

**BYLAWS OF OPEN HEALTH TOOLS, INC.** (revised 2008-07-01)

**ARTICLE I  
VISION**

**Section 1.1 Vision.** The Vision of Open Health Tools, Inc. (“Open Health Tools”) is 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. Open Health Tools is formed exclusively as a non-profit trade association, as set out in section 501(c)(6) of the Internal Revenue Code (the “Code”).

**ARTICLE II  
MEMBERSHIP**

**Section 2.1 General.** Membership is open to those persons or entities who can make substantial contributions in terms of time, technology, knowledge, or industry expertise to the Open Health Tools Vision. Members will be extended additional privileges in Open Health Tools not available to the general community.

**Section 2.2 Process.** To be a Member, a person or entity must complete a written membership application in such form as shall be adopted by the Open Health Tools Board of Stewards (the “Board”), including a description of the contribution that the Member plans on providing to Open Health Tools. Members are approved for admission by a majority vote of the Board, based on the Membership Committee’s recommendation. After Board approval, Membership shall only become effective once the applicant has executed the Membership Agreement in such form as shall be adopted by the Board.

**Section 2.3 Contribution.** The Board shall, from time-to-time, establish mechanisms by which Members may support Open Health Tools activities. Such mechanisms may include, without limitation, voluntary membership fees, sponsorship fees, promotional fees, administration fees, software contributions, and in-kind contribution levels. Notwithstanding the foregoing, Membership in Open Health Tools is on an “as is” basis, without warranties or conditions of any kind. No penalties shall be applied to a Member who fails to meet its contribution pledge.

**Section 2.4 Termination.** The Board may decide to terminate the Membership of any Member, “For Cause”, through a two-thirds (2/3) majority vote at a Board meeting.

For purposes of this Section 2.3 “For Cause” shall mean the Member has materially breached the Membership Agreement, Bylaws, IP Policy, Antitrust Policy, a software license for any software the Member acquired from Open Health Tools and/or other related Open Health Tools agreements or policies, and has not cured such breach within thirty (30) days of receipt of written notice from Open Health Tools.

In order to terminate the Membership of any Member, written notification, including a rationale for termination, must be provided to said Member no less than twenty (20) business days prior to the Board meeting in which the termination vote is to be held. The participating member will have the opportunity to comment, in writing or in person at the Board meeting where the termination is being discussed. The decision of the Board shall be final.

In the case of such a decision, the Secretary of the Board will send the Member a signed, written notice stating that the Member's membership agreement has been terminated.

### **ARTICLE III BOARD OF STEWARDS**

**Section 3.1 Powers and Duties.** The business and technical affairs of Open Health Tools shall be managed by or under the direction of the Board, which shall have all the powers and obligations normally associated, under law, with a Board of Directors. The Board shall also be empowered to adopt rules and regulations governing the action of the Board and Open Health Tools, generally, and to allocate, distribute and/or pay out the moneys received by Open Health Tools from time-to-time, subject to section 501(c)(6) and other applicable provisions of the Code, and the provisions of the Law of the State of Colorado. All contractual arrangements under which Open Health Tools would take on financial obligations must be approved in advance by a majority vote of the Board. In addition, the Board has the responsibility for establishing the policies, programs and practices of Open Health Tools.

**Section 3.2 Composition of Board of Stewards.** The Board shall be comprised of Stewards, Associates, a Chairperson, a Secretary and Representatives of the Committers and Project Leads as follows:

(a) **Stewards.** A Steward is a voting member of the Board, and may represent a Member, Committers or Project Leads as described hereunder. A Steward may withdraw from the Board at any time by written notice to the Secretary or Chairperson.

(i) **Member Stewards.** Each Member has the right to appoint one Steward to the Board, subject to approval of the Board. In the case that the Board rejects a Member's choice for Steward, the Secretary shall inform the Member of the reasons for the rejection, and the Member may appoint another Steward, subject again to approval of the Board. A Member may withdraw their Steward at their discretion at any time by written notice to the Secretary. The Member may then appoint a new Steward, subject to Board approval. The right of a Member Steward to cast a vote at meetings of the Board may be suspended by a two-thirds (2/3) majority vote and resolution of all remaining Directors if the Board concludes that the Member which the Steward is representing has failed to honor promises of support or resources.

(ii) **Committer Stewards.** Committers (as defined in Section 7.3 below), as a class, shall be entitled to at least one (1) seat on the Board (and such representative shall represent the entire class). An additional seat on the Board shall be allocated to the Committer Stewards for every additional five (5) Member Stewards beyond five (5) who are members of the Board. The Committer Stewards shall be selected via annual-at-large elections by the Committers using the Single Transferable Vote process.

