



OSEHRA
Organizational Membership Agreement

Version 5.1
March 18, 2016

Revision History

| Date | Version | Description | Author |
|-------------|----------------|---|---------------|
| 11/20/2013 | 2 | Revision based upon changes to membership and dues policy and review by Corporate Counsel. Corporate and General Agreements separated at the direction of the Board. | Hewitt |
| 01/13/2014 | 3 | Revised to reflect Corporate Name Change | Hewitt |
| 03/03/2014 | 3.1 | Addition of special termination provision 7.4 for 501(c)(3) members | Hewitt |
| 03/05/2014 | 3.2 | Add area to designate primary and alternate representatives | Hewitt |
| 04/16/2014 | 3.3 | Add title information to primary and alternate representatives | Hewitt |
| 08/31/2015 | 4.0 | Update Definitions paragraph. Add requirement for applicant to provide organization type and size information for dues determination, including non-profit type. Change terminology for contributed code from "Contributions" to "Submissions" to avoid confusion. Add language regarding Member use of OSEHRA Mark. Additional clarifications on New Member Marks and information use, as well as specifications for display name and web URL. | Hewitt/Toy |
| 10/30/2015 | 5.0 | Update Document name to OSEHRA Organizational Membership Agreement. Change terminology "corporate" to "organizational" to be more accurate. Insert new organization membership options. | Toy |
| 03/18/15 | 5.1 | Correct error in dues description; Add requirement that confidential information must be marked. | Toy/Hewitt |

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OSEHRA Organizational Membership Agreement

This OSEHRA Organizational Membership Agreement (the “**Agreement**”) is made as of the later of the two execution signature dates below, by and between Open Source Electronic Health Record Alliance, Inc. (“**OSEHRA**”), and

[] (“**New Member**”).

WHEREAS, New Member has been admitted as an Organizational Member pursuant to the current Bylaws of OSEHRA;

WHEREAS, all Organizational Members (as defined in OSEHRA’s Membership Policy) (collectively, “**Members**”) are required to enter into a Membership Agreement in connection with their admission to membership in OSEHRA;

WHEREAS, New Member and OSEHRA wish to define certain rights and obligations with respect to New Member’s membership in OSEHRA;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions

“**Person**” means an individual or a corporation, general partnership, limited partnership, limited liability company, sole proprietorship, joint venture, unincorporated organization, association, governmental entity or political subdivision thereof, or other entity.

“**Affiliate**” means any Person that, directly or indirectly, controls, is controlled by, or is under common control or ownership with a specified Person. As used in the definition of Affiliate, “**control**” and the formatives “**controls**” and “**controlled**” mean the possession, directly or indirectly, of the power to direct, or cause or influence the direction of, the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“**Policies**” means the OSEHRA Certificate of Incorporation, Bylaws, Code of Conduct, Terms of Service, Membership Policy, and Privacy Policy.

“**Representatives**” means New Member’s Affiliates and its controlling persons, directors, officers, employees, agents, and advisors.

2. Membership Dues

2.1. Dues

The Board of Directors of OSEHRA (“**Board of Directors**”) shall set the dues, fees, and other charges and assessments for membership in OSEHRA (collectively, “**Dues**”). New Member hereby agrees to pay the applicable Dues in accordance with the Dues policy set forth in OSEHRA’s Membership Policy (“**Dues Policy**”), which may be amended from time to time by the Board of Directors of OSEHRA.

OSEHRA Organizational Members can choose from six membership levels, each of which has an extensive set of benefits, as described on the OSEHRA website at <http://www.osehra.org/content/organizational-membership-information>

New Member agrees that for purposes of initial dues determination, the following information is complete and correct:

New Member desired Organizational Membership Level:

- Principal III
- Principal I
- Principal I
- Innovator III
- Innovator II
- Innovator I

2.2. Payment

The Dues initially owed by New Member are payable upon admission to membership in OSEHRA in accordance with the Dues Policy. New Member’s membership in OSEHRA shall become effective upon OSEHRA’s receipt of New Member’s initial Dues payment (“**Effective Date**”). The first day of the month following the Effective Date shall be hereinafter referred to as the “**Anniversary Date.**” Successive annual Dues shall become due and payable by New Member upon each one (1) year anniversary of the Anniversary Date. Dues shall not be considered as being in arrears until thirty (30) days after the applicable due date. OSEHRA shall bill New Member for Dues in advance by written invoice sent out at least thirty (30) days prior to the applicable Anniversary Date. If New Member resigns from OSEHRA prior to the end of any one (1) year membership period, New Member shall nonetheless be responsible for payment of Dues for such entire one (1) year membership period, and shall not be entitled to a refund of any Dues previously paid by New Member.

