

ECHOCARDIOGRAPHY QUALITY IMPROVEMENT PROGRAM FACILITY AGREEMENT

This echocardiography quality improvement program facility agreement (the “**Agreement**”) is made this _____ day of _____, 20__ (the “**Effective Date**”) between CorHealth Ontario (“**CorHealth**”) and _____, (the “**Facility**”, and together the “**Parties**” and each a “**Party**”).

BACKGROUND

A. CorHealth is a non-share capital corporation incorporated under the Corporations Act (Ontario) dedicated to improving the quality, efficiency, access and equity in the delivery of health care services in Ontario, including cardiac services. To this end, CorHealth works with the Ontario Ministry of Health and Long-term Care (“**Ministry**”), Local Health Integration Networks and Ontario hospitals and other care providers to plan, monitor, evaluate, propose, and assist in the implementation of quality improvement measures in connection with these health care services.

B. At the request of the Ministry, and in furtherance of its objective to improve the quality, efficiency, access and equality in the delivery of adult cardiac services in Ontario, CorHealth has been mandated by the Ministry to operate an echocardiography quality assurance program designed to verify whether accepted standards (the “**Standards**”) as set out in Cardiac Care Network of Ontario’s April 2015 report “*Standards for Provision of Echocardiography in Ontario*” of echocardiography are being maintained in Ontario (the “**Program**”).

C. The Facility is engaged in echocardiography diagnostic testing and understands that CorHealth will review certain echocardiography images, reports and related materials provided by the Facility to CorHealth. As part of the Program, CorHealth will review the Facility's operations with respect to the Standards and provide feedback as to current performance.

D. This Agreement sets out, among other things, details of the Program and the terms and conditions on which the Facility agrees to provide, and CorHealth agrees to receive, echocardiography data for the purpose of the Program.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1) The Facility requests that CorHealth review the operations of the Facility with respect to the Standards, and CorHealth hereby agrees to review the Facility's operations

against the Standards, to provide feedback to the Facility on the Facility's current performance and to advise if the Facility achieves the Standards.

2) The Parties acknowledge that the following generally sets out the submission, review and reporting process of the Program:

- (a) The Facility will complete an on-line registration form, which will include information relating to site locations, medical directors, technical directors and practicing physicians;
- (b) The Facility will be provided with instruction and documentation templates necessary for carrying out an internal review and reporting of their performance in each Standard;
- (c) The Facility will submit to CorHealth this Facility Agreement, Physician Attestation Form(s) and a Facility Policy and Procedure Manual;
- (d) Following receipt by CorHealth of the documentation set out in paragraphs 2(a) and (c) above, a sonographer (the “**Reviewer**”) will be assigned by CorHealth to assist and guide the Facility in the review process and coordinate the review;
- (e) The Reviewer will be responsible for coordinating and conducting an on-site visit to the Facility. During the onsite visit, the Reviewer(s) will evaluate all modalities performed at the Facility, speak with staff about Facility operations and review information, documentation and materials relating to the Facility's operations and services, including with respect to the acquisition of images and the interpretation and reporting of results (the “**Materials**”). If the Reviewer is able to determine that the Facility is in compliance with the Standards following the onsite visit based on the provision and evaluation of the foregoing Materials and information in this paragraph 2(e), then the Reviewer will recommend to CorHealth that the Facility be provided with a Certificate of Achievement and such Certificate of Achievement shall be provided by CorHealth to the Facility as contemplated in subparagraph 2(i)(ii);
- (f) If the Reviewer is not able to determine that the Facility is in compliance with the Standards during the onsite visit based on the provision and evaluation of the foregoing Materials and information in paragraph 2(e), then the Facility may be required to submit some or all of the Materials to CorHealth, as required by CorHealth, for review;
- (g) Once submitted to CorHealth, a duly qualified physician, registered to practice medicine in the Province of Ontario with expertise in echocardiography (the “**Assessor**”) will review the Materials provided and will provide a report to

the CorHealth echocardiography review panel (the “**Panel**”) for the Panel’s review and evaluation. The name and other identifiable information of the Facility will not be disclosed to the Assessor or the Panel. If it becomes known to CorHealth or to the Facility that the Assessor, or a member of the Panel has, or is likely to have learned the identity of the Facility, then a replacement Assessor or Panel member (as the case may be) shall be appointed before the process contemplated in this paragraph (g) and the processes below proceed;