**(iii)** Project Lead Stewards. Project Leads (as defined in Section 7.2 below), as a class, shall be entitled to at least one (1) seat on the Board (and such representative shall represent the entire class). An additional seat on the Board shall be allocated to the Project Lead Stewards for every additional five (5) Member Stewards beyond five (5) who are members of the Board. The Project Lead Stewards shall be selected via annual-at-large elections by the Project Leads using the Single Transferable Vote process.

**(iv)** Alternates. Each Steward, upon written notice to the Secretary or Chairperson, may appoint an Alternate. The Alternate for a Member Steward must be approved by the Member. The Alternate for a Committer Steward must be a Committer. The Alternate for a Project Lead Steward must be either a Project Lead, or a member of the Project Lead Steward's Project Management Committee. Alternates may be appointed for any length of time, including, without limitation, a specific meeting, the Steward's vacation period, or a longer period. The Alternate shall have the rights and obligations of the Steward being represented, in place of the appointing Steward for the appointment period. References to "Stewards" hereunder shall mean a Steward, or in that Steward's absence, his or her Alternate.

**(b)** Associates. Associates may be nominated by any Steward or the Chairperson, and must be approved by a majority vote of the Board. Associates shall represent areas of technical, academic, or business disciplines complementary to the Vision. Associates may participate in meetings and deliberations of the Board but are not entitled to a vote at those meetings unless the Associate is also a Steward. Associates shall serve for a term of one (1) year. At the end of this term, the individual may be nominated again. Associates serve at the pleasure of the Board and can be removed at any time by majority vote. An Associate can withdraw from the Board at any time by written notice to the Secretary or Chairperson. The Board shall initially appoint candidates to the following Associate positions:

- (i)** Chief Medical Officer ("CMO")
- (ii)** Chief Technical Officer ("CTO")
- (iii)** Committee and Council Chairs where such person is not also a Steward.

**(c)** Chairperson. A Chairperson for the Board shall be nominated by one or more Stewards and shall be appointed by majority vote of the Board. The Chairperson shall report to the Board, shall serve at the pleasure of the Board and shall be subject to the oversight of the Board. The Chairperson shall have the rights and responsibilities listed hereunder:

**(i)** The Chairperson will also occupy the position of Executive Director of Open Health Tools.

**(ii)** The Chairperson shall preside over all meetings of the Board and at the Annual Meetings.

**(iii)** The Chairperson shall be entitled to cast a single vote where there is a tie among the Stewards. Under no other circumstances is the Chairperson entitled to a vote.

(iv) The Chairperson shall, at each meeting of the Board, if not sooner, report to the Board all matters within the Chairperson's knowledge affecting Open Health Tools that should be brought to the attention of the Board.

(v) The Chairperson shall chair the Executive Committee. The Chairperson, or his/her designate, shall act as the official spokesperson for Open Health Tools.

(vi) The Chairperson shall perform such other duties and responsibilities as defined by the Board from time to time.

(vii) The Chairperson shall serve for a term of two (2) years. At the end of this term, the individual may be re-appointed at the pleasure of the Board, or the Board may nominate one or more new individuals and decide among the nominees through a vote.

(viii) Notwithstanding the foregoing, the Chairperson serves at the pleasure of the Board and can be removed at any time by a majority vote of the Board, although only one such vote shall be permitted in any calendar year.

(ix) The Chairperson can withdraw from the Board at any time by written notice to the Secretary. In the event of a vacancy in the Chairperson position, the Secretary shall convene a Special Meeting of the Board.

(d) Secretary. A Secretary for the Board shall be nominated by one or more of the Stewards, and the appointment must be approved by majority vote of the Board. The Secretary shall have the rights and responsibilities defined hereunder.

(i) The Secretary shall create, distribute, and remediate, where necessary, the notices and agendas of Board meeting.

(ii) The Secretary (or designate thereof) shall participate in all meetings and deliberations of the Board. The Secretary shall not be entitled to a vote unless the Secretary is also a Steward.

(iii) The Secretary shall keep accurate records of proceedings of all meetings of the Board.

(iv) The Secretary shall give, or cause to be given, notice of all meetings of the Board including special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or the Chairperson, under whose supervision he or she shall be.

(v) The Secretary shall have general charge of the membership records of Open Health Tools and shall keep a record of the Members showing the name, address, telephone number, facsimile number and electronic mail address of each Board participant.

