

Open Health Tools Membership Agreement

This Open Health Tools Membership Agreement (“Agreement”) is entered by and among Members as defined below.

1.0 Background.

A) The Members share the Open Health Tools Vision (“Vision”) to enable a ubiquitous ecosystem where members of the Health and IT professions can collaborate to build interoperable systems that enable patients and their care providers to have access to vital and reliable medical information at the time and place it is needed.

B) The Members are willing to make substantial contributions in terms of time, technology, knowledge, and/or industry expertise to accomplish the vision. As a Member, you will be extended privileges such as voting to establish the projects, policies, practices and priorities in Open Health Tools not available to the general community.

C) The Members wish to encourage broad industry use of the software technology developed by and/or for Open Health Tools.

2.0 Definitions.

2.1 “Associate”

shall mean a non-voting member of the Board.

2.2 “Board”

shall mean the Board of Stewards of Open Health Tools.

2.3 “Chairperson”

shall mean the Chairperson of the Board as elected by the Members.

2.4 “Effective Date”

for each Member shall mean either the date of the Member’s signature of this Agreement, or the approval, by the Board, of the Member’s membership, whichever is later.

2.5 “Member”

shall mean any entity that has signed this Agreement and whose membership in Open Health Tools has been approved in accordance with Section 3 hereunder and has not been terminated.

2.6 “Secretary of the Board” or “Secretary”

shall mean the person, appointed by the Board, whose responsibilities include maintaining a list of members of the Board, informing Board members of upcoming meetings, publication of and remediation of meeting agendas, and taking and distributing minutes of such meetings.

2.7 “Steward”

shall mean a voting member of the Board.

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3.0 Organization and Membership.

3.1 Membership

Membership in Open Health Tools is intended to be broadly available to entities or persons who share in the Vision and who are willing to contribute to the Vision. Such contributions (“Contributions”) may consist of any, or all of the following:

- 1) Financial contribution;
- 2) In kind assets;
- 3) Intellectual Property, including existing software, documentation, or other written material;
- 4) Personnel time dedicated to developing Open Health Tools’ Intellectual Property or to activities that further Open Health Tools’ Vision ;
- 5) Services including, without limitation, public relations, organization of events, or management oversight;
- 6) Public statements, including press releases, analyst visits, and visible participation, that raise the awareness of Open Health Tools;
- 7) Advice, direction, expertise, based on industry experience and knowledge.

Applications for membership are available on the Open Health Tools web site and must include a proposal which describes your planned Contributions. Completed applications must be submitted to the address provided in the application.

The membership application, including the proposal for Contributions, must be approved by a majority of Stewards at a Board meeting or through an electronic vote.

3.2 Open Health Tools Board and Bylaws

Open Health Tools will be organized, managed, and administered by a Board of Stewards. Policies and procedures under which the Board shall operate shall be governed by the Open Health Tools Bylaws (“Bylaws”) once they are approved by the Board.

3.3 Stewards

Once your membership application is approved, you are entitled to appoint one (1) Steward to the Board. This appointment must be approved by a majority vote of the Board. If approved, your Steward will represent you in Open Health Tools and will act in accordance with this Agreement and the associated Bylaws. You agree to support your Steward in the performance of his/her role in Open Health Tools and that any intra-member coordination or approvals are the responsibility of the member and not Open Health Tools.

3.4 Withdrawal or Removal of a Member

You may terminate this Agreement and your participation in Open Health Tools as a Member at any time by sending a signed, written notice to the Secretary.

The Board may decide to terminate this Agreement and your participation in Open Health Tools as a Member through a two-thirds (2/3) majority vote at a Board meeting. In order to terminate your membership, written notification must be provided to you no less than twenty (20) business

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days prior to the Board meeting in which the vote is to be placed. You will have the opportunity to comment, in writing or in person at the Board meeting where the termination is being discussed.

In the case of such a decision, the Secretary of the Board will send you a signed, written notice stating that this Agreement has been terminated. Termination of this Agreement (for any reason) does not affect your rights or obligations under the Eclipse Public License, or other licenses under which you may have received Material from Open Health Tools or provided Material to Open Health Tools; it only terminates your participation in Open Health Tools as a Member.

3.5 Affiliated Companies and Persons

Corporations who are members of a group of corporations or who are affiliated by virtue of common ownership or a parent subsidiary relationship shall be entitled to only one Steward for the group of corporations or affiliates. Similarly, only one person from a group of individuals who are members of a partnership may serve as a Steward. Each individual is likewise responsible for establishing the organization which that individual represents. Except when exercising a proxy, an individual may only represent a single organization, and will interact with Open Health Tools in that capacity.

3.6 General

Open Health Tools is formed exclusively as a nonprofit trade association, as set out in section 501(c)(6) of the U.S. Internal Revenue Code. You are not authorized to bind Open Health Tools or its Members to any contractual obligations. You are only authorized to act on your own behalf. Each Member is solely responsible for its actions and omissions and the actions and omissions of its employees if the Member is an entity.

4.0 Decision-Making.

4.1 Major Decisions

Major decisions concerning Open Health Tools, such as (A) the formation or dissolution of one or more projects, and (B) the appointment, removal or replacement of a Project Lead, will be made by the Board.

4.2 Day-to-day Operation

The ground rules and procedures for the day-to-day management of Open Health Tools will be established by the Board.

