

OPEN HEALTH TOOLS MEMBER COMMITTER AGREEMENT

THIS MEMBER COMMITTER AGREEMENT (THE “AGREEMENT”) is entered into as of the ___ day of _____, 200_ (the “Effective Date”) by and between Open Health Tools Inc. (“Open Health Tools”), a Colorado nonprofit corporation, and _____ (“Member”) with respect to Member’s employees and/or contractors listed in Open Health Tools’ Committer Database who have been approved to be committers as further described herein.

INTRODUCTION

Individuals who give frequent and valuable contributions to an Open Health Tools development project, or component of a project (in the case of large projects), can have their status promoted to that of a “committer” for that project or component respectively, in accordance with the project’s corresponding charter. A committer has write access to the source code repository for the associated project (or component), or to other content on the Open Health Tools website. In order for an individual to become a committer, another committer for the project (or component) must nominate that individual. Once an individual is nominated, the existing committers for the project (or component) will vote using the process and rules determined by each Project Charter and administered by the Project Management Committee (“PMC”). When a new project is started, the responsible corresponding Project Lead will nominate an initial set of committers for approval by the Chief Technical Officer. Becoming a committer is a privilege that is earned by contributing and showing discipline and good judgment. It is a responsibility that should be neither given nor taken lightly.

The employees or contractors of Member listed in Exhibit A have been approved to be committers by their PMC. By executing this Agreement with respect to such employees or contractors, Member agrees that it has reviewed this Agreement with such personnel, and that it shall allow them to enjoy the rights of a committer and cause them to agree to and comply with all obligations that result from being a committer, including without limitation those set forth in Section 2 below. Member’s employees or contractors listed in Open Health Tools’ Committer Database shall hereinafter be referred to in this Agreement as “Committers,” and each as a “Committer”. The Committers listed in Exhibit A are understood to be an initial set of Committers and the list may be subject to change. Once the personnel in Exhibit A have been entered into Open Health Tools’ Committer Database, the database will constitute the master list of the Member’s Committers and may be updated as required in compliance with the New Committer Process. Open Health Tools will provide the Member with a list of its Committers upon request.

1 MEMBER RIGHTS AND OBLIGATIONS

1.1 Representation of Employee Status. Member hereby represents that all individuals listed on Exhibit A are employees or contractors of Member as of the Effective Date, and that any future Committers listed in Open Health Tools Committer Database shall

be employees or contractors of Member as of the date of such listing. In the event that any Committer leaves Member's employ, Member shall use reasonable efforts to notify Open Health Tools, provided that Member's failure to do so shall not be considered a material breach of this Agreement. To the extent any new Member employees or contractors are listed in Open Health Tools' Committer Database from time to time after the Effective Date, they shall be deemed to be Committers hereunder. Upon Open Health Tools' request from time to time, Member shall verify the employment or contractor status of the Committers. Member shall notify Open Health Tools in writing in the event that Member desires to discontinue an employee's or contractor's Committer-status under this Agreement. In such event, Open Health Tools shall have the right to determine, at its sole discretion, whether to continue such individual's status as a Committer pursuant to a separate agreement between such individual and the Open Health Tools.

1.2 Member Consent. For each Committer, Member agrees that Committer's current and future contributions to Open Health Tools will be provided under the terms of this Agreement and under the terms of the Eclipse Public License ("EPL") unless otherwise agreed upon in writing between the parties.

2 COMMITTER RIGHTS AND OBLIGATIONS

2.1 Compliance with Bylaws. Each Committer shall abide by the Bylaws of Open Health Tools as may be amended from time to time, which is hereby incorporated herein by reference.

2.2 Compliance with Policies and Guidelines. Each Committer shall abide by the IP Policy and Committer Guidelines and any and all additional policies, guidelines and procedures adopted by Open Health Tools, as may be amended from time to time, which are hereby incorporated herein by reference.

2.3 Compliance with the Eclipse Public License. Each Committer shall review and ensure that they understand the terms and conditions of the EPL. Each Committer agrees that the EPL will serve as both the general contribution license for Open Health Tools as well as the distribution license, unless otherwise agreed to in accordance with the Bylaws and IP Policy.

2.4 Committer Questionnaire. Committers shall complete and submit to Open Health Tools the Individual Committer Questionnaire.

2.5 Committer Contact Information. Committers shall promptly inform Open Health Tools of any change in the information provided on the Individual Committer Questionnaire, including without limitation address, other contact information and/or change in employment status or employer, and shall promptly provide such information to Open Health Tools for new Committers when added to Open Health Tools Committer Database.

2.6 Committer's rights. Committers working on content in the Open Health Tools repositories may be granted commit rights to specific project directories and/or files in the repository. Committers working on content on the Open Health Tools web site may be granted access to specific web site directories and/or files. Committers may also be granted other rights necessary to administrate and manage projects such as

mailing list administration, Bugzilla administration, etc. Open Health Tools will have complete control and discretion over which capabilities are assigned to a Committer account, and may terminate or temporarily disable Committer access for any reason at any time.

2.7 Treatment of Account. Each Committer shall maintain the strict confidentiality of his or her passwords issued by Open Health Tools (“Password”) and shall not allow any other individual or entity to use his or her username or Password. Should a Committer become aware of any such use, Committer shall notify Open Health Tools immediately by sending an e-mail to oh-tmo@openhealthtools.org or such other e-mail address as may be designated by Open Health Tools from time to time.