(vi) The Secretary shall have custody of the seal of Open Health Tools and he or she shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his or her signature. The Secretary shall sign such instruments as

may require his or her signature and, in general, shall perform all duties as may be assigned to him or her from time to time by the Chairperson.

(vii) The Secretary shall serve for a term of two (2) years. At the end of this term, the individual may be nominated again or the Stewards can nominate a new individual.

(viii) The Secretary serves at the pleasure of the Board and can be removed at any time by majority vote of the Board.

(ix) The Secretary can withdraw from the Board at any time by written notice to the Chairperson.

(e) Parliamentarian. A member of the Board shall be nominated by the Chairperson as Parliamentarian for the Board and the appointment must be approved by majority vote of the Board. The Parliamentarian shall advise the Chairperson and the Board on matters of procedure governing Board deliberations and decisions.

(f) Terms. All Member Stewards shall hold office during the period of membership of the Member that they are representing, unless: i) removed by the Board as indicated herein, ii) resign, or iii) are removed by the Member that they are representing. There shall be no prohibition on re-election or re-designation of any Steward following the completion of that Steward's term of office.

**Section 3.3 Regular Meetings.** The Chairperson will schedule Regular Meetings and (as required under Section 3.4 below) Special Meetings of the Board. The Board may hold its meetings at such place as the Board may from time-to-time determine. No Regular Board meeting will be deemed to have been validly held unless the Chairperson provided notice of same to each Steward at least thirty (30) calendar days prior to such meeting. No Steward will be intentionally excluded from Board meetings. Electronic voting shall be permitted in conjunction with any and all meetings of the Board (including Special Meetings as set forth in Section 3.4 below).

**Section 3.4 Special Meetings.** Special Meetings of the Board for any purpose or purposes may be called at any time by the Chairperson or by ten percent (10%) or more of the Stewards and notice of such special meeting shall be given to all of the Stewards, and the meeting scheduled within ten (10) business days. No Special Meeting of the Board will be deemed to have been validly held unless the Chairperson provided prior notice of at least seven (7) calendar days to each Steward. Special Meetings require a published agenda that shall be included in the meeting notice, and will be considered formal with respect to that Special Meeting only.

**Section 3.5 Notices.** The Notice for any meeting of the Board shall be in the form of an electronic mail message sent to the email address provided in the Membership Application, or an updated address on file with Open Health Tools, whichever is more recent and posted on the Open Health Tools web site. The Notice shall include a formal agenda that will be discussed and acted upon during the meeting. Items that do not appear on the agenda shall not be dealt with by the Board meetings unless notification is sent to Board members at least seven (7) days prior to the meeting at which the agenda addendum items are to be discussed.

**Section 3.6 Appeals:** If any Steward feels that a decision of the Chairperson of the Board should be appealed, they may indicate, in writing to the Secretary and Chairperson, the nature of their appeal and pertinent information. The issue on whether to reconsider the decision will be automatically brought to a vote no later than the next Regular Meeting. The Board will conduct a simple majority vote on whether to open debate to discuss the matter of the appeal.

**Section 3.7 Annual Meeting.** The annual meeting shall be held in the first calendar quarter of each year, on such date and at such time and place as determined by resolution of the Board (“Annual Meetings”). The Chairperson will present the Annual Report, including a report on the most recent financial audit at the Annual Meeting.

**Section 3.8 Meeting Attendance.** Any employee of any Member organization is welcome to attend any meeting of the Board as an observer.

**Section 3.9 Conflict of Interest.** In any meeting of the Board, Committee or Council, where a matter under discussion creates a conflict of interest for a voting attendee of that meeting, the voting attendee must identify the conflict of interest and recuse him/herself from any discussion or vote. Voting attendees employed by the [U.S. Department of Health and Human Services](#) will abide by this provision as and to the extent it is consistent with applicable criminal statutes and/or government-wide and/or agency-specific standards of ethical conduct prohibiting their participation in matters where they have an actual or apparent conflict of interest.

**Section 3.10 Action by the Board.** No action may be taken or approved by the Board that is outside the Vision of Open Health Tools as set forth in Section 1.1. Except as provided herein, the Board may undertake an action only if it was identified by the Chairman in a Board Meeting notice or otherwise identified in a notice of Special Meeting.