- (h) The Panel will assess the Materials and/or the Assessors report on same, and the results of the on-site Facility visit, and determine if the Facility achieves the Standards, or does not achieve the Standards;
- (i) If the Facility achieves the Standards:
 - (i) The decision of the Panel will be conveyed to the Facility together with a report and comments and recommendations may be made with respect to how the Facility can improve its performance with respect to the Standards, where applicable; and
 - (ii) The Facility will be provided with a Certificate of Achievement, valid for a period of 3 years (the “**Certificate**”) subject to the terms herein;
- (j) If the Facility does not achieve the Standards and minor concerns are identified, the decision of the Panel will be conveyed to the Facility together with a report that will detail recommendations required to achieve the Standards. When the Facility has confirmed to CorHealth that such recommendations have been fully implemented at the Facility within the times (if any) specified in the CorHealth report, a Certificate of Achievement shall be provided by CorHealth to the Facility as contemplated in paragraph 2(i)(ii);
- (k) If the Facility does not achieve the Standards and significant concerns are identified, the decision of the Panel will be conveyed to the Facility together with a report and comments, and a request for the provision of a Quality Improvement Plan (“**QIP**”) (including timelines for implementation). Future consultation between the Facility and CorHealth will be required for ongoing review, assessments and/or reconsideration. Once confirmed that all standards have been

achieved, a Certificate of Achievement shall be provided by CorHealth to the Facility as contemplated in paragraph 2(i)(ii);

(l) If the Facility does not achieve the Standards and critical concerns are identified:

(i) The decision of the Panel will be conveyed to the Facility together with a report that will detail corrective action (including timelines for implementation) required to correct critical failures. A Reviewer(s) will return to the Facility in accordance with the timelines referred to in the report for a focused visit to review and confirm, or not, the successful implementation of the corrective actions; and paragraphs 2(f) and 2(g) shall apply. A cardiologist with significant experience in echocardiography shall be actively involved in this further review, including attendance electronically or in person at the Facility, as required;

(ii) The Panel will assess the Materials and the results of the on-site Facility visit, and determine if the Facility has successfully implemented critical quality improvements:

(A) If the Facility is deemed to have implemented the critical quality improvements, the decision will be conveyed to the Facility, along with a request for the provision of a QIP (including timelines for implementation) to address remaining significant improvements, if any, as per paragraph 2 (k). If there are no further quality improvements required, a Certificate of Achievement shall be provided by CorHealth to the Facility as contemplated in paragraph 2(i)(ii);

(B) If the Facility is deemed to have not implemented the critical quality improvements, the decision will be conveyed to the Facility and to the Ministry.

(m) During the improvement process as described in paragraphs 2(j), 2(k) and 2(1), except for paragraph 2(1)(ii)(B), and/or while the Facility is pursuing an appeal as described in paragraphs 2(n) or 19, the Facility shall be considered as “actively pursuing accreditation” and will be reported as such to the Ministry, so long as timely and constructive efforts continue, as assessed by the Panel. Notwithstanding the foregoing, CorHealth may report and/or update the Ministry at any time and from time to time on the status of any or all Facilities, as requested

by the Ministry and/or when critical quality improvements are required. If there are reasonable grounds to believe that the Facility is or will be operated in a manner that poses an immediate threat to the health or safety of any person then CorHealth shall immediately notify the Ministry in writing on an urgent basis so that the Ministry may take immediate action.

