



Thank you for your interest in the CommonWell Health Alliance. To help us process your membership application, please complete the below information along with your signed Membership agreement, which requires a signature by an authorized member of your organization. Once completed and signed, please email the document in full to [membership@commonwellalliance.org](mailto:membership@commonwellalliance.org).

**Organization Information:**

Organization Legal Name:  
 Organization Address:  
 Corporate Website:

**Contact Information:**

**Authorized Signatory Contact on Membership Agreement:**

First Name: Direct Phone Number:  
 Last Name: Email:  
 Title:

**Alliance Primary Contact (if different than authorized signatory contact):**

First Name: Direct Phone Number:  
 Last Name: Email:  
 Title:

**Invoice Information:** Please complete both email and street address, denoting which is your preferred delivery medium.

Billing Street Address:  
☐ Preferred invoicing method  
 Billing Email Address:  
☐ Preferred invoicing method

**Membership Category (Select One Category or the Other)**

☐ Contributor Member  
☐ General Member

**Membership Fees**

As we are a not-for-profit funded by our membership fees, membership dues will be based upon an organization's annual US revenue. In order for us to invoice you correctly, please confirm your organization's approximate annual US revenue based on the chart below. Available commercial services require applicable Commercial and Certification fees.

Organization	Annual US Revenue	Contributor Member Annual Dues	General Member Annual Dues	Organization Category (Mark with an "x")
NPO/Government	N/A	NA	\$2,500	<input type="checkbox"/>
Corporate	< \$50M	\$10,000	\$5,000	<input type="checkbox"/>
	\$50M - \$100M	\$20,000	\$7,500	<input type="checkbox"/>
	\$100M - \$500M	\$35,000	\$15,000	<input type="checkbox"/>
	\$500M - \$1B	\$60,000	\$25,000	<input type="checkbox"/>
	\$1B - \$2B	\$90,000	\$50,000	<input type="checkbox"/>
	> \$2B	\$100,000	\$75,000	<input type="checkbox"/>

## CommonWell Health Alliance

### Membership Agreement

This Membership Agreement (this “**Agreement**”) is entered into by and between CommonWell Health Alliance Inc. (the “**Alliance**”) and each Member. By executing this Agreement, the Member accepts Membership in CommonWell Health Alliance in accordance with the following terms and conditions.

#### Agreement

##### 1. Definitions

“**Affiliate**” shall have the meaning defined in the Bylaws.

“**BOD**” shall have the meaning defined in the Bylaws.

“**Bylaws**” means the bylaws of the Alliance, as adopted and approved by the BOD and as such bylaws may be amended from time to time.

“**Committee**” shall have the meaning defined in the Bylaws.

“**Compliant Portion**” means only those specific portions of systems, services, apparatuses, devices, procedures, processes, materials, software, metrics, data, data structures and data communication methods that (a) implement and are compliant with all relevant and applicable portions of a Specification, and (b) are within the bounds of the Scope.

“**Confidential Information**” means all non-public information (including, but not limited to, trade secrets) related to the Scope that is disclosed by a Member (or the Alliance) to another Member (or the Alliance) in connection with Alliance activities orally, electronically or visually, in machine or human readable format and in tangible or intangible form, provided that such information is (i) clearly designated, labeled or marked as “Confidential” prior to or at the time it is provided by the discloser, or (ii) of a nature that recipient knows or should know to be confidential.

“**Contribution**” means a submission to or for a Committee or Working Group by a Member to add to or to modify a Specification or a Draft Specification or portion thereof, provided the submission is either (i) submitted in writing (including a writing in an electronic media or an electronic transmission), or (ii) if stated orally, memorialized with specificity in the written minutes of a Committee or Working Group, attributed in the meeting minutes to the submitting Member, and promptly provided to the individual representing the submitting Member. In the case of subsection (ii) above, if a submitting Member withdraws its submission as soon as practicable and, in any event, no later than forty-five days following receipt of such written minutes, then such submission shall not be deemed a Contribution. Formal requirements and procedures for submission of Contributions are available from the Alliance.