2.8 Employment by Member. If a Committer leaves the employment (or his or her contract ends) of Member, his or her rights and obligations as a Committer shall continue unless and until such Committer’s Password is discontinued. Committer may be required to execute an Individual Committer Agreement or be covered by another Member Committer Agreement in order to maintain Password access.

3 TERM AND TERMINATION

3.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue until such time as Member’s Membership Agreement terminates.

3.2 Termination of Committer Status by Open Health Tools. Open Health Tools may terminate any Committer(s), with or without cause, by providing Member notice of such termination. A Committer can terminate its status as a Committer by providing written notice to Open Health Tools.

3.3 Termination of the Agreement by Member. Member may terminate this agreement, with or without cause, by providing Open Health Tools notice of such termination. Such termination may result, at Open Health Tools sole discretion, in the termination of the Committers’ rights and obligations as Committers. Committers may be required to execute an Individual Committer Agreement in order maintain Password access.

4 GENERAL

4.1 No Other Licenses. By executing this Agreement, Member and Committers neither grant nor receive, by implication, estoppel, or otherwise, any rights under any copyright, patents or other intellectual property rights of Open Health Tools or another Member.

4.2 Limitation of Liability. IT IS THE EXPECTATION OF OPEN HEALTH TOOLS AND OTHER MEMBERS THAT MEMBER WILL MONITOR THE ACTIVITES OF ITS COMMITTERS AND THAT THE COMMITTERS WILL MEET THEIR OBLIGATIONS, AND NOT EXCEED THE SCOPE OF THEIR AUTHORITY, AS SET FORTH IN THIS AGREEMENT. NOTWITHSTANDING THE PRECEDING SENTENCE, IN NO EVENT WILL EITHER OPEN HEALTH TOOLS, MEMBER OR THE COMMITTERS BE LIABLE TO EACH OTHER OR ANY OTHER MEMBER OR THIRD PARTY UNDER THIS AGREEMENT FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOST

REVENUE, LOST SALES, LOSS OF USE, LOSS OF DATA OR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

4.3 Governing Law. This Agreement shall be construed and controlled by the laws of the State of New York without reference to conflict of laws principles.

Notwithstanding the foregoing, in the case where a member is a department or agency of the United States Federal government, the following shall apply:

- a) The Agreement shall be governed and construed in accordance with United States Federal law rather than the laws of the State of New York. In the event of a conflict between the Agreement and applicable U.S. Federal law, U.S. Federal law shall prevail.
- b) Nothing in this Agreement or any related agreement between Open Health Tools and Member shall be construed to take precedence over the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680 with respect to any tort claim.
- c) Nothing in this agreement shall be construed to authorize Open Health Tools to act outside the scope of any U.S. Federal law, with respect to this agreement.
- d) If any term or condition of this Agreement is or becomes invalid or unenforceable, such term or provision shall not affect the validity or enforceability of any other term or provision contained herein to the extent that they comply with U.S. Federal law.
- e) In no case will the U.S. government waive sovereign immunity nor shall the U.S. government be subject to the jurisdiction of any state or other foreign jurisdiction.

4.4 Notices. All notices or other communications to or upon any party shall be delivered to or at the addresses set forth on the signature page(s) hereto. For purposes of this Section, notice can include notice by written mail, electronic mail or by facsimile and shall be deemed served when sent; provided, however, that notice of a breach of this Agreement and notice of termination of this Agreement shall be given by overnight courier service or certified mail, return receipt requested. Either party may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such party at such changed address.

4.5 Complete Agreement; No Waiver. Except with respect to the Bylaws of Open Health Tools, the IP Policy, the Membership Agreement, the EPL, Open Health Tools' Antitrust Policy, and any other policies, guidelines and procedures that may be adopted by Open Health Tools, from time to time, in accordance with the Bylaws, this Agreement, including all attachments, sets forth the entire understanding of Open Health Tools and Member with respect to the subject matter hereof and supersedes all prior agreements and understandings relating hereto, unless otherwise stated in this Agreement. The waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

4.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but collectively shall constitute one and the same instrument.

4.7 Compliance with Laws. Anything contained in this Agreement to the contrary notwithstanding, the obligations of Open Health Tools and Member shall be subject to all laws, present and future, of any government having jurisdiction over Open Health Tools or Member including, without limitation, all export and re-export laws and regulations. It is the intention of Open Health Tools and Member that this Agreement and all referenced documents shall comply with all applicable laws and regulations.

4.8 Independent Contractors. The relationship of Open Health Tools with respect to Member and its Committers established by this Agreement is that of independent contractors. This Agreement does not give either party the power to direct and control the day to day activities of the other, constitute the parties as partners, joint venturer, co-owners, principal agent or otherwise participants in a joint or common undertaking, or, except as expressly provided herein, allow either party to create or assume any obligation on behalf of the other for any purpose whatsoever.

In witness of this Agreement, Open Health Tools and Member have executed this Agreement below,

Open Health Tools

Open Health Tools

By: _____

Name: _____

Title: _____

Date: _____

Notice Information

Address: c/o Open Health Tools
11782 Rose Beach Line
Morpeth ON, N0P 1X0
Canada

Attention: Committer Records
Telephone: +1 519-674-0323

Fax: +1 828-707-9508

email: Oht-mo@openhealthtools.org

Member:

Company: _____

By: _____

Name: _____

Title: _____

Notice Information

Address: _____

Attention: _____

Telephone: _____

Fax: _____

EXHIBIT A

[List Member Employees]