERT HOSPITAL HERE**

**AMERICAN HOSPITAL ASSOCIATION**

\_\_\_\_\_  
 NAME: \_\_\_\_\_  
 ITS: \_\_\_\_\_  
 DATE: \_\_\_\_\_

\_\_\_\_\_  
 NAME: DOUGLAS SHAW  
 ITS: SR. VICE PRESIDENT  
 DATE: JULY 1, 2020