

# MEMBERSHIP AGREEMENT OF HEALTHCARE SERVICES PLATFORM CONSORTIUM

This Membership Agreement (this "Agreement") is entered into with an effective date of July 7th, 2016 by and between **Healthcare Services Platform Consortium, Inc.**, a Delaware charitable nonstock corporation (the "**Corporation**"), and the organization listed by the applicant (the "**Member**"). For and in consideration of the mutual agreements and provisions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

## RECITALS

- A. The Corporation is organized and operated for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Corporation's mission is to improve clinical outcomes and financial efficiency for the healthcare enterprise by catalyzing industry-wide collaboration in the development of interoperable clinical and business information technology applications, consistent with the standards adopted by the United States Department of Health and Human Services. The Corporation expects that such developments will facilitate the electronic use and exchange of health-related information consistent with the legislative intent of the American Recovery and Reinvestment Act of 2009.
- B. The Corporation has determined that the addition of the Member as a member of the Corporation pursuant to this Agreement and Article III, Section 1 of the Bylaws of the Corporation (the "Bylaws") will better enable the Corporation to fulfill its mission.

## AGREEMENT

### 1. Incorporation

- 1.1. The incorporation of the Corporation will precede ratification of class of membership and representation. The Corporation will be governed initially by the Founding Members that include Intermountain Healthcare, LSU Health Care Services Division, and The Department of Veterans Affairs. Each organization will appoint a representative to serve as a member of the Interim Board of the Directors of the Corporation.
  - a) Within fifteen days from incorporation, the Founding Members will vote in a Chairman of the Board and the initial ratification of the bylaws of the Corporation, including initial governance, class of membership, membership fees, schedule of events and meetings, etc.
  - b) The Founding Members will vote in a five-member Interim Board of directors who shall serve for the initial three-month duration. This board will dissolve when the final board members are voted in by the Benefactor Members. The final Board of Directors will consist of 9 members including the Chairman of the Board. The Chief Executive Officer of the Corporation will hold one board seat.
- 1.1. New members will be initially voted in as members of the Corporation based on the ratified fee structure and the ratified Bylaws.

### 2. Class of Membership and Representative

- 1.1. Class. The Member is a member of the selected class of membership within the meaning of Article III, Section 1 of the Bylaws:
- 1.2. Representative. The Member has designated a person to serve as its duly authorized representative at meetings of the members of such membership class, for the receipt of notices, and executing ballots. The Member may change the representative by written notice to the Corporation:

### 3. Membership Fees

- 1.1. Initial Fee from Benefactor Members. Each Benefactor Member signing below promises to pay an initial one-time fee according to the current rate schedule (the "Initial Fee"), by check or by money order or by wire transfer made payable to the Corporation within 30 days of signing. There is no Initial Fee for any other membership class.
- 1.2. Payment of Membership Fees. The Member hereby promises to pay its annual membership fees within 30 days of signing this Agreement and on the anniversary date of signing this Agreement as long as it is a member of the Corporation. A member's class is determined by the member's choice and the member's qualifications for a class. Member will pay the membership fee, by money order, or by wire transfer made payable to the Corporation. Initial membership in the Corporation is dependent upon payment of the initial applicable membership fees to the Corporation and any renewal of membership in the Corporation is dependent upon payment of the applicable annual membership fees. The membership fees are set forth in the membership matrix found at <http://hspconsortium.org/join/>. Questions can be discussed on a case by case basis. The 4 general categories are:

- (a) Benefactor Member
- (b) Associate Member
- (c) Individual Member
- (d) Student/Faculty Member