“**Draft Specification**” shall have the meaning defined in the Bylaws.

**“Member”** shall have the meaning defined in the Bylaws.

**“Necessary Claims”** means those claims of all patents and patent applications, other than design patents and design registrations, throughout the world that (i) a Member or any of its Affiliates has the right, at any time during the term of this Agreement, to grant licenses of the nature agreed to be granted herein; (ii) are within the bounds of the Scope; and (iii) are infringed only when it is not possible to avoid infringing because there is no commercially reasonable non-infringing alternative for implementing such portions of a Specification. Necessary Claims do not include any claims other than those set forth above, even if contained in the same patent as Necessary Claims.

**“Membership”** means the state of being a Member of any class as defined in the Bylaws.

**“Scope”** means interoperability between and among electronic health record solution suppliers and other clinical data providers to enable trusted interoperation, interconnection, interaction, communication, messaging, and data liquidity across settings of care in accordance with a Specification.

**“Specification”** shall have the meaning defined in the Bylaws.

**“Technology”** means systems, services, apparatuses, devices, procedures, processes, materials, software, metrics, data, data structures and data communication methods within the Scope.

**“Working Group”** shall have the meaning defined in the Bylaws.

## **2. Member Benefits and Responsibilities**

### **2.1. Support for the Bylaws**

During the term of its Membership in the Alliance, the Member plans to support the design, development, and application of Technology that will implement and comply with a Specification adopted and released by the BOD in accordance with this Agreement and the Bylaws. However, nothing in this Agreement shall obligate the Member to manufacture, sell, or use Technology complying with a Specification or preclude the use of alternate or competing specifications.

### **2.2. Member Benefits**

The Member shall be entitled to the benefits provided by this Agreement and the Bylaws.

### **2.3. Use of Name**

The Member may publicly disclose that it is a Member of the Alliance. The Alliance shall have the right to include the Member’s name in any lists of Members published by the Alliance and to announce that the Member has joined the Alliance.

## **2.4. Affiliates**

The Member acknowledges and agrees that it and its Affiliates, if any, shall be treated for all purposes as one Member, entitled to one vote on all matters upon which the Member is entitled to vote. The Member also acknowledges and agrees that Section 3 below binds the Member and its Affiliates in accordance with its terms.

## **2.5. Bylaws**

The Member has had adequate opportunity to review and obtain independent legal advice regarding the Bylaws, and hereby agrees to abide by the terms and conditions of the Bylaws. Terms used in this Agreement, without definition, have the same meaning as when the same terms are used in the Bylaws. In the event of a conflict as to the meaning of any such term, the meaning in the Bylaws shall have precedence.

## **2.6. Contributions**

The Member may make Contributions to a Specification, subject to the terms and conditions of this Agreement and in accordance with the Bylaws.

## **2.7. Dues and Other Fees**

The Member shall pay dues, fees and other assessments, as established from time to time by the Alliance and the BOD.

## **2.8. Expenses**

The Member shall bear its own costs and expenses incurred in connection with its Membership in the Alliance, such as travel, employee compensation and incidental expenses.

# **3. Intellectual Property**

## **3.1. Ownership**

The Member acknowledges and agrees that each Member shall retain ownership of all worldwide rights, titles, and interests in and to its Contributions made pursuant to the terms of this Agreement, subject to the licenses granted herein.

## **3.2. Patents**

### **3.2.1. Compliant Portion**

For each Specification adopted by the Alliance, the Member, upon request, agrees to grant any other Members, or licensees authorized by the Alliance, a worldwide, royalty-free, non-exclusive, non-sublicensable, non-transferable (except as provided in Section 8.9 of this Agreement or in the Bylaws) license under the Member's Necessary Claims under reasonable and nondiscriminatory terms to make, have made, use, import, offer to sell, sell, and otherwise distribute Compliant

Portions, provided, however, such agreement to license shall not extend outside the Compliant Portions. Such license grant may be conditioned upon, among other things, the licensee Member's grant of a reciprocal license.