(a) Simple Majority Required. For all actions, for which the Board has authority to take within the stated purpose of the Open Health Tools as set forth in Section 1.1, such actions must be approved by no less than a simple majority of those Stewards represented at a Board meeting at which a quorum is present. A simple majority is defined to mean more than half of the valid votes cast. Notwithstanding the foregoing, a decision to terminate the Membership of a Member requires a two-thirds (2/3) majority vote as provided for under Section 2.3.

(b) Action Without Meeting. Any action required or permitted to be taken by the Board at a meeting may be taken without a meeting on the approval of a majority of the Stewards. The action shall be fully described, including a description of all issues reasonably deemed to be related to the action. This shall be emailed to each Steward at least five (5) business days before the required approval deadline. The action shall be included in the minutes of the subsequent meeting and filed with the corporate records. No action taken hereunder shall be effective until the receipt of the written consent of a majority of the Stewards. Electronic voting shall be permitted in conjunction with the solicitation of written consents as set forth in Section 3.13(b)(ii).

**Section 3.11 Telephonic Meetings.** The Board shall provide facilities, such as a conference call number, that would permit any or all Stewards to participate in a Regular or Special Meeting through a means of communication by which all Stewards participating may simultaneously hear each other during the meeting. A Steward participating in a meeting by this means is deemed to be present in person at the meeting.

**Section 3.12 Quorum.** Except as otherwise required by these Bylaws, one-half (1/2) of the Stewards entitled to vote, represented in person, by that Steward's Alternate, through a proxy, or through registered electronic means, along with the Chairperson (or designate appointed in writing), shall constitute a quorum at a Board meeting. If a quorum is present, the affirmative vote of a majority of the Stewards represented at the meeting and entitled to vote on the subject matter shall be the act of the Board, unless the vote of a greater number is required by these Bylaws.

A majority of the Stewards present, whether or not a quorum is present, may adjourn any meeting to another time and place.

**Section 3.13 Voting; Electronic Voting.**

(a) **General.** Each Steward (or that Steward's Alternate) shall be entitled to one (1) vote on each matter submitted to a vote of the Board.

(b) **Electronic Voting.** Electronic voting may be used in connection with both meetings of the Board and the solicitation of written consents as follows:

(i) **Meetings.** For purposes of soliciting electronic votes in connection with a meeting of the Board at which a quorum was present, only those Stewards, or those holding proxies, in attendance of the meeting shall be permitted to vote with respect to this Section 3.13(b)(i). The Stewards shall be permitted to cast their votes electronically in response to the distributed ballots.

(ii) **Action Without Meeting.** For purposes of taking action without a meeting, solicitation via electronic balloting and voting shall be permitted hereunder. Such procedure shall be initiated by the electronic distribution of ballots and all related materials for consideration by the Board to all of the Stewards at least five (5) days prior to the deadline for the vote. Thereafter, The Stewards shall be permitted to cast their votes electronically in response to the distributed ballots.

(iii) **Votes.** Electronic votes may be in the form of a password protected web page that permits the Steward to vote on an issue, an email from the Steward to the Secretary in which the voting choice is indicated, or by other means deemed acceptable by the Board.

**Section 3.14 Proxies.** Through written notice to the Chairperson or Secretary, a Steward may issue a proxy to another Steward. Any person holding such a proxy can vote with any rights and privileges normally accorded to the Steward who issued the proxy. Proxy holders are entitled to vote once on behalf of each proxy they hold, and organizational representation is

recorded based upon Stewards present, either in-person or by proxy. There are no limits on the number of proxies any Steward may hold.

Commitments made by proxy holders are considered to be commitments from the Steward that the proxy-holder represents. Any conditions or stipulations placed on proxy voting is a matter between the proxy-issuing Steward and the proxy-holder, and not the responsibility of the Secretary or Open Health Tools to enforce.

**Section 3.15 Organizational Transparency.** Discussions and votes of the Board (with the exception of personnel issues and confidential business and technical/business matters concerning suppliers to Open Health Tools) shall be open, transparent, and non-confidential. Board members shall maintain the confidentiality of any confidential issues discussed by the board, with the exception that they may discuss such issues with those in their appointing constituency who have a need to know, and who are bound by an appropriate non-disclosure agreement.