- 1.3. Non-refundable. Membership fees shall not be refundable.
- 1.4. Failure to Pay Membership Fees. Membership in the Corporation is dependent upon advance payment of the applicable membership dues owed to the Corporation annually. If a Benefactor Member fails to pay the full amount of annual membership fees called for in this Section 3 by the due date, and that default is not corrected within fifteen (15) days after Member receives a written or telephonic notice from the Corporation, the following provisions shall apply, commencing after such 15 day delay period and continuing until the earlier to occur of (i) the termination of the Benefactor Member's membership in the Corporation or (ii) such earlier date as the Benefactor Member has otherwise cured the default in accordance with subsection (d) below.
  - a) Whenever the vote or consent of the Benefactor Member or of any director of the Corporation or a member of a committee of the Corporation who is an officer, director, representative, employee or agent of the Benefactor Member would otherwise be required or permitted by the Bylaws or by applicable statute, the Benefactor Member or such director shall not be entitled to participate in such vote or consent, and such vote or consent shall be calculated as if the Benefactor Member was not a member of the Corporation or if such director or committee member was not a member of the Corporation's Board of Directors or any committee. In addition, Benefactor Member's failure to timely pay its membership fees will automatically suspend the Benefactor Member's other rights and privileges of membership in the Corporation.
  - b) The Corporation may commence legal proceedings against the Benefactor Member to collect the due and unpaid amount of membership fees, together with interest thereon for the account of the Corporation from the due date at the maximum rate allowed by applicable law, plus the costs and expenses of collection (including attorneys' fees and expenses).
  - c) If, after thirty (30) days from the expiration of the 15 day delay period, the Benefactor Member has not paid the full amount of due and unpaid membership fees, together with interest thereon, the Corporation may terminate the Benefactor Member's membership in the Corporation by the affirmative vote of at least a majority of the other Benefactor Members, provided notice of the intention to terminate the Benefactor Member's membership interest is provided to the Member.
  - d) Notwithstanding the foregoing provisions of this Section, the Benefactor Member shall have the opportunity to cure its default in the payment of the annual membership fees pursuant to this subsection if the Benefactor Member exercises its opportunity to cure within thirty (30) days of the termination of the 15day delay period prescribed in the first sentence of this Section (the "Cure Period"). In order to cure such default, prior to the end of the Cure Period, the Benefactor Member must pay all of its unpaid membership fees to the Corporation, together with 10% per annum interest thereon for the account of the Corporation. In the event that the Benefactor Member cures its default as provided in this subsection prior to the expiration of the Cure Period, the Corporation shall reinstate any voting privileges revoked pursuant to subsection (a) and rescind any actions taken against the Benefactor Member pursuant to Sections subsections (b) and (c) as if the Benefactor Member had not defaulted in its payment of membership fees hereunder.
  - e) The Board may change the amount of the fees for each class of membership, but no more frequently than once each year.
- 1.5. In-kind Contributions. In exceptional cases and if unanimously supported, the Board may approve, on a case-by-case basis, in-kind contributions for the payment of the Initial Fee or of annual membership fees.

#### **4. Obligations of the Member**

In addition to the obligation to pay annual membership fees in the manner set forth in Section 3 of this Agreement, the Member hereby represents, covenants and warrants as follows:

- 1.1. Contributions. Benefactor Members shall use their best efforts to make contributions to the Corporation as described in the applicable subsection of Article III, Section 3.1(a) of the Bylaws.
- 1.2. Organization of the Member. Each Benefactor or Associate Member is a legal entity duly organized, validly existing and in good standing under the laws of its state of incorporation or formation and has all requisite power and authority to execute and deliver this Agreement, and perform all of its obligations under this Agreement.
- 1.3. Governing Documents of the Corporation. The Member acknowledges that, in its capacity as a member, it is bound by terms and conditions of the Bylaws and the Corporation's Certificate of Incorporation, each of which the Member acknowledges that it has read and understands, and such policies and procedures as may be adopted from time to time by the Board of Directors of the Corporation.
- 1.4. Membership Term.
  - a) A Member (other than a Benefactor Member) commits to remain a member in good standing of this Corporation for a minimum period of one year from signing this Agreement and to pay the fees specified for that one-year period.
  - b) A Benefactor Member commits to remain a member in good standing of the Corporation for at least three years from signing this Agreement and to pay the fees specified for that period to provide a stable funding source for the Corporation. After the initial three-year membership term, a Benefactor Member may enroll for subsequent terms of one year each.
  - c) A Benefactor Member is exempt from this three-year commitment if prohibited by law from making it. But that Benefactor Member commits, at a minimum, to a one- year term of membership and to pay the fees specified for that period.

#### **5. Obligations of the Corporation**

- 1.1. Organization of the Corporation. The Corporation represents, covenants and warrants that it is a charitable nonstock Delaware corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to:
  - a) conduct its charitable activities as presently conducted and contemplated;
  - b) execute and deliver this Agreement, and perform all of its obligations under this Agreement; and
  - c) grant membership to the Member in accordance with the terms of this Agreement, its Certificate of Incorporation and its Bylaws.