(n) If the Facility disagrees with a decision of the Panel it shall be entitled, within 20 business days of receiving notice, to give a notice to CorHealth, requesting it hold a hearing regarding the decision of the Panel by submitting a written request to CorHealth which request shall set out in sufficient detail the facts upon which it disagrees with a decision of the Panel. The hearing shall be conducted by an appeal panel (the “**Appeal Panel**”) chosen from a list of cardiologists developed and maintained by the Ontario Association of Cardiologists and CorHealth. The Facility shall have the right to appear before the Appeal Panel and to make written submissions to the Appeal Panel. No person involved in such hearing, including any member of the Appeal Panel, will have been a member of the Panel which gave rise to the decision under review. Unless specifically noted otherwise by the Appeal Panel during the hearing, timelines for improvement as identified in paragraphs 2(j), 2(k) and 2(l), will remain in effect. Minutes of the hearing, together with the decision of the Appeal Panel in writing, will be made available to the Facility. Following the hearing in circumstances where the Facility and CorHealth are unable to agree on the outcome of the review, assessment, appeal and/or hearing, CorHealth shall report the matter to the Ministry, along with all related documentation, but without recommendation. If the Facility has so requested, CorHealth shall report the matter to the Ministry, along with all related documentation, but without recommendation.

3) No provision of this Agreement shall be construed to limit or invalidate provisions of the Health Insurance Act, 1990 (Ontario), specifically section 18(16) “**Disagreement with Notice**”.

4) The Assessor and the Panel are independent contractors and are not employees of CorHealth. Each Reviewer, Assessor and Panel member will be required to provide CorHealth with written confirmation that each such person does not have a conflict of interest in acting in their capacity as a Reviewer, Assessor or Panel member in connection with the review and assessment of the Facility. A conflict of interest includes but is not limited to a potential conflict of interest where he or she has a direct or indirect financial interest, including one in a competing Facility, or where such person has a past history with the Facility or any of its owners or physicians that could influence or appear to be able to influence any decision with respect to the Facility either meeting or not meeting the Standards. The Facility shall have the right to object to a particular Reviewer, Assessor or Panel member where the Facility reasonably believes that such person has a

conflict of interest and, in such case, CorHealth shall appoint a replacement for the person objected to.

5) In this paragraph 5, the following capitalized terms have the following meanings:

“Agent” has the same meaning as “agent” in PHIPA;

“Custodian” has the same meaning as “health information custodian” in PHIPA;

“De-identify” means to remove information which in the circumstances it is reasonable to believe identifies or could be used with other publically or otherwise available information to identify an individual or an organization and **“De-identification”** has a corresponding meaning;

“ESP” means a person who supplies services for the purpose of enabling a Custodian to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information, and who is not an Agent of the Custodian;

“PHI” means information that is “personal health information” under PHIPA for which the Facility is the Custodian and that the Facility discloses under this Agreement for the purposes of an audit or review; and,

“PHIPA” means the *Personal Health Information Protection Act, 2004* (Ontario) as amended or superseded from time to time.

(a) The Parties acknowledge and agree that:

- (i) the Facility is a Custodian and the Materials will contain PHI;
- (ii) the Facility is disclosing PHI to CorHealth under the provision in PHIPA permitting disclosure by a Custodian to a person conducting an audit or reviewing an application for accreditation or reviewing an accreditation, where the audit or review relates to services provided by the Custodian (which on the effective date of this Agreement is section 39(1)(b) of PHIPA);
- (iii) the Reviewer is acting on behalf of CorHealth and is not acting on his/her own behalf in accessing, reviewing, assessing and/or removing PHI from the Facility;
- (iv) CorHealth will be an ESP to the Facility in connection with any electronic information solution that CorHealth makes

available to the Facility to transmit or store PHI in connection with the Program;

- (v) CorHealth will perform any De-identification of PHI under this Agreement as an Agent of the Facility; and
- (vi) CorHealth will De-identify PHI and any other identifying information in Materials submitted by the Facility for review by an Assessor and a Panel prior to the Materials being made available to the Assessor and Panel.

(b) CorHealth shall:

- (i) provide electronic means for CorHealth to collect PHI from the Facility and for the Facility to transmit or disclose PHI to CorHealth for De-identification and/or additional assessment as provided herein;
- (ii) maintain PHI that it has removed from the Facility for assessment or that it has access to in order to De-identify on behalf of the Facility in a secure and confidential manner as required for the Program, including where applicable, until the Facility has exhausted any appeal rights;
- (iii) return to the Facility and/or destroy PHI when it is no longer required for the Program;
- (iv) require any Assessor or any Panel member who has or is likely to have learned the identity of the Facility to promptly notify the Facility and CorHealth, return all of the Materials, and withdraw from the review of the Facility as more particularly described in paragraph 2(g) of this Agreement;
- (v) not use PHI except as necessary in the course of providing its services under this Agreement;
- (vi) not disclose PHI in the course of providing its services; and
- (vii) not permit its employees or any person acting on its behalf to be able to have access to PHI unless the employee or person agrees to comply with the restrictions that apply to CorHealth under this Agreement;