**Section 3.16 Standard of Conduct.** Stewards shall discharge the duties of a Steward, including duties as a member of any Board Council or Committee upon which the Steward may serve, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances. In discharging the duties of a Steward, a Steward shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case if prepared or presented by: (a) one or more officers or employees of Open Health Tools whom the Steward reasonably believes to be reliable and competent in the matters presented; (b) legal counsel, public accountants or other persons as to matters the Steward reasonably believes are within the person's professional or expert competence; or (c) a Board Committee as to matters within the Board Committee's jurisdiction, if the Steward reasonably believes the Board Committee merits confidence. A Steward is not acting in good faith if the Steward has knowledge concerning the matter in question that makes reliance otherwise permitted in this [Section 3.16](#) unwarranted. Stewards employed by [U.S. Department of Health and Human Services](#) will abide by this provision in relation to their discharge of the duties of a Steward, including duties as a member of any Board Council or Committee upon which the Steward may serve, as and to the extent it is consistent with the oath and/or principles of public service to which they have sworn or are otherwise bound by virtue of their employment.

## **ARTICLE IV COMMITTEES OF THE BOARD**

**Section 4.1 Standing Committees.** The Board shall have five (5) standing committees (each, a "Standing Committee") as listed below. Each Standing Committee shall consist of two (2) or more Stewards nominated by the Chairperson or any Steward, including the designation of one Standing Committee member as the Chair and confirmed by a simple majority of the Board. Standing Committee Chairs shall represent the Standing Committee's issues and concerns to the Board, and shall have the responsibility reporting to the Board, on a quarterly schedule, the deliberations, plans and progress of the Standing Committee. Standing Committee Stewards may delegate their committee responsibilities to any individual that is an employee, officer, director, or consultant of an existing Member. Each Standing Committee may invite

non-Steward advisors to participate in or attend certain committee meetings in order to assist the Standing Committee in the performance of its duties. The Board shall retain the right to limit the powers and duties of each Standing Committee. All Standing Committee Charters, including, without limitation, the Standing Committee's rules for meetings, minutes and quorum, shall be published publicly on the Open Health Tools website and subject to Board approval.

(a) **Executive Committee.** As further set out in an Executive Committee charter, the Executive Committee shall meet as necessary to review the general affairs and issues of Open Health Tools. The Chairperson shall chair the Executive Committee. The Chairperson may, from time-to-time, appoint additional Stewards to this committee as he or she deems necessary or appropriate.

(b) **Membership Committee.** As further set forth in a Membership Committee charter, the Membership Committee shall meet as necessary to review and take appropriate actions concerning the membership policies of Open Health Tools and to promote the growth of membership in Open Health Tools. The Membership Committee shall establish a Membership Requirements Policy and shall recommend to the Board, acceptance or rejection of Membership applications based on such Policy. The Chairperson may, from time-to-time, appoint additional Stewards to this committee as he or she deems necessary or appropriate.

(c) **Finance Committee.** As further set forth in a Finance Committee charter, the Finance Committee shall have overall responsibility for the oversight of all corporate funds, and shall perform, or cause to be performed, the following: (a) review proposed annual budget, and presentation of budget to Board; (b) presentation of budget update at every Regular Meeting of the Board; (c) review of all financial records of Open Health Tools and authorize audits to be carried out by an independent external auditing firm under the direction of the Finance Committee Chair, and approve the results of such audits, (d) authorization of the deposit of all monies and other valuable effects in the name and to the credit of Open Health Tools in such depositories as may be designated by the Board; (e) authorization of disbursement of all funds when proper to do so; (f) review and/or making of financial reports as to the financial condition of Open Health Tools to the Board; and (g) such other powers and duties as may be designated from time-to-time by the Board. The Finance Committee Chair may, from time-to-time, appoint additional Stewards to this committee as he or she deems necessary or appropriate, subject to Board confirmation as set forth above.

(d) **Compensation Committee.** As further set forth in a Compensation Committee charter, the Compensation Committee shall establish and review compensation of Open Health Tools Officers. No Officer shall sit on this Committee. Appointments to the Compensation Committee shall be limited to a two (2) year term.

(e) **Legal Committee.** As further set forth in a Legal Committee charter, the Legal Committee shall meet as necessary to review and take appropriate actions concerning the IP, contractual and other legal policies of Open Health Tools as well as review and approve the development and modification of all standard agreements (including the Membership agreement, Terms of Use and Committer/Contributor agreements). All material modifications of Open Health Tools standard agreements must be approved by the Board. The Legal Committee shall

oversee the application of the IP Policy. The Chairperson may, from time-to-time, appoint additional Stewards to this committee as he or she deems necessary or appropriate.