### **3.2.2. Disclosures**

The Member shall make a good faith effort to disclose in writing to the Secretary (as defined in the Bylaws) as soon as reasonably practicable, any Necessary Claims or likely Necessary Claims of the Member with respect to a Draft Specification or any as yet unadopted revision or proposed update to a Specification which an individual representative of the Member, involved in the development of a Specification or revision or update is personally aware. These disclosures will be recorded by the Secretary. As part of the disclosure process, a patent call will be made at least quarterly and prior to the publication of each Draft Specification by a Committee or Working Group.

The obligations set forth above do not, however, impose any obligations on Members to perform or conduct patent or application searches. Further, nothing in this Agreement nor the act of a Member submitting, supporting or approving a proposal for a Specification will be construed or otherwise interpreted as any kind of express or implied representation that such Member does or does not hold patents or patent applications which contains Necessary Claims. Notwithstanding anything to the contrary herein, nothing shall be construed as requiring Member to disclose unpublished patent applications.

### **3.2.3. Exclusion**

Specific Necessary Claims may be excluded from the licensing requirements in Section 3.2.1 by a Member if that Member indicates a refusal to license specific Necessary Claims no later than seventy-five days after the publication of each first Draft Specification by the Alliance (or a Committee or Working Group, as applicable) by specifically disclosing Necessary Claims that will not be licensed according to Section 3.2.1. For each subsequent Draft Specification, if any claims are made necessary as a result of subject matter not present or apparent in a previous Draft Specification, the Member may exclude these new Necessary Claims (and only these claims) by indicating its refusal to license these claims within forty-five days after the publication of the applicable Draft Specification. Except as provided herein, no claims may be excluded. Notwithstanding the foregoing, a Member shall not exclude Necessary Claims required to use the Contributions of such Member according to the licenses set forth in this Section 3.

Any exclusion of Necessary Claims in pending, unpublished applications must provide either the text of the filed application or identification of the specific part of the applicable Draft Specification whose implementation makes the excluded claim necessary.

If a Member excludes Necessary Claims and the Member is a participant in the Committee or Working Group for applicable Specification, the BOD may either (a) at its sole discretion terminate the participation of the Member in the Committee or Working Group, or (b) terminate the Membership of the Member in the Alliance pursuant to the Bylaws.

### **3.2.4. Anti-circumvention**

The Member agrees that it will not assign patent rights for any patents having Necessary Claims for the purpose or effect of circumventing this Section 3 of this Agreement or the Bylaws. Any such transfer by the Member to a third party of a patent having Necessary Claims shall be subject to the terms and conditions of this Agreement and the Bylaws. A Member may choose the manner in which it complies with this Section, provided that any agreement for transferring or assigning Necessary Claims includes a provision that such transfer or assignment is subject to existing licenses and obligations to license imposed on the Member by standards bodies, specification development organizations, or similar organizations (or language of similar import).

### **3.3. Copyrights**

The Member grants and agrees to grant to other Members and the Alliance a worldwide, irrevocable, non-exclusive, non-transferable (except as otherwise provided in the Bylaws or this Agreement), sublicensable, royalty-free copyright license to reproduce, create derivative works of, distribute, display, and perform the Contributions of the Member solely for the purposes of developing, publishing, supporting and distributing (i) Draft Specifications and Specifications; and (ii) Technology incorporating Compliant Portions. Subject to Section 3.1, the Alliance shall own all right, title, and interest in the compilation of Contributions forming the released Specifications and related works. Upon the release of a Specification that has been finally adopted by the BOD, the Alliance grants and agrees to grant the Member a worldwide, non-exclusive, non-transferable (except as otherwise provided in the Bylaws or this Agreement), non-sublicensable, royalty-free copyright license to reproduce, distribute, display, and perform the Specification and the Contributions of any and all Members for the purpose of developing and promoting Technology complying with the Specification. Members will have the right to create derivative works of the Specification and the Contributions of any and all Members to the extent that the derivative works are created for the purpose of developing and promoting Technology complying with the Specification.