- 1.2. Use of Membership Fees. The Corporation (i) shall use membership fees to carry out the charitable purposes of the Corporation and (ii) represents, covenants and warrants that no part of the net income or assets of the Corporation shall ever inure to the benefit of any director, officer, or member thereof or to the benefit of any private person within the meaning of section 501(c)(3) of the Code.

## **6. Intellectual Property ("IP")**

This Agreement does not require Member to provide or receive any confidential information or IP. Any IP issues will be the subject of a separate agreement.

## **7. Termination of Membership**

- 1.1. Voluntary Withdrawal. The Member may in its own discretion withdraw and be automatically removed from membership in the Corporation at any time (i) after three (3) years for a Benefactor Member, and (ii) after one (1) year for any other Member, by giving written notice to the Secretary of the Corporation. In the event of its permissible withdrawal pursuant to this subsection 7.1, the Member forfeits any entitlements or rights arising from such membership and shall have no obligation to pay additional membership fees or make any other required contributions to the Corporation.
- 1.2. Involuntary Termination. The Member's membership in the Corporation shall be terminated upon the occurrence of any of the following events:
  - a) a removal pursuant to Article III of the Bylaws;
  - b) the failure to pay annual membership fees on or before the due date prescribed for payment in accordance with the procedures set forth in Section 3 of this Agreement; provided, however, the Member's membership in the Corporation may be reinstated upon (i) the payment of the full amount of due and unpaid membership fees payable under this Agreement, together with interest thereon; (ii) the payment in full of a non-refundable reinstatement fee equal to 25% of the Member's annual fees for the year of involuntary termination; and (iii) the affirmative vote of at least a majority of the Benefactor Members; or
  - c) the Member's liquidation or dissolution under the laws of the State of its incorporation or organization.
  - d) The Member is under legal sanction under US state or federal or applicable international laws.
- 1.3. Obligation to Pay Membership Fees. The termination of the Member's membership in the Corporation pursuant to this Section 7 shall not relieve any Benefactor Member of its obligation to pay any portion of its annual membership fees for the full (3) year membership commitment accrued and unpaid as of the effective date of such termination of membership. In the event of a Benefactor Member's voluntary withdrawal from membership in the Corporation, the Benefactor Member shall be obligated to pay all annual membership fees payable for the full three (3) year membership commitment under Section 4.4(b) of this Agreement.

## **8. Resolution of Disputes**

Any Member complaints which cannot be resolved to the mutual satisfaction of the Member and the Corporation through communications between the Member and the President (or the President's designee) shall be submitted for final resolution to a committee appointed by the Board of Directors of the Corporation. Any such dispute that cannot be resolved by such committee shall be resolved by arbitration in Utah, pursuant to the Commercial Arbitration Rules then in effect for the American Arbitration Association. The parties shall be entitled to conduct reasonable discovery in accordance with the Federal Rules of Civil Procedure, prior to the arbitration hearing, and the Federal Rules of Evidence shall be applicable to the arbitration hearing. Neither the Member nor the Corporation shall commence any action against the other to resolve any such dispute in any court except to confirm such arbitrator's award or to obtain equitable relief. Judgment upon any such award rendered by an arbitrator may be entered by any court in Utah having jurisdiction thereof. The arbitrator (a) shall not have any power or authority to add to, alter, amend or modify the terms of this Membership Agreement; (b) shall be bound by, the laws of Delaware, except that this Section 8 shall be governed by the Federal Arbitration Act; (c) shall have no power or authority to grant or award punitive damages; and (d) shall establish and enforce appropriate rules to ensure that the proceeding, including the decision, be kept confidential and that all confidential information of the parties be kept confidential and be used for no purpose other than the arbitration. The parties shall be deemed to have waived any rights to punitive damages. This provision shall survive the termination of this Agreement and shall apply equally to any former Member, including with regard to any continuing obligation to pay membership fees pursuant to Section 3 hereof. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, specifically including Section 10.5 hereof, any Member that constitutes a State agency, board, office, unit, department or other State entity shall not be bound by the provisions of this Section requiring submission to arbitration in any location outside of their affiliated State or be subject to or bound by the laws of any State other than the applicable laws of their affiliated State.