**Section 4.2 Appointment of Committees.** Based upon the recommendation of the Chairperson, the Board may appoint such committees as the Board from time-to-time deems necessary or appropriate to conduct the business and further the objectives of Open Health Tools (the “Board Committee”). Any appointment by the Board of any other Board Committee having the authority of the Board, including the designation of one Board Committee member as the Chair, must be by resolution adopted by the Board. Any committee having authority of the Board shall consist of two (2) or more Stewards. The Board shall retain the right to limit the powers and duties of any Board Committee that it has created and to disband any such Board Committee in its sole discretion. Board Committee Stewards may delegate their committee responsibilities to any individual that is an employee, officer, director, or consultant of an existing Member. Each Board Committee may invite non-Steward advisors to participate in or attend certain committee meetings in order to assist the Board Committee in the performance of its duties.

**Section 4.3 Powers and Authority of Committees.** The Board may delegate to any Board Committee having the authority of the Board, any of the powers and authority of the Board in the management of the business and affairs of Open Health Tools; *provided, however*, that no Board Committee may: (a) authorize payment of a dividend or any part of the income or profit of Open Health Tools to its directors or officers; (b) approve dissolution, merger, or the sale, pledge or transfer of all or substantially all of Open Health Tools assets; (c) elect, appoint, or remove Stewards or fill vacancies on the Board or on any of its committees; (d) adopt, amend or repeal the Certificate of Incorporation of Open Health Tools, Bylaws or any resolution by the Board.

## ARTICLE V OPEN HEALTH TOOLS COUNCILS

**Section 5.1 Councils.** The Board will initially establish four (4) Councils, and will have the authority to establish additional Councils if required. The CMO and CTO will be the Chairs of the initial four (4) councils as indicated below. Council Chairs have the responsibility for reporting to the Board, on a quarterly schedule, the deliberations, plans and progress of the Council. Each Council shall consist of one (1) or more Stewards nominated by the Council Chair. Council Stewards may delegate their council responsibilities to any individual that is an employee, officer, director, or consultant of an existing Member. Each Council may invite non-Steward advisors to participate in or attend certain committee meetings in order to assist the Council in the performance of its duties. The Board shall retain the right to limit the powers and duties of each Council. The Chairperson can appoint members to the Councils. All Council Charters, including, without limitation, the Council’s rules for meetings, minutes, and quorum, shall subject to Board approval and shall be published publicly on the Open Health Tools website..

(a) **Clinical Council.** As further set out in a Clinical Council charter, the Clinical Council is responsible for ensuring that the design, development and deployment of the

Open Health Tools technology meet the needs of the health domain and industry. As a body that includes established, experienced, professionals from the health care domain, the Clinical Council will be the primary domain expertise resource for the Requirements and Architecture Councils. The Chair of the Clinical Council shall be the CMO.

**(b) Requirements Council.** As further set out in a Requirements Council charter, the Requirements Council is responsible for managing the set of requirements that serves as a base for the planning and development of the Open Health Tools technology, working closely with the Clinical Council and the healthcare community. The Council identifies (and reconciles) applicable standards. The Co-Chair of the Requirements Council shall be the CMO and the CTO.

**(c) Architectural Council.** As further set out in an Architectural Council charter, the Architectural Council has the responsibility of creating and managing the high level architecture of the Open Health Tools technology. Working jointly with the Planning Council, the Architectural Council develops the Road Map, and reviews funded development proposals for compliance with the Road. The Architectural Council will be chaired by the CTO.

**(d) Planning Council.** As further set out in a Planning Council charter, the Planning Council is responsible for implementing the Road Map and managing the project development process. To this end, it must work closely with the Architecture Council on the Road Map and funded development proposals, where the Planning Council will focus on implementation issues of the Road Map (implementation practicality, complementarity with other aspects of the Road Map, schedule, availability of enabling code, schedule). In addition, the Planning Council will be responsible for the on-going monitoring of all development projects, whether in-house, out-sourced, or contributed. The Planning Council will be chaired by the CTO.

## **ARTICLE VI OPEN HEALTH TOOLS OFFICERS**

**Section 6.1 Board Empowerment.** The officers of Open Health Tools shall include the Executive Director, Secretary, CMO, CTO, plus additional officers that the Board shall appoint as it deems necessary in the interests of Open Health Tools. One person may hold no more than two offices in Open Health Tools unless otherwise stated herein with the exception that one person may hold the office of Secretary, Treasurer and one additional office.

**Section 6.2 Nomination and Appointment.** The officers of Open Health Tools shall be appointed annually by the Board in accordance with this Article VI. Each officer shall, during his or her term in office, hold his or her office until he or she shall resign or shall be removed or his or her successor shall be appointed. Any officer may be removed by a majority vote of the Board, subject to Sections 3.2b, 3.2c (viii) and 3.2d (viii).