2.3. Failure to Pay Dues

New Member’s membership in OSEHRA shall be suspended or terminated if New Member does not pay all required Dues, in full, by the end of the grace period established by the Board of Directors in the Dues Policy, pursuant to procedures established by the Board of Directors. Further, New Member’s voting privileges and Board nomination privileges (including

the privileges of any General Members appointed by New Member) will be automatically suspended in the event New Member's dues are not current at the time such voting occurs (i.e., the due date specified on the membership renewal invoice has passed without OSEHRA receiving payment).

3. Confidentiality

3.1. Open Source Submissions

All information, source code submissions and other materials (collectively, "**Submissions**") provided by New Member to OSEHRA under this Agreement or under any Policies shall be considered non-confidential and non-proprietary information, and shall be provided under the OSEHRA Website Terms of Service and OSEHRA's intellectual property policies described therein (collectively, the "**Terms of Service**").

3.2. Confidential Information

In connection with New Member's membership in OSEHRA, New Member may receive or have access to certain non-public information (including certain information of other Members), (i) which is designated and labelled in writing by OSEHRA as confidential, or (ii) which New Member should reasonably know, by its nature or the manner of its disclosure, to be confidential (collectively, "**Confidential Information**"). New Member agrees (a) to keep such Confidential Information in the strictest confidence, using the same degree of care that it exercises with respect to its own confidential information of like importance, but in no event less than reasonable care, (b) not to disclose the Confidential Information to any Person other than its Representatives (1) who have a need to know such information, and (2) who are subject to nondisclosure obligations at least as protective of such Confidential Information as the provisions set forth herein, and (c) not to use the Confidential Information in any manner or medium whatsoever (whether now known or hereafter devised), except as required under this Agreement. Confidential Information shall not include:

(A) information that is customarily shared by OSEHRA and Members in connection with the development of open source software code as set forth in the Terms of Service;

(B) information which is independently developed by New Member without the use of or reliance on any Confidential Information;

(C) information which is or becomes known to the public through no act or omission of New Member, including, but not limited to, information disclosed or made generally available through OSEHRA's website;

(D) information which is disclosed in response to a valid order of a court or other governmental agency or law enforcement authority, each of competent jurisdiction;

(E) information that, at the time of disclosure to New Member, was rightfully known to New Member free of restriction; or

(F) information that is disclosed to New Member by a third party not bound by a confidentiality restriction.

4. Warranties; Indemnification

4.1. Representations and Warranties

New Member hereby represents and warrants that (i) it has all rights necessary to enter into this Agreement and to grant the licenses hereunder and to perform its obligations under this Agreement, (ii) its performance of its obligations and exercise of its rights under this Agreement will not violate any agreement or other obligation by which it is bound; (iii) no Submission provided by New Member under this Agreement, nor the use by OSEHRA of any such Submission, in any manner or media throughout the world, will in any way infringe or otherwise violate the intellectual property or other proprietary rights of any Person; and (iv) it shall comply with all applicable laws, rules and regulations in the exercise of its rights and performance of its obligations under this Agreement.

4.2. Indemnification

New Member agrees to fully defend, indemnify, save and hold OSEHRA and its other Members, and the officers, directors, employees agents and representatives of OSEHRA and its other Members (collectively, “**OSEHRA Indemnitees**”), harmless from any and all liabilities, claims, demands, causes of action, suits, damages, losses and expenses (including attorneys’ fees, expert fees and court costs) incurred or suffered by such OSEHRA Indemnitees arising out of, or in connection with, any third party claim, demand, or cause of action to the extent such claim, demand or cause of action is based upon or arises out of (i) any allegation that any Submission provided by New Member under this Agreement infringes or otherwise violates any intellectual property or other proprietary rights of any Person; (ii) New Member’s breach of this Agreement (including breach of any Policies); and/or (iii) New Member’s gross negligence or willful misconduct.