#### **3.3.1. Copyright Notices**

Any publication of a Specification shall contain an appropriate copyright notice as determined by the Alliance from time to time. Additionally, public references to the Specifications shall attribute authorship to the Alliance to the extent appropriate and practical.

#### **3.3.2. Survival**

The licenses granted under this Section shall survive termination of a Member's participation and membership in the Alliance.

### **3.4. Trademarks**

#### **3.4.1. CommonWell Trademarks (Standard Character Mark and Logo)**

The Alliance shall grant the Member a worldwide, non-exclusive, royalty-free, non-transferable (except as provided in Section 8.9 of this Agreement and the Bylaws), non-sublicensable (except to third parties that are distributing and selling the Member's goods and services incorporating Compliant Portions), right to use CommonWell trademarks solely in conjunction with marketing, selling and distributing of the Member's Technology. Members may only use CommonWell trademarks when referring to a Compliant Portion, and such references will be in accordance with the terms and conditions of this Agreement, the Bylaws, and the Alliance's trademark usage guidelines, which may be promulgated from time to time by the Alliance. However, nothing in this Agreement limits a Member's right to display CommonWell trademarks in a nominative or referential manner if and as permitted without a license under applicable law. In the event of a conflict between the trademark usage guidelines and this Agreement or the Bylaws, the provisions of the Agreement and the Bylaws shall prevail over the trademark usage guidelines. The Member agrees that it shall not use CommonWell trademarks in a manner that derogates from the Alliance's rights in CommonWell trademarks, nor take any action that will interfere with or diminish the Alliance's rights in CommonWell trademarks, either during the term of this Agreement or thereafter. The Member agrees that all use of CommonWell trademarks will inure solely to the benefit of the Alliance. The Member may not use CommonWell trademarks in any way as an endorsement or sponsorship of the Member's goods or services by the Alliance.

##### **3.4.1.1. Attribution**

On all items, including without limitation all products, packaging, technical documentation, brochures, advertisements, press releases, promotions, and other marketing materials, bearing or using CommonWell trademarks, the Member will include the following legend in the same manner in which it uses its own trademarks:

“CommonWell Health Alliance’ and the CommonWell logo are licensed trademarks of CommonWell Health Alliance in the U.S. and other jurisdictions.”

##### **3.4.1.2. Quality**

The Member agrees to use reasonable efforts to maintain the quality of the Member's Technology used in conjunction with CommonWell trademarks at a level that meets or exceeds industry standards and is at least commensurate with the quality of similar offerings previously distributed by the Member, if any.

### **3.5. Extension to Affiliates**

The licenses and obligations granted to Members shall extend to the Member's Affiliates in existence during the period of membership, and such Affiliates are bound by the terms and conditions of the Bylaws and this Agreement and that the Necessary Claims of such Affiliates are

included in the Necessary Claims as defined in the Bylaws and this Agreement. No rights, duties or obligations contained in this Agreement, the Bylaws or any other agreements related to the Scope shall be applicable to an Affiliate that does not meet the criteria set forth in the preceding sentence. The extension of license rights and obligations granted to a Member's Affiliates shall apply only so long as such Affiliate remains an Affiliate as defined in the Bylaws. If at any time, an Affiliate of a Member ceases to meet all the requirements of an Affiliate as defined in the Bylaws, such entity may join the Alliance as a Member by complying with all then applicable prerequisites for Membership in the Alliance.

### **3.6. No Implied Licenses**

Except as expressly provided by the Bylaws or policies or procedures adopted by the BOD under the Bylaws and in this Agreement, no other rights are granted or received hereunder by implication, estoppel or otherwise. All rights not expressly granted are reserved.

### **3.7. Enforcement of Intellectual Property Rights**

#### **3.7.1. Enforcement by the Alliance**

The Alliance shall have the primary responsibility for enforcing any intellectual property rights of the Alliance and for enforcing compliance with the terms of any membership agreement (including this Agreement) by any Members upon written notice to the other Members. The Member agrees to cooperate with the Alliance and other Members' reasonable written requests in safeguarding the intellectual property of the Alliance.