Appointment of officers shall be held in July of each year. Each officer's term of office shall be for one year, and shall run from July until June of the following year. There shall be no prohibition on re-appointment of an officer following the completion of that officer's term of

office, provided, however, an Officer removed per this Section 6.2 may not be re-appointed. The Board may, by resolution, establish procedures governing nomination and appointment of officers that are not inconsistent with these Bylaws.

**Section 6.3 Executive Director.** The Chairperson, in the role of Executive Director, shall have responsibility for general and active day-to-day management of the affairs of Open Health Tools. In this role, the Executive Director shall have the authority to do the following, as required to carry out the functions of Open Health Tools:

- a) execute, on behalf of Open Health Tools, all contracts, agreements, membership certificates and other instruments;
- b) engage the services of contractors and hire employees; and
- c) Propose annual budget for review by Finance Committee and approval by Board.

Before the execution of any contracts or agreements under which Open Health Tools could incur financial obligations, the Executive Director shall present a summary of the contract to the Board including the criteria of success for the product or services to be delivered through said contract. At subsequent Board meetings, the Executive Director shall report on the progress of executed contracts and provide a close-out summary for those contracts that have been terminated since the previous meeting.

**Section 6.4 Secretary.** The Secretary of the Board shall have the roles and responsibilities described in Section 3.2d above, and shall perform such other duties as may be prescribed by the Board or Chairperson, under whose supervision he or she shall be.

**Section 6.5 Chief Medical Officer.** The CMO's role and responsibilities shall be defined by the Board.

**Section 6.6 Chief Technical Officer.** The CTO's role and responsibilities shall be defined by the Board.

**Section 6.7 Standards of Conduct for Officers.** An officer shall discharge the officer's duties, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the officer reasonably believes to be in the best interests of Open Health Tools. In discharging the duties of an officer, an officer shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case if prepared or presented by: (a) one or more officers or employees of Open Health Tools whom the officer reasonably believes to be reliable and competent in the matters presented; or (b) legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence. An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted in this Section 6.7 unwarranted. An officer is not liable to Open Health Tools, any Member or any other person for any action taken or not taken as an officer, if the officer acted in compliance with this Section 6.7.

## **ARTICLE VII PROJECTS**

**Section 7.1 Projects.** As further set out in the Development Process document, the Board shall establish one or more Projects consistent with the Vision. For each Project, the Board will approve the scope, and establish a written charter describing the goals, development approach, expected contributions, and potential IP issues.

**Section 7.2 Project Leads.** For each Project, the Board will appoint a Project Lead, which can be changed by a majority vote of the Board. The Project Lead will set the ground rules and procedures for the day-to-day management of the Project in accordance with the charter for the Project.

**Section 7.3 Committers.** One or more Committers shall be associated with each Project. As further set out in the Committer Due Diligence Guidelines, a Committer is a Contributor (as such is defined in the Eclipse Public License) who has write-access to Open Health Tools repositories. Contributors may be nominated to become a Committer by a Project Lead or by other Committers, and such nomination must be confirmed by a vote of the Committers or the Board.

## **ARTICLE VIII INDEMNIFICATION OF STEWARDS, OFFICERS AND AGENTS**

**Section 8.1 Indemnification of Stewards, Officers and Agents.** Open Health Tools shall indemnify any person made or threatened to be made a party to an action by or in the right of Open Health Tools to procure a judgment in its favor by reason of the fact that he, his testator or intestate is or was a Steward, director or officer of Open Health Tools, against amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred by him in connection with the defense or settlement of such action or in connection with an appeal therein, except in relation to matters as to which such person is adjudged to have breached his duty to Open Health Tools. Open Health Tools shall indemnify any person, made, or threatened to be made, a party to any action or proceeding other than as described in the preceding sentence (i.e., other than one by or in the right of Open Health Tools to procure a judgment in its favor), whether civil or criminal, including an action by or in the right of any other organization of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any such person served in any capacity at the request of Open Health Tools, by reason of the fact that he, his testator or intestate was a Steward, director or officer of Open Health Tools, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such person acted, in good faith, for a purpose which he reasonably believed to be in the best interests of Open Health Tools and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his conduct was unlawful. Notwithstanding the above, Open Health Tools shall only be subject to these indemnification provisions if: (i) the party seeking the indemnity provides notice of the claim promptly to Open Health Tools; (ii) Open Health Tools is given sole control of the defense and settlement of the claim; (iii) Open Health Tools receives from the party seeking the

indemnity all available information, assistance and authority to defend such claim; and (iv) the party seeking the indemnity has not compromised or settled such proceeding without Open Health Tools prior written consent.

Expenses incurred by a person described in this section in defending a civil or criminal action or proceeding may be paid by Open Health Tools in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such person to repay the amounts so advanced if it should be ultimately determined that such person is not entitled to be indemnified hereunder.

In no event shall individual Members of Open Health Tools be subject to the indemnification and advancement of expenses obligations of Open Health Tools under this section. The indemnification and advancement of expenses granted pursuant to, or provided by, this section shall not be deemed exclusive of any other rights to which a Steward, director, officer, employee or other agent of Open Health Tools seeking indemnification of expenses may be entitled, whether contained in the certificate of incorporation or these Bylaws, or in a resolution of the Board, or an agreement providing for such indemnification or under law or otherwise; provided, that no indemnification may be made to or on behalf of any Steward, director or officer if a judgment or other final adjudication adverse to the Steward, director or officer establishes that his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

Open Health Tools shall purchase and maintain insurance on behalf of any person who is a Steward, director or officer, or was serving at the request of Open Health Tools as a Steward, director or officer or in any other capacity against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not Open Health Tools would have the power to indemnify him or her under this section. The agreement with the provider of the insurance coverage will be made available to Stewards on request.

## **ARTICLE IX MISCELLANEOUS**

**Section 9.1 Fiscal Year.** The fiscal year of Open Health Tools shall begin on January 1 and end on December 31 of the same year.

**Section 9.2 Disbursements.** A process for approving expenditures (including documenting payments received and expenditures allocated, preventing commingling of funds, disposition of the funds upon bankruptcy of the Secretary, etc.) will be developed by the Board.

**Section 9.3 Contributions.** The Board is authorized to undertake actions to ensure that all code and materials contributed to the Open Health Tools code base complies with the terms of the Open Health Tools IP Policy, or other applicable guidelines and agreements as established or approved in accordance with these Bylaws.

**Section 9.4 Expenses.** Each Member will bear its own costs and expenses in connection with its performance of its rights and duties in respect of Open Health Tools, including, without limitation, compensation of its employees, and all travel and living expenses associated with any Member's participation in any meetings and conferences called in connection with the activities of Open Health Tools.

**Section 9.5 Checks, Notes and Contracts.** The Board is authorized to select such depositories as it shall deem proper for the funds of Open Health Tools and shall determine who shall be authorized in Open Health Tools behalf to sign bills, notes, receipts, acceptances, endorsements, checks, releases, contracts and documents. The Board shall make its selection based on objective standards, clear criteria, acting as a prudent and reasonable Board. Decisions should not be made in a manner that gives rise to the reasonable perception of an actual or potential conflict of interest.

**Section 9.6 Investments.** The funds of Open Health Tools may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, or stocks, bonds or other securities, as the Board in its discretion may deem desirable. The Board shall make its selection based on objective standards, clear criteria, acting as a prudent and reasonable Board. Decisions should not be made in a manner that gives rise to the reasonable perception of an actual or potential conflict of interest.

**Section 9.7 Posting of Minutes.** Open Health Tools shall post on its website minutes from all Board Meetings as well as any and all Update Reports and Quarterly Reports. Such minutes shall include the date, time and location of the meeting, a list of attendees, the intended agenda, a brief summary of discussion topics, and the outcome of proposals made (including vote tallies if votes were taken).

**Section 9.8 Notices to Secretary or Chairperson:** Where a written notice to the Secretary or Chairperson is required under the Bylaws, such written notice may a signed document faxed to the Secretary or Chairperson, or an email sent to the Secretary or Chairperson, originating from the email address registered for the person or organization giving notice.

**Section 9.9 Books.** There shall be kept at the office of Open Health Tools correct books of account of the activities and transactions of Open Health Tools, including a minute book which shall contain a copy of the certificate of incorporation, a copy of these Bylaws, and all minutes of the meetings of the Board.

**Section 9.10 Seal.** The seal of Open Health Tools shall be circular in form and shall bear the name of Open Health Tools and words and figures showing that it was incorporated in the State of Colorado and the year of incorporation.

**Section 9.11 Amendments.** These Bylaws may not be amended without (i) the consent of a two-thirds (2/3) majority vote of all Stewards of the Board; and (ii) any other consent requirements expressly set forth herein with respect to such amendment's proposed subject matter. The provisions of any such amended Bylaws will be binding upon all of the Membership.