5. Trademark License

5.1. License for OSEHRA use of New Member Marks

New Member hereby grants OSEHRA a limited, worldwide, non-exclusive, royalty-free license to (i) use, reproduce, electronically distribute, transmit, broadcast and/or publicly display New Member’s name and logo (collectively, the “**Marks**”), solely to identify New Member as a Member of OSEHRA on OSEHRA’s website, in informational briefings of OSEHRA and/or in other marketing, advertising or promotional materials of OSEHRA, and (ii) otherwise use the Marks in any manner as OSEHRA may request from time to time, solely with New Member’s prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. *Within ten (10) days of the Effective Date of this Agreement, New Member agrees to provide the Marks in .eps or .ai format to ensure sufficient resolution for*

consistent display with other Organizational Members, as well as a descriptive “about us” paragraph to OSEHRA for use on the OSEHRA website Organization Member page.

Subject to the Phase-Out Period set forth in **Section 5.2**, the license granted in this **Section 5.1** shall remain in effect until the effective date of termination of this Agreement in accordance with **Sections 7.3** and **8.1**.

When used on the OSEHRA website to show New Member as a Corporate Member of OSEHRA, the Marks will be a live link to any website specified by New Member. New Member may also designate a name to be used in conjunction with the Marks, which may not be identical to the legal name used in this Agreement (e.g., “Acme”, as opposed to “Acme Partners, LLC”). New Member designates the following name for public marketing use by OSEHRA, and the following website as the target site to be used in conjunction with the Marks:

Name: _____

URL: _____

5.2. License for New Member Use of OSEHRA Mark

Upon execution of this Agreement, a digital copy of the OSEHRA logo (“OSEHRA Mark”) will be provided via email to New Member. Use of the OSEHRA Mark shall constitute consideration for, agreement to, and acceptance of the following terms and conditions by New Member:

1. The OSEHRA Mark is the sole and exclusive property of OSEHRA. It may be used only by OSEHRA members, if and only if such use is made pursuant to the terms and conditions of this limited and revocable license. Any failure by a user to comply with the terms and conditions contained herein may result in the immediate revocation of this license and other remedies. The interpretation and enforcement (or lack thereof) of these terms and conditions, and compliance therewith, shall be made by OSEHRA at its sole discretion.
2. The OSEHRA Mark will be provided in .png format. When displayed, the preferred background is white, but other backgrounds may be used as necessary.
3. The OSEHRA Mark may be used in a professional manner by New Member in briefings, on a website, or in any other comparable manner to signify the New Member's membership in OSEHRA. When used online, the OSEHRA Mark should, where possible, be displayed as a link to www.osehra.org.
4. Notwithstanding the foregoing, the OSEHRA Mark may not be used in any manner that, in the sole discretion of OSEHRA:
 - discredits OSEHRA or tarnishes its reputation and goodwill;

- is false or misleading;
 - violates the rights of others;
 - violates any law, regulation or other public policy; or
 - mischaracterizes the relationship between OSEHRA and the user, including but not limited to any use of the logos that might be reasonably construed as an endorsement, approval, sponsorship, or certification by OSEHRA of New Member's business or organization, products, or services, or that might be reasonably construed as support or encouragement to purchase or utilize the New Member's products or services.
5. Use of the OSEHRA Mark shall create no rights to the OSEHRA Mark or its use beyond the terms and conditions of this limited and revocable license. The OSEHRA Mark shall remain at all times the sole and exclusive intellectual property of OSEHRA. Without further notice, OSEHRA reserves the right to prohibit use of the OSEHRA Mark if it determines, in its sole discretion, that a use thereof, whether willful or negligent, is not in strict accordance with the terms and conditions of this license, otherwise could discredit OSEHRA or tarnish its reputation and goodwill, or the user is not an OSEHRA member in good standing.
 6. Any questions concerning use of the logos or the terms and conditions of this license should be directed via email to membership@osehra.org.

5.3. Phase-Out Period

For a period of thirty (30) days from the effective date of termination of this Agreement (“**Phase-Out Period**”), OSEHRA shall have the right to continue to use the Marks under the terms of this Agreement. Immediately following the end of the Phase-Out Period, OSEHRA shall cease any and all such use of the Marks. Similarly, New Member shall have the right to continue to use the OSEHRA Mark under the terms of this Agreement, and New Member shall cease any and all use of the OSEHRA Mark immediately following the end of the Phase-Out Period.

6. Governing Documents; Limitation of Liability

6.1. Governing Documents

New Member acknowledges receipt of all Policies, and further acknowledges that it understands the terms and conditions of such Policies. All terms and conditions of all Policies are hereby incorporated into and made part of this Agreement. New Member has had adequate opportunity to review and obtain independent legal advice regarding the Policies, and hereby agrees to abide by all terms and conditions of all Policies.