#### **3.7.2. Enforcement by the Member**

Each Member retains the right to enforce its intellectual property rights. Upon written notice to the Alliance, one or more Members ("Prosecuting Members") may seek to enforce other Members' compliance with the Bylaws and Section 3 of this Agreement. Other Members may, at their discretion, join in the enforcement action to become Prosecuting Members or provide reasonable assistance in the prosecution of such enforcement action, at the expense of the Prosecuting Member (except for the value of the time of the assisting Members' employees which cost shall be borne by the assisting Member), so as to become "Assisting Members"; provided, however, that none of the Assisting Members shall be required to be named as a party to such action unless its joinder is necessary to the maintenance of such action. In the event any Member does not wish to participate in the enforcement action and is nonetheless joined as a necessary party ("Joined Member"), the Prosecuting Member agrees to pay the reasonable expenses (including without limitation attorneys' fees and fees of other professionals) incurred by the Joined Member in such enforcement action (except for the value of the time of a Joined Member's employees, which cost shall be borne by the Joined Member). The Prosecuting Members will retain any recovery in such suit.



## **4. Confidentiality**

### **4.1. Confidentiality and Non-Disclosure.**

All Contributions shall be considered non-confidential and non-proprietary information, regardless of any markings to the contrary included thereon or related thereto. Draft Specifications (*i.e.*, the selection and compilation of Contributions comprising the Draft Specifications) and Specifications approved, but not yet released, shall be considered Confidential Information. Each Member agrees not to disclose Confidential Information, except as otherwise provided for under the terms and conditions of the Bylaws or this Agreement. Unless the BOD determines otherwise, this obligation of confidentiality will expire three years from the date of disclosure of such information hereunder. Confidential Information shall not include any information that is: (a) in the public domain other than by the recipient's breach of a duty; (b) rightly received from a third party without any obligation of confidentiality; (c) rightfully known to the recipient without any limitation on use or disclosure prior to its receipt from the disclosing party; (d) independently developed by employees of the recipient without breach of the terms of this Agreement; (e) disclosed as required by law to comply with applicable laws or regulations, or with a valid order of a court or other governmental body of the United States, provided a protective order is sought to minimize the required disclosure; (f) made public by unanimous agreement of the BOD; or (g) inherently disclosed in the marketing or sale of Technology without confidentiality obligations.

### **4.2. Survival**

The obligations of this Section 4 shall survive termination of this Agreement.

### **4.3. Residuals**

Any party shall be free to use Residuals for any purpose including use in the development, manufacture, marketing and maintenance of its products and services, subject only to the obligations herein with respect to disclosure of such Confidential Information. The term "Residuals" means that Confidential Information in non-tangible form that may be retained in the unaided memories of individuals who have had rightful access to such Confidential Information under this Agreement. It is understood that receipt of Confidential Information under this Agreement shall not create an obligation in any way limiting or restricting the assignment and/or reassignment of any of the Member's employees within the Member's organization. However, this Section 4.3 shall not be deemed to grant to any party a license under any other party's copyrights, maskworks, patents or other intellectual property rights.

### **4.4. Independent Development**

This Agreement and the terms of confidentiality hereunder shall not be construed to limit the Member's right to independently develop or acquire products or technology, including similar or competing products or technology, without the use of other Members' Confidential Information, without breach of the terms of this Agreement.

## **5. Term**

Unless terminated as provided herein and except as otherwise provided herein or in the Bylaws, the provisions of this Agreement shall remain in full force and effect as to the Members renewing annually upon the Member's payment of dues, if applicable.

## **6. Withdrawal and Termination of the Member**

### **6.1. Withdrawal by the Member**

Except as otherwise set forth in this Agreement or the Bylaws, the Member may withdraw from Membership in the Alliance at any time upon giving sixty days written notice (the "Withdrawal Notice") to the Secretary of the Alliance or the BOD. The sixtieth day after receipt of the Withdrawal Notice by the Secretary of the Alliance is referred to herein as the "Effective Date of Withdrawal." The Member shall be obligated to pay dues, assessments, or fees, which accrued prior to the Effective Date of Withdrawal. After the Effective Date of Withdrawal, the Member shall not be subject to any agreement to grant a license of its Necessary Claims, except as provided in Sections 6.1.1 and 6.2.1.

#### **6.1.1. Survival of Agreement to Grant License if the Member Withdraws**

Upon a Member's withdrawal, the Member's agreement to grant licenses as provided in Section 3 shall remain in full force and effect for the following: (i) Specifications to which the BOD gave notice of its approval seventy-five or more days before the Member's Effective Date of Withdrawal ("Pre-withdrawal Committed Specifications"); (ii) any Contribution made by the withdrawing Member to a Specification prior to the Member's Effective Date of Withdrawal; and (iii) unmodified portions of Pre-withdrawal Committed Specifications that are contained in a Specification approved after the Member's Effective Date of Withdrawal. Such licenses and agreements to grant licenses shall extend to all Members of the Alliance, including Members who become Members after the Member's Effective Date of Withdrawal if such Members that join the Alliance after the Member's Effective Date of Withdrawal grant reciprocal licenses to the Withdrawing Member for the Withdrawing Member's products or product components that have been designed and released for fabrication prior to the Member's Effective Date of Withdrawal.

### **6.2. Termination of the Member by the Alliance**

The Alliance may terminate for cause the Member's status as a Member and the Member's rights under this Agreement or the Bylaws on written notice, if the Member breaches its material obligations under this Agreement or under the Bylaws, provided that the Member has been provided written notice (the "Termination Notice") and thirty days to cure the breach. If the Member fails to cure the breach within thirty days following receipt of the Termination Notice, the Member's status as a Member and the Member's rights under this Agreement shall immediately terminate. The date of termination in accordance with the immediately preceding sentence is referred to herein as the "Effective Date of Termination." The Member shall be obligated to pay dues, assessments, or fees that accrued prior to the Effective Date of Termination. After the

Effective Date of Termination, the Member shall not be subject to any agreement to grant a license of its Necessary Claims, except as provided in Sections 6.2.1.

#### **6.2.1. Survival of Agreement to Grant License if the Alliance Terminates the Member**

A terminated Member's agreement to grant licenses as provided in Section 3 shall remain in full force and effect for the following: (i) Specifications to which the BOD gave notice of its approval more than seventy-five days before the Member's Effective Date of Termination ("Pre-termination Committed Specifications"); (ii) any Contribution made by the Member prior to the Member's Effective Date of Termination; and (iii) unmodified portions of Pre-termination Committed Specifications that are contained in Specifications approved after the Member's Effective Date of Termination. Such licenses and agreements to grant licenses shall extend to all Members, including Members who become Members after the Member's Effective Date of Termination.

#### **6.3. Termination upon Dissolution**

This Agreement shall immediately terminate upon the dissolution of the Alliance.

#### **6.4. Survival**

The following Sections shall survive termination (whether by the Member or the Alliance) or expiration of this Agreement: Sections 1, 2.3 (second sentence), 2.4, 2.5, 2.8, 3.1, 3.2.1, 3.3, 3.5, 3.6, 3.7, 4, 6.1.1, 6.2.1, 6.4, 7, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.10, 8.11, 8.12, 8.13, and 9. In addition, Section 3 shall survive to the extent provided in Section 6.1.1 and 6.2.1, as applicable.

### **7. Warranty Disclaimer; Limitation of Liability**

#### **7.1. Disclaimer of Warranties**

EXCEPT AS PROVIDED IN SECTION 7.4, ALL MATERIAL, INFORMATION, AND LICENSES PROVIDED TO MEMBERS BY THE ALLIANCE HEREUNDER (INCLUDING, WITHOUT LIMITATION, THE CONTRIBUTIONS) AND ALL MATERIAL, INFORMATION AND LICENSES PROVIDED TO THE ALLIANCE BY MEMBERS (INCLUDING WITHOUT LIMITATION, SPECIFICATIONS AND CONTRIBUTIONS PROVIDED OR RELEASED TO THE ALLIANCE BY A MEMBER), ARE PROVIDED ON AN "AS IS" BASIS, WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, CONTRACTUAL OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, OR ANY WARRANTY OTHERWISE ARISING OUT OF ANY PROPOSAL, SPECIFICATION OR SAMPLE. FURTHERMORE, NO WARRANTY OR REPRESENTATION IS MADE OR IMPLIED RELATIVE TO THE VALIDITY OR ENFORCEABILITY OF ANY PATENT LICENSED HEREUNDER, OR RELATIVE TO FREEDOM FROM INFRINGEMENT OF ANY THIRD PARTY PATENTS.

**7.2. Exclusion of Damages**

IN NO EVENT WILL ANY MEMBER BE LIABLE TO ANOTHER MEMBER OR THE ALLIANCE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, USE, DATA OR OTHER ECONOMIC ADVANTAGE), HOWEVER IT ARISES, WHETHER FOR BREACH OF THIS AGREEMENT, INCLUDING BREACH OF WARRANTY, OR IN TORT (INCLUDING NEGLIGENCE), EVEN IF THAT PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**7.3. Limitation of Liability**

IF, AT ANY TIME, ANY LIABILITY ARISES FROM OR BY VIRTUE OF THIS AGREEMENT, AND REGARDLESS OF WHETHER SUCH LIABILITY IS DUE TO THE ALLIANCE'S OR ANOTHER MEMBER'S NEGLIGENCE, THE MEMBER AGREES THAT IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF THE ALLIANCE OR ANY OF ITS MEMBERS FOR ANY CLAIMS, LOSSES, OR DAMAGES INCURRED BY THE ALLIANCE OR ANY MEMBER EXCEED \$10,000. THIS LIMITATION OF LIABILITY IS COMPLETE AND EXCLUSIVE, SHALL APPLY EVEN IF THE ALLIANCE AND MEMBERS HAVE 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 THE MEMBER, ITS CUSTOMERS, OR ANY THIRD PARTIES. THIS LIMITATION OF LIABILITY REFLECTS AN AGREED ALLOCATION OF RISK BETWEEN THE MEMBER AND THE ALLIANCE IN VIEW OF THE NATURE OF THIS TRANSACTION; PROVIDED, HOWEVER, THAT THIS SECTION 7.3 SHALL NOT APPLY TO LIMIT OR WAIVE ANY REMEDY OTHERWISE AVAILABLE TO ANY PARTY FOR INJURY SUFFERED OR TO BE SUFFERED BY THAT PARTY AS A RESULT OF ANOTHER PARTY'S BREACH OF SECTION 3 OR 4 OF THIS AGREEMENT.

**7.4. Covenant**

THE MEMBER COVENANTS THAT ITS REPRESENTATIVES TO THE ALLIANCE SHALL NOT SUBMIT A CONTRIBUTION THAT ITS REPRESENTATIVES HAVE PERSONAL KNOWLEDGE (WITH NO OBLIGATION TO INVESTIGATE) VIOLATES THE INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER MEMBER OR THIRD PARTY.

**8. General****8.1. Limited Effect**

This Agreement shall not be construed to waive any Member's rights under law or any other agreement except as expressly set out herein.

**8.2. Notices**

Notices to the parties hereto or the Alliance shall be sent by personal delivery, regular mail, or facsimile to the address or facsimile number of such party listed on the signature page hereto. The Member's address may be modified by sending written notice to the Secretary of the Alliance.

**8.3. Governing Law**

This Agreement shall be construed and controlled by the substantive laws of the State of Delaware, without regard to conflict of laws principles.

**8.4. Not Partners**

Members are independent companies and are not partners or joint venturers with each other with respect to the subject matter of this Agreement. While Members may select an entity to handle certain administrative tasks for them, no party is authorized to make any commitment on behalf of all or any of them.

**8.5. Complete Agreement; Amendment**

This Agreement, the Bylaws and the policies and procedures adopted by the BOD under the Bylaws set forth the entire understanding of the parties and supersedes and replaces all prior agreements and understandings between the Member and the Alliance relating hereto in their entirety.

This Agreement shall only be modified in accordance with the Bylaws; provided, however, the Alliance shall provide at least thirty days written notice prior to the effective date of such modification and the Member may withdraw from Membership in the Alliance upon reasonable written notice to the Secretary of the Alliance or the BOD prior to the effective date of such modification. No such amendment shall have any retroactive effect.

**8.6. Publicity**

The Member may not make any statement on behalf of the Alliance, without the prior approval of the BOD.

**8.7. Execution in Counterparts**

This Agreement may be executed in any number of counterparts, each of which when so executed and timely delivered shall be deemed an original, and such counterparts together shall constitute one instrument.

**8.8. Severability**

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will nevertheless remain in full force and effect; and a substitute, valid, and enforceable provision most nearly reflecting the original intent shall be developed in place of the invalid provision.

**8.9. Assignment**

Except as set forth in this Agreement or the Bylaws, the Member may not transfer, assign, sublicense or otherwise delegate any of its rights or obligations under this Agreement without due prior written consent of the Alliance except in connection with the transfer of its Membership in the Alliance as provided in the Bylaws, which consent shall not be unreasonably withheld. Any attempt to assign, transfer or otherwise delegate any of the rights, duties, or obligations under this Agreement without the prior written consent of the Alliance shall be void. The rights and liabilities of the parties under this Agreement will bind and inure to the benefit of the parties' permitted assigns and successors.

**8.10. No Obligation to Enforce**

Nothing contained in this Agreement shall be construed as imposing on the Member any obligation to institute any suit or action for infringement of any of its intellectual property rights, or to defend any suit or action brought by a third party which challenges or concerns the validity of any of its intellectual property rights licensed under this Agreement, or to file any patent application or to secure any patent or maintain any patent in force.

**8.11. Waiver**

Any waiver of any of the terms of this Membership Agreement with respect to a Member shall be valid only if made in writing and executed by the applicable Member and the Alliance. The waiver by any party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or a subsequent breach of the same or a different provision.

**8.12. Compliance with Export Laws**

The Members each agree to comply with all United States export laws in connection with the marketing, sale and distribution of products and services based on any Specification of the Alliance, including without limitation the Export Administration Regulations administered by the U.S. Department of Commerce and the International Traffic in Arms Regulations (ITAR) administered by the U.S. Department of State.

**8.13. Headings**

Captions and headings contained in this Agreement have been included for ease of reference and convenience and shall not be considered in interpreting or construing this Agreement.

**8.14. Third Party Beneficiaries**

The parties acknowledge and agree that each of the Members is an intended third party beneficiary to this Agreement.

## **9. Compliance with Competition Laws**

The Member acknowledges that Members are committed to fostering competition in the development of new products and services based on a Specification. The Member further acknowledges that it may compete with other Members in various lines of business and that they will comply with all applicable competition laws pertaining to the Member's Membership in the Alliance. Without limiting the generality of the foregoing, the Member acknowledges that it will not discuss issues relating to product costs, product pricing, methods or channels of product distribution, any division of markets, or allocation of customers or any other topic which should not be discussed among competitors where such discussion would constitute a violation of antitrust or other applicable competition law. Accordingly, the Alliance hereby assumes responsibility to provide appropriate legal counsel to its representatives acting under this Agreement regarding the importance of limiting their discussions to subjects that relate to the purposes of this Agreement, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise.

IN WITNESS WHEREOF, the Alliance and the Member have executed this Agreement effective as of the date it is executed by the Alliance:

**COMMONWELL HEALTH ALLIANCE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**MEMBER:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_