- (viii) use commercially reasonable safeguards to protect PHI it transmits and holds under this Agreement;
 - (ix) notify the Facility at the first reasonable opportunity, and in any event within 48 hours after CorHealth becomes aware, by telephone followed by written notice pursuant to Section 9, if it uses or discloses PHI in a manner that is inconsistent with this Agreement or PHIPA or if any PHI has been stolen or lost or a person has obtained unauthorized access to PHI.
- (c) The Facility hereby authorizes:
- (i) CorHealth to De-identify PHI as described above where the information is to be provided to an Assessor or Panel member;
 - (ii) CorHealth to document, collect and remove PHI using the electronic means contemplated in paragraph 5(b)(i) so long as Section 5(b)(ii) hereof has been complied with;
 - (iii) CorHealth to remove any records of PHI from the Facility's premises deemed necessary to fulfil the requirements of the provisions of this Agreement, in particular provisions 2(f), (g) and (h) as provided herein by the means contemplated above, and so long as Section 5(b)(ii) has been complied with; and
 - (iv) any Assessor or any Panel member who receives PHI in the circumstances set out in paragraph 5(b)(iv) above to respond as described in paragraph 5(b)(iv) above.
- 6) No provision of this Agreement shall be construed so as to give CorHealth, the Assessor, the Reviewer or the Panel access to or control over the Facility's books and records.
- 7) The Facility hereby represents, warrants and covenants that it is, and will at all times during the effective period of the Certificate: (i) be an Echocardiographic Laboratory (as that term is defined in the Standards); and (ii) notify CorHealth forthwith and in writing of the name of any new physician who begins to provide echocardiography

services/testing or any physician who ceases to provide echocardiography services/testing, in each case at the Facility.

8) The Facility acknowledges and agrees that (i) the Facility shall notify CorHealth in writing and in advance of any change in the Facility's medical director, medical staff, sonographer or the implementation of a new imaging modality; (ii) CorHealth will provide the Facility's name, address, group number, medical director's name and date of registration to the Ministry upon the Facility's registration in the Program; and (iii) in the event that the Facility achieves the Standards, CorHealth will provide the Facility's name, address, group number, medical director's name and date of achieving the Standards to the Ministry; and (iv) the Certificate shall only be transferable where there is a sale of the Facility at the address recorded in paragraph 9 to another owner provided that the new owner agrees in writing to CorHealth to be bound by the provisions of this agreement as if it was an original signatory hereto and the new owner commits in writing to CorHealth that, for a period of at least 12 months after the sale is completed, there will be: (a) no change in the medical director, interpreting physicians, echocardiography technologists or stress technologists, other than a change directly caused by the death, disability or resignation of one of the foregoing; (b) no change to the equipment or location.

9) All notices, requests, demands or other communications (collectively, “**Notices**”) by the terms hereof required or permitted to be given by one Party to any other Party, or to any other person shall be given in writing by e-mail, personal delivery or registered mail, postage prepaid, to such other party as follows:

To CorHealth at: CorHealth Ontario
4100 Yonge Street, Suite 502
Toronto, Ontario
M2P 2B5
Attention: EQI Program
Email: EQI@CorHealthOntario.ca

To the Facility at:

Attention:
Email:

or at such other address or e-mail address as may be given by such Party to the other Party hereto in writing from time to time and such Notices shall be deemed to have been received when e- mailed (if sent via e-mail), when delivered or, if mailed, on the fifth (5th) business day after the mailing thereof; provided that in the event of a strike or other interruption in the normal delivery of mail after the mailing of any Notice hereunder but

before the deemed receipt thereof as provided herein, such Notice shall not be deemed to be received by the Party for whom the same is intended unless the same is delivered to such Party as contemplated herein.

10) Neither Party may transfer or assign this Agreement without the prior written consent of the other.