6.2. Disclaimer

ALL MATERIALS, INFORMATION, AND ANY LICENSES PROVIDED TO NEW MEMBER BY OSEHRA HEREUNDER OR UNDER ANY POLICY (INCLUDING, WITHOUT LIMITATION, ANY CONTRIBUTIONS PROVIDED BY ANY OTHER MEMBERS), ARE PROVIDED ON AN “AS IS,” “AS AVAILABLE” BASIS. OSEHRA MAKES NO, AND HEREBY DISCLAIMS ANY AND ALL, REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, CONTRACTUAL OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

6.3. Exclusion of Damages

EXCLUDING NEW MEMBER’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 4.2, AND/OR ANY LIABILITY ARISING FROM EITHER PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCURRED OR SUFFERED BY THE OTHER PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, USE, DATA OR OTHER ECONOMIC ADVANTAGE), WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

6.4. Limitation of Liability

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF OSEHRA UNDER THIS AGREEMENT, REGARDLESS OF THE CAUSE OR THEORY OF RECOVERY, EXCEED \$10,000. THIS LIMITATION OF LIABILITY IS COMPLETE AND EXCLUSIVE, SHALL APPLY EVEN IF OSEHRA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL CLAIMS, LOSSES, OR DAMAGES, AND SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF ANY OTHER REMEDIES POSSESSED BY NEW MEMBER OR ANY PERSON. THIS LIMITATION OF LIABILITY REFLECTS AN AGREED ALLOCATION OF RISK BETWEEN NEW MEMBER AND OSEHRA IN VIEW OF THE NATURE OF THIS TRANSACTION.

7. Relationship; Term and Termination

7.1. Relationship

New Member hereby acknowledges and agrees that it participates in OSEHRA voluntarily, solely to advance the purposes of OSEHRA set forth in OSEHRA’s Policies. New Member acknowledges and agrees that each of the Members remains free, in its independent judgment, to adopt, reject, or modify any and all guidance developed by OSEHRA. New Member shall not have the authority, actual or implied, to bind any other Member or OSEHRA

in any way, to make any commitments or representations on behalf of another Member or OSEHRA, or to act as agent of another Member or OSEHRA. OSEHRA shall not have the authority, actual or implied, to bind New Member in any way or to act as agent for New Member.

7.2. Term

This Agreement shall be effective upon the Effective Date, and shall remain in full force and effect until the effective date of New Member's resignation or removal from membership in OSEHRA in accordance with **Sections 7.3 and 8.1** below.

7.3. Termination

In addition to New Member's right to terminate this Agreement in accordance with **Section 8.1** below, New Member may resign as a Member of OSEHRA in accordance with the Bylaws at any time upon written notice to OSEHRA. Further, New Member may be removed from membership in OSEHRA (i) in accordance with the Bylaws of OSEHRA, or (ii) if New Member is in violation of this Agreement, as determined by OSEHRA in its sole discretion ("**Removal for Cause**"). Before Removal for Cause, OSEHRA will provide written notice (via letter or email) to New Member of any such violation. If New Member fails to remedy such violation within ten (10) days of receipt of such written notice, New Member will be removed from membership effective as of the eleventh day following receipt by New Member of such written notice. This Agreement shall terminate immediately upon the effective date of New Member's resignation or removal from membership in OSEHRA. Notwithstanding the foregoing, the provisions of **Sections 3, 4, 5.3, 6.2, 6.3, 6.4, 7.3 and 8** shall survive the effective date of termination of this Agreement, and New Member shall not be entitled to receive any refund for any prepaid Dues.

7.4. Additional Termination Provisions - Section 501(c)(3) Members

OSEHRA does not believe that its current or planned activities include any form of activity prohibited for Section 501(c)(3) organizations. If, at any time, the nature of the activities conducted by OSEHRA include activities prohibited for Section 501(c)(3) organizations, notwithstanding any provision of the Membership Policy to the contrary and notwithstanding the provisions of Sections 2.2 and 7.3 of this Agreement, any Member that qualifies as a Section 501(c)(3) organization may terminate its membership and such resigning Member may request a pro rata refund of any prepaid Dues. Any resignation pursuant to this Section shall be made in writing and shall include specific identification of those activities that the resigning Member believes to be prohibited for Section 501(c)(3) organizations. OSEHRA shall first be given the opportunity to adjust its activities such that they no longer constitute activities prohibited for Section 501(c)(3) organizations and reject the Member's resignation pursuant to this Section (in which case the Member may choose to resign pursuant to the provisions of Section 7.3 hereof). Otherwise, OSEHRA shall accept the Member's resignation pursuant to this Section and issue a pro rata refund of the Member's prepaid Dues.