## **9. Term of Agreement**

The terms and provisions of this Agreement shall apply for an initial period commencing on the effective date of this Agreement and ending three years thereafter for a Benefactor Member and one year thereafter for any other Member, unless said membership is renewed as provided herein. Thereafter, upon any renewal of membership as provided herein, the terms and provisions of this Agreement shall be renewed automatically and continue in effect on a year-to-year basis unless the Agreement is terminated pursuant another provision of the Agreement.

## **10. General Provisions**

- 1.1. Remedies. The remedies provided to the parties by this Agreement are not exclusive or exhaustive, but are cumulative of each other and in addition to any other remedies the parties may have.
- 1.2. Notices. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and transmitted by commercial courier, email or other electronic transmission, or by first class mail or certified mail, postage prepaid, to the President of the Corporation or to the Member's representative at the address set forth in Section 2.2. Any party may change the address to which notices are sent by giving notice in accordance with the provisions of this section. Any notice given by mail shall be deemed to be delivered at the time when the same shall be deposited in the United States mails, as aforesaid.

- Any notice given by email or other electronic transmission shall be deemed to be given upon successful transmission thereof.
- 1.3. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, and nothing in this Agreement is intended, nor shall it be deemed, to confer benefits on any third party.
  - 1.4. Assignment. No assignment of this Agreement or the rights and obligations hereunder shall be valid without the prior written consent of the other party.
  - 1.5. Governing Law. Except as expressly provided otherwise herein, this Agreement shall be governed by and construed in accordance with the laws of the State of Utah applicable to contracts to be performed therein, without regard to the principles of conflicts of law thereof.
  - 1.6. Severability. If any part of this Agreement shall be held invalid or inoperative for any reason, the remaining parts, so far as is possible and reasonable, shall remain valid and operative.
  - 1.7. Waiver. Waiver by any party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any prior, concurrent or subsequent breach. None of the provisions of this Agreement shall be considered waived by any party except when such waiver is given in writing.
  - 1.8. Entire Agreement. This Agreement, any exhibits and any amendments or addenda hereto, all of which are hereby incorporated by reference, constitute the entire agreement between the parties regarding the subject matter of this Agreement and supersede all prior or contemporaneous discussions, representations, correspondence and agreements, whether oral or written. In the event of any conflict between this Agreement and the provisions of the Corporation's Articles of Incorporation and/or its Bylaws, the conflict shall be interpreted and resolved in the following order of precedence, except as otherwise required by applicable law: the terms and provisions of this Agreement shall control, followed by the Articles of Incorporation and then the Bylaws.
  - 1.9. Headings. The headings contained in this Agreement are for convenience purposes only and shall not affect the meaning or interpretation of this Agreement.
  - 1.10. Amendment. This Agreement shall not be amended or modified except by a written document executed by both of the parties hereto and such written amendment(s) shall be attached to this Agreement.
  - 1.11. Effective Date. The effective date of this Agreement shall be the date full payment is received by the Corporation.
  - 1.12. Counterpart Signatures. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute a single instrument.
  - 1.13. No Third Party Beneficiary. The obligations of each party to this Agreement shall inure solely to the benefit of the other Party, and no other person or entity shall be a third party beneficiary to this Agreement.
  - 1.14. Survival. The provisions of this Agreement which should by their nature survive termination or expiration, shall survive termination or expiration of this Agreement, specifically including without limitation, Sections 3, 4, 7, 8 and 10.
  - 1.15. Maintenance of Tax Exempt Status. Nothing in this Agreement shall be construed or interpreted in any matter that could adversely affect or impact the Corporation's status as an organization exempt under Section 501(c)(3) or cause it or its directors to be subject to any material penalty or fine related to such code section. If the Corporation determines in its reasonable discretion that any terms of this Agreement or the performance of any obligations hereunder will either (i) jeopardize Corporation's status as an organization exempt under Section 501(c) (3) or cause it or its directors to be subject to any material penalty or fine related to such code section, the Corporation may, in its discretion, (i) request written amendment of this Agreement to remove or amend the applicable sections, or (ii) terminate this Agreement upon no less than thirty (30) days' prior written notice to Member.

For questions or concerns please contact: [info@hspconsortium.org](mailto:info@hspconsortium.org)