11) This Agreement will be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario, (other than any conflict of law rules that would result in the choice of laws of another jurisdiction) and the Parties submit to the exclusive jurisdiction of the Courts of the Province of Ontario.

12) This Agreement constitutes the entire agreement between the Parties with respect to all of the matters herein and its execution has not been induced by, nor do either of the Parties rely upon or regard as material, any representations or writings whatsoever that are not incorporated herein and made a part of this Agreement. Any and all previous agreements, written or oral, express or implied between the Parties with respect to the matters herein are hereby terminated.

13) The written waiver by either Party of a breach or violation of any provision of this Agreement will not operate as or be construed to be a waiver of any subsequent breach of this Agreement. The failure of a Party to insist upon strict adherence to any term of this Agreement on one or more occasion will not be considered a waiver or deprive that Party of the right to insist upon strict adherence to that term or any other term of this Agreement thereafter.

14) The invalidity or unenforceability of any term or condition of this Agreement will in no way affect the validity or enforceability of any other term or provision. If any provision of this Agreement is found to be invalid or unenforceable, such provision will be deemed to be struck from this Agreement, the remainder of this Agreement will remain in full force and effect and the parties will negotiate in good faith to amend the Agreement to replace any provision found to be invalid or unenforceable with a valid and enforceable provision which, as near as possible, accomplishes the original objectives of the Parties.

15) The Facility acknowledges that it is not an agent (except as defined herein and related to PHIPA), joint venturer or partner of CorHealth, the Assessor, the Reviewer or the Panel, and the Facility shall not take any actions that could establish or imply such a relationship.

16) Except as otherwise provided herein, those sections of this Agreement which, by the nature of the rights or obligations set out therein might reasonably be expected to

survive any termination or expiry of this Agreement, will survive any termination or expiry of this Agreement, including, without limitation, Section 5.

17) The Facility agrees that it shall do or cause to be done all further lawful acts, deeds and assurances whatever for the performance of the terms and conditions of this agreement, including without limitation with respect to the matters listed at Paragraph 2.

18) The Facility acknowledges that it has read, understands and agrees with all the provisions of this Agreement, and acknowledges that it has had the opportunity to obtain independent legal advice with respect to it.

19) If the Facility is or becomes in breach of any of the terms or conditions herein, CorHealth shall provide written notice (including details of such breach) to the Facility (the “**Notice of Breach**”) and may revoke a Certificate and/or repeal a decision that the Facility has met the Standards, subject to the provisions of this paragraph 19. Notwithstanding the foregoing, CorHealth shall provide the Facility with not less than 20 business days from the date of the Notice of Breach, to cure such breach prior to such revocation or repeal becoming effective (subject to the below rights of appeal). During the period of 20 business days following the date of the Notice of Breach, the Facility shall have the right to appeal the decision of CorHealth contemplated in this paragraph 19 to an appeal panel (the “**Appeal Panel**”) chosen from a list of cardiologists developed and maintained by the Ontario Association of Cardiologists and CorHealth. The Facility shall have the right to appear before the Appeal Panel and to make written submissions to the Appeal Panel. No person involved in such hearing, including any member of the Appeal Panel, will have been involved in the decision to issue the Notice of Breach. A notice of appeal must be delivered by the Facility to CorHealth within 20 business days following the date of the Notice of Breach. A Certificate shall not be revoked while the breach is under appeal and being considered by the Appeal Panel. Minutes of the hearing, together with the decision of the Appeal Panel in writing, will be made available to the Facility. Following the hearing, if the Facility does not agree with the outcome of the appeal hearing, CorHealth shall report the matter to the Ministry, along with all related documentation, but without recommendation. If the Facility has so requested, CorHealth shall report the matter to the Ministry, along with all related documentation, but without recommendation.

20) This Agreement may be executed in counterparts and when each Party has executed an identical counterpart and delivered a copy thereof to the other (by personal delivery or facsimile transmission), then both the counterparts taken together will be deemed to constitute a single identical agreement.

IN WITNESS WHEREOF, the duly authorized officers of each Party have executed this Agreement as of the date first above written.

CorHealth Ontario

Per: _____
Name:
Authorized Signing Authority

[FACILITY NAME]

Per: _____
Name:
Authorized Signing Authority