8. Miscellaneous

8.1. Amendment

For the purposes of this Agreement, no course of dealing between or among the parties hereto and no delay on the part of any party hereto in exercising any rights hereunder shall operate as a waiver of the rights hereof. All waivers must be in a writing signed by the party waiving such rights to be effective. New Member agrees that the content of this Agreement may be amended at any time upon the approval of the Board of Directors of OSEHRA. Upon any such amendment, New Member will be provided sixty (60) days in which to either (i) execute the amended Agreement, or (ii) resign as a Member of OSEHRA (“**Amendment Period**”). In the event New Member fails to execute the amended Agreement within the Amendment Period, this Agreement, and New Member’s membership in OSEHRA, shall automatically terminate immediately following the end of such Amendment Period.

8.2. Consent to Email Correspondence

New Member hereby consents to receive any and all correspondence from OSEHRA, including any notices of Member meetings or Board of Director meetings, by email.

8.3. Designation of Representatives

8.3.1. New Member Representatives

New Member shall designate below an employee as its primary Representative and (optionally) an employee as its alternate Representative to OSEHRA. Such designated Representatives shall have the authority to act on behalf of New Member, including without limitation, with respect to casting votes and paying Dues on New Member’s behalf. Any notices required for or permitted to OSEHRA by this Agreement or otherwise shall be delivered to New Member or, as applicable, to both New Member’s primary Representative and its alternate Representative, by means of email as set forth in **Section 8.2**, and such delivery shall constitute full satisfaction of any notice requirements. Please include any applicable professional prefix or suffixes (M.D., Ph.D., etc.) so that mailings/invitations can be accurate.

Primary Representative:

Name: _____

Title: _____

Phone: _____ Email: _____

Alternate Representative:

Name: _____

Title: _____

Phone: _____ Email: _____

8.3.2. OSEHRA Representative

The following person will be the primary point of contact at OSEHRA for all membership information and issues:

Name: Desereé S. Johnston

Title: Director, Communications and Membership

Phone: 571-858-3181 Email: johnstond@osehra.org

8.4. Appointment of General Members

If, based upon New Member's dues category, New Member is authorized to appoint individual General Members, New Member shall appoint the appropriate number of General Members by sending their names and email addresses to the OSEHRA point of contact designated in Paragraph 8.3.2 above.

8.5. Assignment

This Agreement shall be binding upon and inure to the benefit of the parties, and their respective Affiliates, successors in interest, heirs, executors, administrators, permitted assigns, agents and representatives. New Member may not assign or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of OSEHRA and its Board of Directors. OSEHRA may assign any of its rights or obligations under this Agreement in the sole discretion of OSEHRA and its Board of Directors.

8.6. Applicable Law

This Agreement shall be deemed a contract made under the laws of the Commonwealth of Virginia and together with the rights and obligations of the parties hereunder, shall be construed under and governed by the laws of such state, without giving effect to its conflict of laws principles. Any legal action or proceeding with respect to this Agreement may be brought exclusively in the federal or state courts located in Arlington, Virginia. Service of process shall be made in any manner allowed by applicable law.

8.7. Entire Agreement

This Agreement, together with the Policies, and all exhibits, attachments, documents and instruments referred to herein or therein, constitute the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all other prior representations, agreements, discussions and understandings, both written and oral, between such parties with respect to such subject matter.

8.8. Severability

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be separately effective and valid under applicable law, but if any provision of this Agreement shall be deemed prohibited or invalid under such applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, and such prohibition or invalidity shall not affect the validity of the remainder of such provision or any other provision of this Agreement.

8.9. Inconsistency of Terms

Terms used in this Agreement, without definition, have the same meaning as such terms are ascribed in the Bylaws. In the event of any inconsistency between this Agreement and the Bylaws with regard to the meaning of any such term, the meaning of such term as set forth in the Bylaws shall control to the extent of the inconsistency.

8.10. Counterparts

This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same instrument. A complete set of counterparts shall be lodged with each party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the later of the two dates below.

OPEN SOURCE ELECTRONIC HEALTH RECORD ALLIANCE, INC.

Signature: _____

Name: _____ or
Title: _____ digital
signature
----->

Date: _____

[]

Signature: _____

Name: _____ or
Title: _____ digital
signature
----->

Date: _____