

**MedBiquitous Consortium**

**MEMBER AGREEMENT**

**Member Category** (check one):      Non-profit Organization      \_\_\_  
   Government Entity      \_\_\_  
   University      \_\_\_  
(Consult Exhibit 1 for applicable      Industry/Corporate – small      \_\_\_  
Membership Fee)      Industry/Corporate – intermediate      \_\_\_  
   Industry/Corporate – large      \_\_\_

This CONSORTIUM MEMBER AGREEMENT (this “*Agreement*”) is dated as of the \_\_\_ day of \_\_\_\_\_, 200\_ (the “*Effective Date*”), by and between the MedBiquitous Consortium LLC having an office at Davis 3110C, 5801 Smith Ave, Baltimore, Maryland 21209 USA (the “*Consortium*”), and \_\_\_\_\_, having an office at the location set forth on the signature page hereto (the “*Member*”) (capitalized terms not defined in the body of this Agreement shall have the meanings ascribed to them in the Glossary contained at the end of this Agreement).

WHEREAS, Johns Hopkins Medicine (“*JHM*”) has established the Consortium for the purposes set forth herein and in the MedBiquitous Consortium Process Document dated the date hereof and attached hereto as Exhibit 1; and

WHEREAS, the Member wishes to participate as a Member in the Consortium on the terms and conditions hereinafter provided; and

WHEREAS, the Consortium has agreed to the Member's participation as a Member in the Consortium, subject to said terms and conditions; and

WHEREAS, the Member's participation in the Consortium will further the objectives of the Consortium in a manner consistent with its non-profit, tax-exempt purposes.

NOW, THEREFORE, the Consortium and the Member agree as follows:

**1. Purpose of Consortium.**

The purpose of the Consortium is to advance healthcare education through technology standards that promote professional competence, collaboration, and better patient care. Specifically, the focus of the Consortium will be on the development of specifications for an eXtensible Mark-up Language (XML) blueprint for professional healthcare education and training, competence assessment, certification and licensure, professional and scientific publications, and professional online communities and portals. The blueprint consists of, among other things, XML schemas and Web services descriptions (collectively, the “*MedBiquitous XML*”). The MedBiquitous XML will be open and available to the public under the terms and conditions set forth on the MedBiquitous web site. MedBiquitous will also work to develop Community Code software that illustrates how to implement MedBiquitous XML (“*MedBiquitous Community Code*”). Members shall have rights to use the MedBiquitous XML and the MedBiquitous Community Code as set forth herein.

## **2. Participation as a Member.**

The Member hereby agrees to participate in the Consortium as a Member and agrees to pay a membership fee (the “**Membership Fee**”) for the member category listed at the top of this Agreement in the amount specified in Exhibit 1. Payment for the first year of membership will be made on or before the Effective Date in U.S. Dollars, payable to the MedBiquitous Consortium. Payment for subsequent years will be made on or before the first day of the calendar quarter in which the Member joined; i.e. January 1st, April 1st, July 1st, October 1st. Except as expressly provided in this Agreement: (a) the Membership Fee is non-refundable; and (b) the rights of membership set forth herein shall extend only to the Member and Affiliates (hereinafter defined) and, unless falling within the definition of Affiliate, not to its sponsors, subsidiaries, parent corporations, members, or other related parties, unless otherwise determined by the Consortium’s Board of Directors on a case-by-case basis. “Affiliate” shall mean any corporation or other entity controlling, controlled by, or under common control with the Member and for such purpose “control” shall mean direct or indirect ownership of (i) fifty percent (50%) or more of the voting interest in such corporation or other entity; or (ii) fifty percent (50%) or more of the interest in the profit or income in the case of a business entity other than a corporation; or (iii) in the case of a partnership, control of the general partner.

## **3. Term of Membership.**

The period of the Member's participation in the Consortium (the “**Term**”) shall begin as of the Effective Date and, unless terminated sooner as provided herein, shall continue in force for three years from the first day of the calendar quarter in which the Member joined. The Term will automatically be renewed for an additional three years, unless one party furnishes the other with a notice of non-renewal at least six months prior to the end of the Term (references herein to the Term shall include any such renewal term). This Agreement may be terminated prior to the expiration of the Term by either party upon 60-day written notice to the other party specifying that such other party has materially breached this Agreement, provided that the breaching party shall have an opportunity to cure the breach within such 60-day period to the reasonable satisfaction of the non-breaching party. In addition, the Member may elect at any time to withdraw as a Member in the Consortium but shall not be entitled to a refund of any portion of its membership fee and shall still be obligated to pay membership fees for the remainder of the Term.

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

The Member shall have the following rights and obligations under this Agreement, which rights and obligations are further described in Exhibit 1:

- a. The Member shall have the right to participate in the Standards Committee and vote upon all proposed standards developed by the Consortium.
- b. The Member shall have the right to propose new standards as outlined in the Standards Program Operating Procedures available on the MedBiquitous website.
- c. The Member shall make good faith efforts to contribute to the work of the Consortium, including participation in Working Groups.

## 5. Rights and Obligations of the Consortium.

The Consortium shall have the following rights and obligations under this Agreement, which rights and obligations are more fully described in Exhibit 1 :

a. The Consortium shall use diligent efforts to provide the technical and administrative leadership required to accomplish the Consortium's goals.

b. The Consortium shall use the Membership Fees solely to carry out its mission as described herein and in Exhibit 1.

c. The Consortium shall establish and maintain working groups which shall have responsibility for providing research, evaluation, and feedback for proposed standards (the "**Working Groups**"), and which shall operate as set forth in the Standards Program Operating Procedures.

d. The Consortium shall establish and maintain a Standards Committee which shall have primary responsibility for approving proposed standards as set forth in the Standards Program Operating Procedures.

e. The Consortium shall maintain an executive committee ("**Executive Committee**") and an executive director (the "**Executive Director**"), who will oversee the selection and implementation of projects.

f. The Consortium shall collect, maintain, and distribute software and other products created under the auspices of the Consortium, as set forth herein and in Exhibit 1.

g. The Consortium shall establish and maintain Internet connection and computer resources to facilitate the work of, and permit the Member with Internet access to communicate effectively with, the Consortium.

h. The Consortium shall use reasonable efforts to perform its responsibilities under this Agreement, to ensure compliance by all Members with this Agreement, and to enforce all of the Consortium's Intellectual Property Rights under this Agreement, in accordance with, and subject to, the needs of the Consortium in the context of its overall mission.

## 6. License Grants to Member.

a. MedBiquitous XML License. The Consortium hereby grants to the Member, a worldwide, royalty-free, perpetual, non-exclusive, non-transferable, license to copy, use, display, perform, modify, make derivative works of, and develop the MedBiquitous XML for any use, in accordance with the terms and conditions specified in this Agreement.

b. MedBiquitous Community Code License. The Consortium hereby grants to the Member, a worldwide, royalty-free, perpetual, non-exclusive, non-transferable, license to copy, use, display, perform, modify, make derivative works of, and develop the MedBiquitous Community Code for any use, in accordance with the terms and conditions specified in this Agreement.

c. Limitation on Grants; Restrictions and Retention of Rights. All licenses granted hereunder shall apply to any form of software code, whether in Source Code form, Object Code form, or any other form, whether existing now or hereafter developed. Other than the licenses expressly granted in

Sections 6(a) and (b) above, the Consortium shall retain all of its right, title, and interest in and to the MedBiquitous XML and the MedBiquitous Community Code. The Member covenants that in the event the Member modifies any part of the MedBiquitous XML or MedBiquitous Community Code, it will not then represent to the public, through any act or omission, that the resulting modification is an official specification of the MedBiquitous Consortium unless and until such modification is officially adopted as provided in Exhibit 1. The Member acknowledges that the Consortium may, from time to time, obtain rights in MedBiquitous Community Code by license agreements with third parties (the “*In-Licensed Code*”), and that such license agreements may contain restrictions on the use of In-Licensed Code. Accordingly, the Member acknowledges and agrees that, notwithstanding any provision to the contrary set forth in this Section 6, all licenses granted by the Consortium are subject to any restrictions placed on In-Licensed Code, and are granted only with respect to, and to the extent of, the Consortium’s Intellectual Property Rights in and to the subject matter of the grant.

## **7. License Grants By Member With Respect to MedBiquitous Community Code.**

a. Bugs, Errors, and Fixes. Member agrees to notify the Consortium of errors or bugs it discovers in the MedBiquitous Community Code. As a condition to exercising the rights granted under Section 6 hereof, the Member hereby grants to the Consortium perpetually, and to each other Member, a worldwide, perpetual, irrevocable, exclusive, royalty-free, transferable, sublicenseable, license to copy, use, display, perform, modify, make derivative works of, develop and distribute any and all Fixes to the MedBiquitous Community Code. The Member acknowledges and agrees that all Fixes will become part of the MedBiquitous Community Code, unless the Consortium, in its sole discretion, determines otherwise, and that all of the rights in and to such Fixes granted to the Consortium and to the Members hereunder shall survive any termination of this Agreement. Member agrees to provide all of Member’s Fixes to the Consortium as soon as reasonably practicable. The Consortium may, in its discretion, post Source Code and Object Code for Member’s Fixes on the MedBiquitous Consortium Website.

b. Rights of Member. The Consortium shall not own, and hereby disclaims, all right, title, and interest in and to any Enhancement or Product developed by the Member, and the Member shall be under no obligation to share or license any Enhancements or Products to the Consortium or its Members.

## **8. Other Intellectual Property Rights and Obligations.**

a. Ownership of Trademarks and Service Marks. The Consortium shall own all of the right, title and interest in and to the “MedBiquitous” name and variations thereof, including all related logos, (the “*MedBiquitous Marks*”), including, without limitation, all related trademarks, service marks, trade and service mark registrations, and all related domain names. No party shall have any right to use any of the MedBiquitous Marks without the Consortium’s prior express written consent; provided, however, the Member shall be able to identify itself as a member of the Consortium in print, electronic and broadcast media. In addition, the parties acknowledge that (i) no party will have any right to use any trademark or service mark identical or similar to any trademark or servicemark belonging to JHM or its affiliates without the prior express written consent of JHM; and (ii) no party will have any right to use any trademark or service mark identical or similar to any trademark or servicemark belonging to the Member or its affiliates without the prior express written consent of Member; provided, however, the Consortium shall be able to identify the Member as a member of the Consortium in print, electronic and broadcast media.

b. Intellectual Property Contributed. If in the course of developing the MedBiquitous XML and MedBiquitous Community Code the Member elects to contribute Intellectual Property to the Consortium (the Member being under no obligation to make any such contribution), the Member shall have no continuing rights with respect to such contributed Intellectual Property unless otherwise agreed in writing by the Consortium and Member.

## **9. Validation/Compatibility Testing**

a. Conformance Testing. Successful conformance testing shall be deemed to have occurred when a Product implementing MedBiquitous XML has successfully passed all of the conformance requirements established by the Consortium.

b. Certification Testing. The Consortium may establish processes certifying the conformance of Products to MedBiquitous XML standards. Member agrees to complete the certification process if wishing to designate its product as certified conformant Products.

## **10. Confidentiality.**

a. Confidential Information. In performing its obligations hereunder, each of the Consortium and the Member may have access to and receive certain confidential information and trade secrets from the other party or other Consortium members, including any and all tangible and intangible information existing now or in the future, whether oral or in writing or in any other medium and whether in machine or human readable form, relating to intellectual property, business plans and strategies, marketing strategies, business methods; product performance; marketing results; financial data including sales, profits, projections, customers; prospects; product strategies; product designs; product information; computer systems; systems architecture including computer hardware, software source code, object code and documentation; inventions, know-how, designs, drawings, schematics, formulations, prototypes, manuals, and computer programs ("**Confidential Information**").

b. Treatment of Confidential Information. Except as otherwise expressly provided for in this Agreement, each party agrees (i) to hold all Confidential Information in strict confidence; (ii) to limit disclosure of Confidential Information to its employees, agents, subcontractors, or professional advisors having a need to know the information for the purposes of performing this Agreement; (iii) to use Confidential Information solely and exclusively in accordance with the terms of this Agreement in order to carry out its obligations and exercise its rights hereunder; (iv) to afford the Confidential Information at least the same level of protection against unauthorized disclosure or use as the receiving party normally uses to protect its own information of a similar character, but in no event less than reasonable care; and (v) to notify the furnishing party promptly of any unauthorized use or disclosure of such furnishing party's Confidential Information and cooperate with and provide reasonable assistance to the furnishing party to stop or minimize such unauthorized use or disclosure.

c. Excluded Information. Each party's obligation to comply with the confidentiality requirements contained in this Section 10 shall not apply to any information which (i) is already known, or was independently developed, by the recipient; (ii) is available to the general public at the time of disclosure or becomes available to the general public through no fault of the recipient; (iii) is disclosed to the recipient by a third party not known by recipient to be bound by any confidentiality restrictions; or (iv) is the subject of a court subpoena, request for production of documents, court order or requirement of a governmental agency; provided that the recipient gives prompt written notice to the furnishing party so

that the subpoena, request for production of documents, order or requirement can be challenged by the furnishing party.

d. Injunctive Relief. Each party acknowledges that any breach of any provision of this Section 10 by either party, or its agents, may cause immediate and irreparable injury to the other party for which monetary damages would be an insufficient remedy. Accordingly, in the event of such breach, the injured party shall be entitled to seek injunctive relief and an order compelling specific performance of this Section 10, without bond or other security, in addition to any and all other remedies available at law or in equity.

## **11. Notices.**

All notices or other communications to or upon either party shall be in writing delivered by first class, air mail or facsimile, dispatched to or given at the following addresses:

For the Consortium:

Peter S. Greene, M.D., Executive Director  
MedBiquitous Consortium  
Davis 3110 C  
5801 Smith Ave  
Baltimore, MD 21209 USA

For Member:

At the address for the Member set forth on the signature page hereto.

In the event notices and statements required under this Agreement are sent by certified or registered mail by one party to another party at its above address, they shall be deemed to have been given or made as of the date so mailed.

## **12. Relationship of Parties.**

The relationship of the parties under this Agreement is that of independent contracting entities. This Agreement does not create a partnership or joint venture. Neither the Consortium nor the Member can bind the other or create any relationship of principal or agent.

## **13. Operating Agreement for Consortium; Withdrawal By JHM From Consortium.**

The Consortium has been established by JHM and, in that regard, The Johns Hopkins University (“JHU”) and The Johns Hopkins Health System Corporation (“JHHS”) (as the entities comprising JHM) have entered into an Operating Agreement for the MedBiquitous Consortium, LLC. The Operating Agreement provides that JHM has no independent powers or duties, with the Consortium’s activities being governed by this Agreement and the Process Document. Any active participation of JHM in the Consortium shall be through the membership of JHU and in-kind contributions of time or services that JHM, at its option, may provide to the Consortium without charge from time to time. Accordingly, JHHS and JHU shall not have any liability or responsibility for any act or failure to act by the Consortium, its Board of Directors, its Executive Director or Executive Committee or any of its Members. The Member waives any claim or right of action against JHU or JHHS arising out of, or with respect to, any act or

failure to act by the Consortium. SPECIFICALLY, BUT WITHOUT LIMITATION, JHM, JHU AND JHHS MAKE NO REPRESENTATION OR WARRANTY OF ANY NATURE, EXPRESS OR IMPLIED, WITH RESPECT TO ANY CODE, SERVICE OR PRODUCT PROVIDED OR MADE AVAILABLE BY OR THROUGH THE CONSORTIUM. Because JHM is lending its name and reputation to the Consortium, JHM shall have the right to withdraw from the Consortium if it determines that the Consortium is taking actions that could materially and adversely affect the image and reputation of JHM. In such event, JHM will transfer its role in the limited liability company to one or more Members (with the consent of such Members) or other third parties in accordance with its limited liability company operating agreement.

#### **14. DISCLAIMER OF WARRANTIES.**

THE CONSORTIUM MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WITH RESPECT TO ANY COMPUTER CODE OR PROCESS OR RELATED SERVICE PROVIDED OR MADE AVAILABLE TO THE MEMBER IN CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY STANDARD ENDORSED BY THE CONSORTIUM, WITHOUT LIMITING THE FOREGOING, THE CONSORTIUM DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE MEMBER AGREES THAT ALL COMPUTER CODES OR PROCESSES OR RELATED SERVICES PROVIDED OR MADE AVAILABLE TO THE MEMBER BY THE CONSORTIUM SHALL BE ACCEPTED BY MEMBER "AS IS".

#### **15. Limitation of Liability.**

In the event of dissolution of the Consortium for any reason, the Member shall be entitled to receive, as its sole and exclusive remedy, a refund of all of the Member's duly paid and uncommitted Membership Fee for such year, and upon such refund, any further liability of the Consortium to the Member shall be extinguished. The liability of the Consortium to the Member in the event of any other claim by Member shall be limited to the amount of the Member's duly paid Membership Fee for the then current year. In no event shall the Consortium or the Member be liable for any indirect, incidental, consequential, or special damages, including lost profits, sustained or incurred by any other party in connection with or as a result of its participation in the Consortium or under this Agreement. Nothing contained in this Section, however, limits the liability of any other Member for claims of infringement asserted with respect to Intellectual Property contributed to the Consortium by such Member or for any other responsibility or indemnification provided for in the Membership Agreement of such other Member.

#### **16. Force Majeure.**

If the performance of any obligation by the Consortium under this Agreement is prevented, restricted or interfered with by reason of natural disaster, war, revolution, civil commotion, acts of public enemies, blockade, embargo, strikes, any law, order, proclamation, regulation, ordinance, demand or requirement having legal effect under any governmental or judicial authority, or any other act or event which is beyond the reasonable control of the party affected, then the Consortium shall be excused from such performance to the extent of such prevention, restriction, or interference, provided that the Consortium shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed.

## 17. Indemnification.

a. Member Indemnity Obligation. Member hereby agrees to indemnify and defend, at Member's expense, any legal proceeding brought against the Consortium, JHM, or any other member of the Consortium to the extent it is based on a claim: (i) arising in connection with any representation, warranty, covenant, support, indemnity, liability or other license terms Member may offer in connection with any MedBiquitous Community Code; or (ii) arising from Member's use of MedBiquitous Community Code. Member shall pay all damages, costs and fees awarded by a court of competent jurisdiction or authorized arbitral body, or such settlement amount negotiated by Member, attributable to such claim.

b. Consortium Indemnity Obligation. The Consortium hereby agrees to indemnify and defend (subject to the limitation set forth in the last sentence of this Section), at the Consortium's expense, any legal proceeding brought against Member to the extent it is based on a claim that the use, reproduction or distribution of any MedBiquitous Community Code infringes any Intellectual Property Rights of a third party or a copyright in a country that is a signatory to the Berne Convention. Subject to the limitation set forth in the following sentence, the Consortium shall pay all damages, costs and fees awarded by a court of competent jurisdiction or authorized arbitral body, or such settlement amount negotiated by the Consortium, attributable to such claim. With respect to In-Licensed Code or other rights obtained by the Consortium pursuant to license or other agreements with third parties, however, the Consortium's liability shall be limited to the extent of its recovery from such third party as a consequence of such claims of infringement, and the Member shall not assert any other or additional claim against the Consortium.

c. Prerequisites. To make a claim for indemnification hereunder, the party claiming indemnification must: (i) provide notice of the claim promptly to the other party; (ii) give the other party sole control of the defense and settlement of the claim; (iii) provide the other party at such other party's expense, all available information, assistance and authority to defend; and (iv) not have compromised or settled such claim or proceeding without the other party's prior written consent.

## 18. Export Controls.

The Member acknowledges that export and/or re-export from the United States of technical data, computer software, laboratory prototypes and other commodities (the "**Controlled Commodities**") may be subject to the export control laws and regulation of the United States (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979 revised in 1985), and that such laws and regulations could preclude or delay export of such Controlled Commodities. The obligations of the Consortium hereunder are contingent on compliance with such applicable laws and regulations. No party to this Agreement will directly or indirectly export across any national boundary, or communicate or transfer to any third party, any Controlled Commodities without first obtaining any and all licenses that may be required from the appropriate agency of the United States government. The Member agrees to provide the Consortium with written assurances as may be necessary that Member will not re-export or transfer such Controlled Commodities to certain foreign countries or third parties without prior approval of the appropriate government agency. The Consortium agrees to reasonably cooperate with Member in securing necessary licenses in connection with the export, re-export, transfer or communication of any Controlled Commodities. Notwithstanding the foregoing, Member understands and acknowledges that the Consortium cannot guarantee that such licenses will be granted.



**19. Assignment.**

Neither this Agreement nor any rights hereunder, in whole or in part, are assignable by either party without the prior written consent of the other party. Any attempt to assign the rights, duties or obligations under this Agreement without such consent shall be a breach of this Agreement and is null and void.

**20. Entire Agreement.**

This Agreement, together with the Exhibits hereto, embodies the entire understanding between the Consortium and the Member for the Member's participation in the Consortium, and cancels and supersedes any other agreements, oral or written, entered into by the parties hereto as to its subject matter.

**21. No Modifications.**

This Agreement may be amended only by a writing signed by the Consortium and the Member.

**22. Governing Law.**

This Agreement shall be deemed to have been entered into and shall be interpreted and governed in all respects by the laws of the State of Maryland and the United States of America, without giving effect to its conflict of laws rules.

**23. Arbitration.**

Any controversy or claim arising out of or relating to this Agreement, its execution or breach, and any damages allegedly suffered therefrom, first shall be submitted to negotiation between designated executives of the parties. Matters which cannot be resolved through such negotiation shall be finally settled: (i) if the Member is organized or incorporated within any of the United States, under the Commercial Rules of Arbitration of the American Arbitration Association, by one (1) arbitrator appointed in accordance with said Rules, or (ii) if the Member is organized or incorporated outside the United States, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one (1) arbitrator appointed in accordance with said Rules. In any event, the place of arbitration shall be Baltimore, Maryland. The arbitrator shall determine the matters in dispute in accordance with the laws of the State of Maryland pursuant to Section 19 of this Agreement. The English language shall be used throughout the proceedings. Any award, order, or judgment pursuant to such arbitration may be entered and enforced in any court of competent jurisdiction.

**24. Survival of Obligations.**

The obligations of the Consortium and the Member under Sections 6-8, 10-15, 17, 18, and 20-24 of this Agreement shall survive the expiration or earlier termination hereof, and shall continue hereafter in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives, effective as of the day and year first above written.

**MedBiquitous Consortium**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Member**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## *Glossary of Defined Terms*

### **GLOSSARY**

1. “**Enhancements**” means all modifications, developments, and derivative works with respect to the MedBiquitous Community Code.

2. “**Fixes**” means all bug fixes, patches, and error corrections with respect to the MedBiquitous Community Code.

3. “**Intellectual Property Rights**” means worldwide statutory and common law rights associated solely with (i) patents and patent applications; (ii) works of authorship including copyrights, copyright applications, copyright registrations and “moral rights”; (iii) the protection of trade and industrial secrets and confidential information; and (iv) divisions, continuations, renewals, and re-issuances of the foregoing now existing or acquired in the future.

4. “**MedBiquitous Community Code**” means both the Source Code and Object Code.

5. “**Member**” means the specific legal entity or individual signing this Member Agreement.

6. “**Members**” means the group of legal entities and individuals, including the Member, that has signed member agreements with the Consortium.

7. “**Object Code**” means the computer-readable code of the subject computer software programs, which is not readily interpretable by humans, and which is suitable for machine execution without the intervening steps of interpretation or compilation.

8. “**Product**” or “**Products**” means any software, hardware, or other good designed, developed or manufactured by or for Member which implements MedBiquitous XML.

9. “**Source Code**” means the human-readable code of the subject computer software programs and all associated technical documentation for such programs, including flow charts, source code, program procedures and descriptions (including descriptions of the source code and build procedures for the object code), data models, procedures for maintenance and modification, testing data and similar written material relating to the design, structure and implementation of the subject computer software programs.

## EXHIBIT 1

# *MedBiquitous Consortium Overview and Organization*

## **I. MedBiquitous Consortium Overview**

The MedBiquitous Consortium (the “Consortium”) is an initiative, founded by Johns Hopkins Medicine in partnership with professional medical societies, whose purpose is to advance healthcare education through technology standards that promote professional competence, collaboration, and better patient care. MedBiquitous is accredited by the American National Standards Institute (ANSI) to develop information technology standards for healthcare education and training, competence assessment, certification and licensure, professional and scientific publications, and professional online communities and portals.

MedBiquitous members are creating a technology blueprint for professional healthcare education. Based on XML and Web services standards, this blueprint will seamlessly support the learner in ways that will improve patient care and simplify the administrative work associated with education and competence assessment. With these interoperable standards, educators will be better able to exchange educational content, track learner activities and profiles, and make healthcare education more accessible, measurable, and effective, thereby improving patient care.

Members are organizations with an interest in healthcare education. This includes professional medical and healthcare associations, certifying boards, universities, publishers, commercial educators, healthcare organizations, and governmental healthcare entities, among others.

Activities of the Consortium include:

- 1) The creation of XML standards for data interchange and communication among professional medical societies, certifying boards, educators, publishers, and industry partners that support professional education and competency. XML is a standard for Web-based data exchange.
- 2) The creation of requirements and specifications for XML Web services for communications among professional medical societies, certifying boards, educators, publishers, and industry partners that support professional education and competency. XML Web services define how applications can work together over the Internet.
- 3) The creation of software components that help members in implementing MedBiquitous standards.
- 4) The provision of a neutral forum for learning about best technology practices and freely exchanging ideas on use of technology for education and competence assessment.

## **II. MedBiquitous Consortium Organization**

The Consortium organization is designed to facilitate the democratic establishment of technology standards and software requirements for healthcare education and competence assessment. The Consortium is headquartered in Baltimore, Maryland. The Consortium consists of a Board of Directors, an Executive Director, an Executive Committee, a Standards Committee, a Technical Steering Committee, Working Groups, Members, Staff, and Invited Experts. The activities of the Consortium shall be governed by the Member Agreement, which includes this document, and the MedBiquitous Consortium Limited Liability Company Operating Agreement.

### **1. Sponsor**

Johns Hopkins Medicine is the founder and sponsor of the Consortium and has committed significant resources to its development. The guiding notion that Johns Hopkins Medicine brings to this endeavor is that the ends of the Consortium and its Members are best served by an open, democratic process in which the functions of the organization and the authority to govern the Consortium are distributed widely among the Members. This document sets forth that allocation of function and authority, and each Member must make a commitment to actively participate in the governance and operation of the Consortium, including potentially serving on the Board of Directors and being prepared to participate in the standards development process.

### **2. Board of Directors**

The Board of Directors is responsible for helping shape the strategic direction of the Consortium, for overseeing the activities of the Executive Committee and Executive Director, and ensuring that the Consortium's activities further the purposes of the Consortium, serve the interests of the Members, and are conducted in accordance with the Consortium's governing documents. The Board of Directors reviews applications for membership in the Consortium and votes to accept or reject the applications. The Board of Directors elects a Chairman of the Board from among the directors to preside over meetings. The Board of Directors selects an Executive Director and appoints the Executive Committee. The Board of Directors, at its option, may appoint a Secretary and Treasurer and such other officers as the Board deems necessary to carry out the purposes of the Consortium. Officers may be removed and successors appointed by majority vote of the Board. The Board of Directors has authority to amend the Consortium's Member Agreement and this organization and overview document.

The Board may establish one or more committees to assist it in carrying out its responsibilities.

Except as provided in the standards development process, a majority of directors voting at a meeting is required to take or approve any action. A majority of Directors shall constitute a quorum for voting purposes.

Additional Directors may be nominated by Members or by a majority vote of existing Directors subject to maintaining the required allocation of Directors among the membership category. Directors shall serve for a three-year term and may be re-elected for a second term or until a successor is elected. If there are no member nominations, the Board by majority vote may elect

to continue the then existing slate of Directors. The process for electing Directors shall be determined by the Board.

A Director may be removed by a two-thirds vote of all Directors or by a two-thirds vote of all members within the membership category represented by the Director. A substitute Director may be appointed by majority vote of the Board who shall continue to serve until the next regularly scheduled election for Directors is held

To ensure fair representation of the varied groups that comprise the Consortium, seats on the Board of Directors will be divided among Consortium groups in the following manner:

<i>Representation Category</i>	<i>Number of Directors</i>
Non-Profit Societies	6 seats
Corporations	2 seat
Johns Hopkins Medicine	1 seat
Government	1 seat
Universities	1 seat

Any Director may also be removed at any time by the vote of at least a majority of the Consortium Members that elected such Director. Any successor Directors shall serve out the duration of the term to which they succeeded.

### **3. Executive Committee**

The Executive Committee is responsible for evaluating Project Proposals submitted by Members, selecting the projects to be undertaken by the Consortium, and determining whether the projects are appropriate for development as an American National Standard. The Executive Committee is thus charged with implementing the strategic direction given to the Consortium by the Board of Directors and the Members, by selecting projects consistent with those strategic goals. The Executive Committee shall make its determinations using the guidelines set forth in this document and as otherwise may be promulgated by the Board of Directors.

The Executive Committee shall also provide recommendations to the Executive Director regarding the relative priority of different Project Proposals, and provide counsel and advice to the Executive Director on such other issues as the Executive Director may request. The Executive Committee shall assume such further responsibilities as the Board of Directors may from time to time direct.

The Executive Committee consists of individuals appointed by the Board, who need not be Members. There are no formal prerequisites to serve on the Executive Committee, although an effort will be made by the Board to include individuals on the Executive Committee who have technical and other expertise relevant to the Executive Committee's decision-making process.