5.0 Projects.

The Board may decide to establish one or more Projects consistent with the Vision and as further set out in the Development Process Document.

6.0 License.

The Board of Stewards, by a majority vote, will establish the Intellectual Property, licensing, and copyright policies, processes and programs. These will be documented in an Intellectual Property Policy which will be made public on the Open Health Tools web site. All new development work will be licensed under the Open Source License unless otherwise approved by the Board.

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7.0 Costs and Expenses, Providing Resources.

Each Member will bear its own costs for participating in Open Health Tools, including any travel costs. The Members are expected to collectively provide the Contribution and resources necessary for the operation of Open Health Tools to ensure that its Vision is realized. Unless specified otherwise in a signed agreement, any such Contributions are not guaranteed to continue uninterrupted during its term. For example, business plans of the Member may require interruptions arising from maintenance or relocation of the equipment, and may require assignment of alternative space. Any such Contributions, resources, including development code and personnel, equipment, space, and services provided by a Member are provided on an as-is basis, without warranty of any kind. A Member may find it advisable to cease to provide Contributions and may do so at any time at its sole discretion. The Member is not required to provide any notice, but agrees to notify the Secretary of the Board as soon as possible. However, any such termination in the Member's furnishing of Contributions to Open Health Tools will not affect the license for past Contributions made to Open Health Tools.

Members are expected to honor any specific offers of support made by a Steward on behalf of its Member. Instances of a failure to provide promised support will be reviewed by the Board which may take necessary actions including, but not limited to, revoking membership or suspending voting privileges.

8.0 Confidentiality and Publicity.

All information exchanged by Members during the operation of Open Health Tools is non-confidential. However, you agree not to use the name of any other Member to generate publicity unless that Member approves. All information submitted to Open Health Tools will be public and non-confidential.

The Board shall establish policies and procedures for the management and control of the organization's name and/or logo. No Member shall use the name and/or logo in any manner which does not comply with such policies and procedures.

9.0 Limitations.

YOUR PARTICIPATION AND THE PARTICIPATION OF THE OTHER MEMBERS IN OPEN HEALTH TOOLS IS ON AN "AS IS" BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER YOU NOR ANY MEMBER SHALL HAVE ANY LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST SALES, LOST REVENUE OR LOSS OF GOODWILL), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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10.0 Changes.

New developments may make changes to this Agreement necessary or advisable. For example, a modification may add additional terms to facilitate new Project activities. This Agreement may be modified by agreement of a majority of all Stewards after a discussion of such change at a regular Board meeting, the agenda of which contained details of the proposed change. The Secretary of the Board must give all current Members thirty (30) days prior written notice (which may be an email) before the change becomes effective. Any agreed upon changes shall be prospective only. If a Member objects to the change, then the terms and conditions of this version of the Agreement shall remain in force until the anniversary date of this Agreement, at which time the Member may decide whether to terminate this Agreement or accept the new Agreement. This Agreement may not be modified in any other manner.

11.0 Effect of Termination.

Please note that termination of this Agreement (for any reason) does not affect the licenses of any material which You may have obtained from Open Health Tools or from Members; it terminates only your participation in Open Health Tools as a Member.

12.0 Notices.

Any notice or communication (a "Notice") required or permitted under this Agreement or under the Bylaws shall be in writing and shall be sent by electronic mail to the address provided in your Membership Application. You may, by Notice to the Secretary of Open Health Tools, change the electronic mail address to which transmissions shall thereafter be made.

13.0 Change in Control.

If you (i) are a legal entity (such as a corporation or partnership) and not a natural person, and (ii) experience a change in control that results in you becoming an affiliate of another Member of Open Health Tools, then you must notify the Secretary within thirty (30) days of that change of control. An affiliate, for the purposes of this section 13 is a company that controls, is controlled by, or is under common control of the Member.

14.0 Assignment.

A member may only assign this Membership Agreement to another entity in any of the following situations:

- i. if agreed upon at the time of the Membership application
- ii. subject to consent of the Board
- iii. in the case of a change of control or the establishment of a successor organization as a result of government legislation or policy and where the new controller or successor carries on the whole or relevant part of the members business before the change or transfer

15.0 Freedom of Action.

The Members are committed to fostering open competition in the development of open source software, and Open Health Tools is intended to foster such competition. You hereby acknowledge that you and the other Members may be competitors in certain lines of business and

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agree to act in a manner which complies in all material respects with applicable state, federal and international antitrust laws and regulations. You agree not to communicate with the other Members in a manner which may violate such laws, which may include communicating with respect to prices, costs, quantity or quality of production levels or other similar information.

16.0 General.

This Agreement will be governed by the laws of the State of New York, without regard to conflicts of law principles. Except with respect to the Bylaws of Open Health IT, the IP Policy, the Member Committer Agreement, the OSL, Open Health IT's Antitrust Policy, and any other policies, guidelines and procedures that may be adopted by OHT, from time to time, in accordance with the Bylaws, this Agreement and the counterpart versions of this Agreement signed by the other Members are the only agreements between you and the other Members with respect to the subject matter hereof, and they supersede any prior agreement. You agree to comply with all applicable laws and regulations while participating in Open Health Tools.

Member

By:

Name:

Title:

Date: