Statement of Understanding Between HL7 International and HIMSS

This Statement of Understanding (the "SOU" or "Agreement") is entered into effective as of 26th of January, 2020 (the "Effective Date") by and between:

Health Level Seven International ("HL7")
3300 Washtenaw Avenue, Suite 227
Ann Arbor, Michigan 48104

AND

Healthcare Information and Management Systems Society ("HIMSS")
33 West Monroe Street, Suite 1700
Chicago, IL 60603

Throughout this Statement of Understanding, HL7 and HIMSS are each referred to as a "Party" and collectively as the "Parties".

1.0 PURPOSE STATEMENT

WHEREAS, HL7 is a global, not-for-profit, ANSI-accredited standards developing organization dedicated to providing a comprehensive framework and related standards for the exchange, integration, sharing, and retrieval of electronic health information that supports clinical practice and the management, delivery and evaluation of health services. HL7 is supported by more than 1,600 members from over 50 countries representing healthcare providers, government stakeholders, payers, pharmaceutical companies, vendors/suppliers, and consulting firms; and

WHEREAS, HIMSS is a global advisor and thought leader supporting the transformation of health through information and technology. As a mission driven non-profit, HIMSS offers a unique depth and breadth of expertise in health innovation, public policy, workforce development, research and analytics to advise global leaders, stakeholders and influencers on best practices in health information and technology. HIMSS serves the global health information and technology communities with focused operations across North America, Europe, United Kingdom, the Middle East and Asia Pacific; and

WHEREAS, HL7 and HIMSS are engaged in complementary efforts to advance the availability, adoption and implementation of standards and provide for greater interoperability and improve the overall health of communities globally; and

WHEREAS, HL7 and HIMSS support and encourage the accelerated development, adoption, and implementation of the HL7® Fast Healthcare Interoperability Resources (FHIR®) Specification; and

WHEREAS, HL7 and HIMSS wish to enter into a relationship in furtherance of these mutual goals and consistent with their respective missions and non-profit purposes.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:
2.0 MUTUAL COOPERATION

A. HL7 and HIMSS agree to collaborate to accelerate the goal of adoption and implementation of interoperability standards as outlined in this SOU.

B. Each Party will appoint a Liaison and alternate (the “Liaison”) within 30 days of the Effective Date, to support the activities contemplated under this SOU. It is anticipated each liaison will hold joint membership in HL7 and HIMSS. Each party has full discretion over the appointment of its Liaison.

3.0 EDUCATIONAL PROGRAMMING

A. HIMSS and HL7 will develop an award and pledge to recognize an individual annually. The award will be named the HIMSS/HL7 FHIR L.I.G.H.T Distinguished Service Award. L.I.G.H.T will stand for Leaders Inspiring Global Health Transformation. The HIMSS/HL7 FHIR L.I.G.H.T Distinguished Service Award recognizes the contributions and impact on global digital health transformation from leaders in the field of health information and technology that are accelerating the advancement of HL7 FHIR and the delivery of high value, quality care, and the patient experience as well as improved clinical workflows. The first award will be presented at HIMSS20 during the Views from the Top Consortium session. Each year before the HIMSS Global Conference, HL7 and HIMSS will meet to discuss candidates for the award and make a final award individual selection for joint presentation.

B. HIMSS will explore the feasibility of collaborating with HL7 on one or more of the following educational programs:

1. Introduction to HL7 FHIR (webinar(s))
2. HL7 FHIR Experience: A HIMSS21 Global Health Conference Workshop (bootcamp @ conference)
4. HIMSS21 Invited General Education Session; Introduction to HL7 FHIR for Healthcare Leadership

For the first year (for the avoidance of doubt, HIMSS21), HIMSS will develop a budget, which shall be approved by HL7, receive all revenues and assume all financial risks in relation to the above-referenced educational programs with the exception of the HIMSS21 co-hosted FHIR Solutions Showcase where HIMSS will develop a budget, which shall be approved by HL7, and following final reconciliation and less all reasonable expense, provide to HL7 a 25% share of the net profits. Thereafter, should the programs continue, HIMSS and HL7 will explore whether the events should be co-hosted or co-sponsored and net profits shared between the Parties. Where lawful and permitted, HIMSS will share information with HL7 related to attendance and insights on programming.

C. HL7 will provide and be reimbursed for reasonable materials and subject-matter experts to participate in and deliver the content to support all educational events the Parties co-host, co-sponsor, co-create or otherwise collaborate on as identified in this Section.
D. HIMSS will provide subject-matter experts to establish and enable the educational activities noted in this Section, and work with HL7 to coordinate their implementation.

E. Both HL7 and HIMSS will actively promoting and publicizing all educational programs to their respective members and audiences.

4.0 PUBLICITY AND COMMUNICATION

The Parties will collaborate with regard to publicity and communications as follows.

A. HL7 and HIMSS will each designate a Publicity and Communication Lead and will otherwise work together reasonably to support effective advertising and promotion of the collaborative education programs as outlined in Section 3.0.

B. The designated Publicity and Communication Leads will provide quarterly updates to the respective Liaisons and/or management teams.

C. HIMSS will provide communication materials, regular program updates and programmatic impact to the industry related to the collaborative events and programs outlined in Section 3.0.

D. Joint announcements, communications or advertisements must receive prior written approval from both Parties.

5.0 TERM AND TERMINATION

A. Term: This SOU shall have a one-year term from the Effective Date, renewable upon expiry by written agreement by the Parties for subsequent one-year terms.

B. Termination: This SOU can be terminated by either Party with 180 days prior written notice. Unless there is mutual written agreement of the Parties to cancel an existing educational program, all registrations recorded prior to the termination date shall be honored and the educational program shall continue as scheduled.

6.0 TRADEMARK LICENSE

Each party grants to the other and its affiliates a non-exclusive, non-assignable, limited license to use the trade names, trademarks and service marks of such Party and its affiliates (collectively, "Marks") during the term of this agreement for the sole purpose of carrying out the collaboration activities outlined in Sections 3.0 and 4.0. Specific terms for HIMSS’ use of HL7 FHIR trademarks shall be specific in advance, consistent with HL7 policy. Each Party agrees that the owner of the Marks shall retain all right, title and interest in and to its respective Marks, and the other Party shall not contest such interest, nor assist others in doing so. In order for a Party to use the other Party’s Marks, prior written approval must be given or otherwise authorized in the form of approval of media copy, web-site frames, etc. Upon the expiration or termination of this SOU, each Party shall cease and desist the use of the other Party’s Marks, unless authorized pursuant to another written agreement. Each party shall deliver a representative sample of its use of licensed Marks hereunder to the licensing party for inspection. Each licensee shall comply with all licensor instructions with respect to usage of the Marks and shall cease
and desist from any usage hereunder upon the written instruction of the licensor. All good will arising from or relating to the use of licensed Marks accrues to the benefit of the respective licensor.

7.0 INTELLECTUAL PROPERTY

A. Each Party owns and retains all right, title and interest, worldwide, in any and all of its Intellectual Property preexisting before the Effective Date of this SOU ("Preexisting IP").

B. HL7 shall own and retain ownership of any works, inventions, improvements, methods, know how, data, information, derivative works, work product or other Intellectual Property it authors, events or creates, without any contribution from HIMSS of any kind, hereunder ("HL7 IP").

C. HIMSS shall own and retain ownership of any works, inventions, improvements, methods, know how, data, information, derivative works, work product or other Intellectual Property it authors, events or creates, without any contribution from HL7 of any kind, hereunder ("HIMSS IP"). HIMSS IP shall expressly include all HIMSS maturity models and any derivatives related thereto, including those currently in use or developed for future use, regardless of any contribution received from HL7 under this SOU or otherwise.

D. With the exception of Paragraphs A through C above, Intellectual Property jointly made, developed, conceived, first reduced to practice, fixed in any tangible medium of expression or created by HIMSS and HL7 under this Agreement ("Joint IP"), shall be the joint property of the Parties.

E. Each Party hereby assigns and agrees to assign to the other Party, or its designees, an undivided one-half of its full right, title and interest in all Joint IP. Both HL7 and HIMMS agree it will, at the other Party’s request, execute any and all applications, registrations, and related documentation to assign such interest in the Joint IP.

F. The Parties agree not to file any patent, trademark or copyright applications relating to such Joint IP, without first notifying the other Party.

G. Each party agrees to perform all acts that the other Party may reasonably request to assist in obtaining the full benefits, enjoyment, rights, title, and interest in the United States and throughout the world, in the Joint IP. Such acts shall include, without limitation, execution of documents and assistance in the prosecution of patents, copyrights, trademarks, and trade secrets. The Parties shall each bear their own expenses under this Section 7.

H. Both HL7 and HIMSS reserve the right to publish the Joint IP for the benefit of their members. All publications of Joint IP, or parts thereof, shall include and joint marks or statements and any and all logos or identifying graphics as agreed by the Parties. Prior to such publication, each Party shall afford the other Party a reasonable right to review. Reproduction or redistribution by membership of the Parties is not permitted under this SOU absent express written agreement.

I. Neither Party shall have the right to license Joint IP to any third party without the prior written approval of the other Party.

8.0 CONFIDENTIALITY AND NON-DISCLOSURE
A. HL7 and HIMSS may provide and disclose to the other Confidential Information as defined herein. The receiving Party of Confidential Information ("Recipient") shall not directly or indirectly disclose any Confidential Information of the other Party ("Discloser") to any third party, unless such disclosure is: (a) to an employee or counsel of Recipient (or its controlled affiliates) who have a legitimate business reason for knowing such information; or (b) authorized in writing by the Discloser in advance; or (c) required by any court or administrative agency.

B. At any time at the request of Discloser, and upon the termination or expiration of this SOU, Recipient shall return any and all Confidential Information (including any copies thereof in whatever medium such information is stored, i.e., electronically, paper copies, etc.), which are in the possession or control of Recipient.

C. “Confidential Information” shall include, but is not limited to, the following types of information, whether or not reduced to writing: the names of, lists and other information relating to a Party’s and/or its affiliate’s members, suppliers and business and/or affiliation partners, the terms of the SOU, affiliations with other third parties, financial information, strategy and business plans, tactics, reports, computer software, marketing and development plans, marketing techniques and materials, and any information related to a Party’s business which a Party treats as proprietary or designates as confidential information, and any information which a Party should reasonably know to be confidential or proprietary information. Confidential Information shall not include information in the public domain at the time of the disclosure to or receipt by Recipient; information which after disclosure to Recipient becomes part of the public domain by authorized dissemination by a third party and not by an act or omission of Recipient; and information which is subsequently disclosed or made available to Recipient without any obligation of confidentiality by a third party having a bona fide right to disclose or make available such information.

D. If Recipient is required by deposition, interrogation, requests for information or documents, subpoena, civil investigative demand or similar process, to disclose any Confidential Information of Discloser, Recipient shall provide Discloser with prompt notice so that Discloser may seek an appropriate protective order and/or waive Recipient’s compliance with the provisions of the SOU. In the absence of a protective order or the receipt of such a waiver, if Recipient is, in the opinion of Recipient’s legal counsel, compelled to disclose Confidential Information to any legislative, judicial or regulatory body, agency or authority, or else be exposed to liability for contempt, fine or penalty or to other censure, such Confidential Information may be so disclosed.

E. The provisions of this Section 8 shall survive any termination or expiration of this SOU and shall be fully enforceable by Discloser or its successors or assignees subsequent to the termination or expiration of the SOU, regardless of the reason for such termination or expiration.

9.0 DATA PROTECTION

A. To the extent HL7 or HIMSS provides to the other Party any Personal Data during the course of this SOU, each Party represents, warrants and covenants that such activities will be in accordance with the applicable data protection laws. Additionally, both HL7 and HIMSS shall identify in advance and label all Personal Data and shall not deliver any Personal Data to the
other Party without such Party’s prior written consent. Personal Data means any information that relates to an identified or identifiable natural person, to the extent that such information is protected as personal data under applicable Data Protection Laws.

B. Each Party warrants that it shall inform or obtain the prior written consent of each individual, if required by applicable law, for the disclosure of their respective Personal Data and processing in accordance with this clause, if any.

10.0 INDEMNIFICATION

Each Party shall indemnify, defend and hold harmless the other and its affiliates, and their boards of trustees, boards of directors, officers, employees, agents, attorneys, successors and permitted assigns (collectively, “Indemnitees”) from and against any claim, suit, proceeding, damages and liabilities brought by a third party against an Indemnitee arising from: (a) intellectual property infringement involving the indemnifying Party’s or its affiliates’ Marks or other property protected by intellectual property laws; or (b) the gross negligence, willful misconduct or fraud by the indemnifying Party or its affiliates. Each Party shall notify the other Party of any claims for which the Indemnitees seek indemnification. The defense counsel selected by the indemnifying Party shall be reasonably acceptable to the Indemnitees. The indemnifying Party shall not settle any claim without the prior written consent of the Indemnitees. If the indemnifying Party is required to indemnify the Indemnitees in accordance with the terms of this Section 10.0, then the indemnifying Party shall be responsible for paying all settlements, judgments, awards, fines, penalties, interest, liabilities, losses, costs, damages and expenses, including attorneys' fees and disbursements and court costs sustained or incurred by any of the Indemnitees.

11.0 WARRANTIES AND REPRESENTATIONS

Each Party makes no express or implied warranties other than those that may be contained in or appended to this SOU.

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

OTHER THAN IN CONNECTION WITH A BREACH OF SECTION 6.0 OR 9.0, THE AGGREGATE, CUMULATIVE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE MARK OR THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES IN THE AMOUNT OF FIVE THOUSAND DOLLARS ($5,000). THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THIS SECTION APPLY TO ALL CLAIMS OR CAUSES OF ACTION ON WHATEVER BASIS AND UNDER WHATEVER THEORY BROUGHT AND IRRESPECTIVE OF WHETHER THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM.

Each party represents and warrants that (a) it has the authority to enter into this Agreement and to perform its obligations hereunder; and (b) to their respective knowledge as of the Effective Date, licensee’s exercise of the rights granted hereunder shall not violate the rights of any third party, including without limitation, rights in trademark, unfair competition, and contract.

12.0 NON-EXCLUSIVITY
The Parties recognize, acknowledge and agree that nothing herein shall be construed to limit either Party’s engagements with its clients or business partners in any way, nor prohibit business relationships that might result in competitive relationships and/or ideas, technologies or services absent a breach of this SOU.

13.0 MEMBERSHIP AND RELATED FEES

As the Parties are member-based organizations, it is agreed both HIMSS and HL7 will reasonably encourage their respective members to attend sponsored events of the other Party. Nothing herein requires compulsory membership and any fees incurred related to membership in either organization shall be the responsibility of the individual member and shall be assessed at the then current membership rate.

14.0 MISCELLANEOUS

A. Entire Agreement. Effective with its signing, this SOU shall be deemed to set forth the entire understanding and agreement between the Parties relating to the transactions described herein, superseding in its entirety all other terms, conditions, warranties or representations, whether written or oral, and all prior agreements.

B. Governing Law and Forum Selection. This SOU shall be governed by the laws of the State of Illinois in the United States of America without regard to choice of law principles.

C. Counterparts. The SOU may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one Party, but all of which taken together shall constitute one and the same agreement.

D. Successors and Assigns. The SOU shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns. Neither Party shall have the right to assign the SOU, in whole or in part, by operation of law or otherwise, to any third party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

E. Waiver. No failure or delay by either Party in exercising any right under this SOU shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

F. Amendment. The SOU may be amended in whole or in part at any time by written agreement setting forth such changes and signed by each of the Parties.

G. Severability. The invalidity or unenforceability of any part of this SOU shall not impair or affect in any manner the validity or enforceability of the remainder of the agreement. If any provision of the SOU is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

H. Headings. The headings used in this SOU are for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this agreement.
I. **Survival.** The following provisions shall survive the termination or expiration of this SOU and shall remain in full force and effect: Section 6.0 ("Trademark License"), Section 7.0 ("Intellectual Property"), Section 8.0 ("Confidentiality and Nondisclosure"), Section 10.0 ("Indemnification"), Section 11.0 ("Warranties and Representations"), and Section 14.0 ("Miscellaneous"), in addition to any other provisions that are reasonably expected to survive the termination or expiration of this agreement.

The undersigned have caused this SOU to be duly executed.

**HL7 INTERNATIONAL**

Charles Jaffe, MD PhD  
Chief Executive Officer

**HEALTHCARE INFORMATION AND MANAGEMENT SYSTEMS SOCIETY**

Harold F. Wolf III  
President and Chief Executive Officer