A two-thirds majority of the Executive Committee is required to approve each Project Proposal.

#### **4. Executive Director**

The Executive Director has day-to-day authority over the operations of the Consortium and has authority, with the approval of the Board of Directors where required by this Process Document, to enter into contracts on behalf of the Consortium. The Executive Director coordinates the efforts of Consortium Staff, Working Groups, and Standards Committee. In keeping with that responsibility, the Executive Director assigns Project Proposals approved by the Executive Committee to a Working Group or to the Standards Committee if the project is to be developed as an American National Standard. If the Project Proposal brings up an issue that the Consortium is not currently addressing, the Executive Director can establish a Working Group to address the issues brought up in the Project Proposal. The Executive Director appoints Consortium Members and Invited Experts to the Working Group and further appoints one such individual to serve as the Working Group Chair. The Executive Director also appoints a chair to the Standards Committee. If the Project Proposal relates to an issue currently being addressed by a Working Group, the Executive Director can direct the Project Proposal to the appropriate Working Group.

The Executive Director will consult with the Executive Committee on such matters as the Executive Director deems appropriate.

The Executive Director shall be appointed to a three-year term. The appointment shall be made by the Board of Directors. The Board of Directors shall have authority to remove the Executive Director for cause as established and defined by the Board of Directors.

#### **5. Working Groups**

Working Groups are the heart of the MedBiquitous Consortium. They provide research, evaluation, and feedback to those specifications selected for development as American National Standards. A Working Group consists of a Chair, one or more Consortium Staff and/or Invited Experts, and Members of the Consortium. The Chair may also designate a Primary Author, who will be responsible for maintaining documents related to the specifications process. The entire Working Group provides feedback, evaluation, and, when useful or necessary, research throughout the standards development process. The Chair decides when the specification is ready to proceed to the next phase of the development process.

The Executive Director appoints the Working Group Chair, the Consortium Staff member sitting on the Working Group, and Working Group Members. The Executive Director or the Working Group Chair may appoint Invited Experts. If a Working Group Member's behavior is seen as problematic, the Chair may request that the Executive Director remove that Member from the Working Group.

## 6. Standards Committee

The Standards Committee works closely with MedBiquitous Working Groups and serves as the consensus body for MedBiquitous standards. The Executive Director assigns ANSI approved standards proposals to the Standards Committee. The Standards Committee shall guide the standards proposals through the process of creating official ANSI standards.

## 7. Members

Members of the Consortium include professional medical societies and healthcare organizations, healthcare companies, universities, and government entities. The Board of Directors votes to accept or reject each application for membership. Each Member organization must sign a Member Agreement with a three-year term of membership. Membership fees will be based on the following criteria:

<u>Membership Category</u>	<u>Consortium Fee</u>
Individual Non-Profit Organization	\$3,000 per year for 3 years
Government Entity	\$3,000 per year for 3 years
University	\$3,000 per year for 3 years
Corporations with US \$15 million or less annual revenue	\$4,000 per year for 3 years
Corporations with greater than US \$15 million but less than \$US 50million annual revenue	\$8,000 per year for 3 years
Corporations with greater than US \$50 million annual revenue	\$18,000 per year for 3 years

Each Member organization may nominate an individual and an alternate to serve on the Standards Committee, which votes on proposed American National Standards as indicated in the MedBiquitous Consortium Standards Program Operating Procedures.

Each Member organization may nominate individuals to participate in Working Groups and the Executive Director may appoint such nominees to an appropriate Working Group. If the Executive Director determines that a nominee is not appropriate for a specific Working Group or is generally not acceptable to the Consortium, the Member may nominate another individual or may appeal the Executive Director's decision to the Executive Committee, which shall have absolute discretion to accept or reject such nominee. Each Member organization may determine the internal process by which it shall ascertain and cast its vote.



## **8. Consortium Staff**

The Consortium Staff assists and guides the Members with the creation of standards and requirements. The Board of Directors along with the Executive Director will determine specific staffing requirements for the Consortium, which will include programmers, analysts, and documentation specialists.

## **9. Invited Experts**

The Executive Director or Working Group Chair may ask one or more Invited Experts to participate in a Working Group. Invited Experts may have technical or domain expertise. Invited experts may or may not be affiliated with a Member organization. Invited Experts will be required to disclose any IPR claims to the Consortium, which in turn discloses IPR claims to the full membership.