



## Amendment to the OSCAR Service Provider Affiliation Agreement

This Agreement made this            day of            2015,

BETWEEN:

Open Source Clinical Application Resource (OSCAR) Electronic Medical Record (EMR) Inc., a corporation incorporated pursuant to the laws of the Province of Ontario (hereinafter referred to as "OSCAR EMR")

OF THE FIRST PART

and

\_\_\_\_\_ (hereinafter referred to as either "\_\_\_\_\_" or "Approved OSCAR Service Provider")

OF THE SECOND PART

**WHEREAS** OSCAR EMR and [INSERT Approved OSP Name] executed the "OSCAR Service Provider Affiliation Agreement" on [INSERT date of signing], as amended on the ----- day of ----, 2015 and which otherwise remains in full force and effect; (the "Affiliation Agreement")

**AND WHEREAS** OSCAR EMR and [INSERT Approved OSP Name] have recognized that certain amendments to the Affiliation Agreement would enable the Parties respectively to more effectively manage OSCAR EMR's Quality Management System ("QMS") and deliver to Clients' the desired experience of OSCAR as an Affiliated Product of OSCAR EMR (hereinafter referred to as "Affiliated Product");

**NOW THEREFORE, IN CONSIDERATION** of the premises and the mutual covenants and agreements hereinafter contained and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto covenant and agree as follows:

## Article 1: Purpose

- 1.01 This Amending Agreement was prepared in response to a request from, and in collaboration with, Approved OSCAR Service Providers (“Approved OSPs”) who recognized the need to modify and clarify certain terms of the Affiliation Agreement for the good of the OSCAR community and OSCAR Users. This Amending Agreement enables OSCAR EMR to more efficiently and transparently fulfill its leadership role in OSCAR EMR’s QMS on behalf of all OSCAR Users, and to more effectively communicate with users of OSCAR as an OSCAR EMR Affiliated Product. It also enhances accountability measures for Approved OSPs, reflecting their commitment to collaborate and interact in an open and transparent way that strengthens both OSCAR and OSCAR’s community of users.
- 1.02 For ease of distinguishing Approved OSPs who have executed this Amending Agreement from those operating solely in accordance with the terms of the Affiliation Agreement, Approved OSPs under this Amending Agreement will be hereinafter referred to as “Charter OSPs”.

## Article 2: Definitions and Interpretation

- 2.01 Except as provided for in this Amending Agreement, all capitalized terms shall have the corresponding meaning as set out in the Affiliation Agreement. In the event any term or provision of this Amending Agreement is considered to be in conflict with and/or inconsistent with the Affiliation Agreement, the term or provision of this Amending Agreement shall prevail.
- 2.02 For the purpose of this Amending Agreement, the following definitions shall apply:
- “Affiliated Product”** means the OSCAR system made available under GNU General Public License Version 2+ (<http://www.gnu.org/licenses/gpl-2.0.html>) complies with OSCAR EMR’s ISO 13485:2003 certified QMS and receives all of the benefits associated therewith.
- “Amending Agreement”** means this amending agreement which amends the Affiliation Agreement between OSCAR EMR and the Approved OSCAR Service Provider;
- “Charter OSCAR Service Provider” or “Charter OSP”** means and Approved OSP that that has executed this Amending Agreement with OSCAR EMR and, thereby, has agreed to include the OSCAR EMR Affiliated Product Charter as a mandatory Appendix to any Service Contract pertaining to OSCAR as an Affiliated Product of OSCAR EMR;

**“Integrator”** means the open-source software that facilitates data sharing between separate OSCAR systems and is configured in accordance with data sharing permissions established between Clients;

**“OSCAR EMR Affiliated Product Charter” or “Charter”** means a charter, required to be appended to the Service Contract between a Charter OSP and its Client that summarizes key requirements of OSCAR EMR’s ISO 13485:2003 certified QMS related to the OSCAR (Affiliated Product) software in use by the Client, the terms of such charter shall be prescribed by OSCAR EMR from time to time (subject to compliance with the process for implementing changes to requirements of the QMS as set forth in the Affiliation Agreement);

**“OSCAR EMR Affiliated Product Terms of Use Agreement” or “TOU”** means the agreement, the terms of which shall be prescribed by OSCAR EMR from time to time (subject to the provisions contained in Article 8 of that agreement with respect to amendments), between OSCAR EMR, the Client and the Approved OSCAR Service Provider, which establishes the terms of use for OSCAR, a copy of which is appended hereto and marked Appendix “B” and shall include any OSCAR EMR Terms of Use Agreement previously executed up to and including April 15, 2015;

**“Shared OSCAR Integrator Service”** means an Integrator managed by a Charter OSP on behalf of multiple Clients, some or all of whom may have a Service Contract with a different Charter OSP or Approved OSP.

### **Article 3: Amendments**

#### **Amendment #1:**

#### **Enhancing OSCAR EMR’s Direct Relationship with OSCAR Users**

3.01 OSCAR EMR shall be entitled to direct engagement with any Client of the Charter OSP that is using OSCAR as an Affiliated Product. In addition to the provisions for direct Client engagement by OSCAR EMR in the Affiliation Agreement and OSCAR EMR Affiliated Product Terms of Use Agreement, OSCAR EMR may contact a Client directly when, as determined by OSCAR EMR in its sole discretion and acting reasonably:

- a. a Charter OSP’s non-compliance with any aspect of the QMS has the potential to materially impact the Client. Aspects of the QMS for which non-compliance would be

considered to have a material impact include any that would place the OSCAR software outside of the scope of an Affiliated Product of OSCAR EMR, including:

- i. requirement for completion of OSCAR EMR Affiliated Product Terms of Use Agreement
- ii. bug fix process
- iii. feature change process
- iv. implementation set-up and corresponding hardware and software requirements
- v. upgrade requirements
- vi. any other requirements of certification relevant to the Client (e.g. including but not limited to Ontario EMR Specification requirements).

All such communication shall be carried out by OSCAR EMR in a manner that is transparent to the Charter OSP with the clear objective of supporting the Charter OSP in resolving the non-compliance while concurrently mitigating risks to the Client during the resolution process.

- b. direct communication with a Client or Clients is required to appropriately assess, and support full resolution of, a non-compliance of the QMS related to the obligations of the Charter OSP under its Service Contract with the Client (e.g. response time, resolution time, customer service). All such communication shall be carried out by OSCAR EMR in full collaboration with the Charter OSP as follows:
  - i. OSCAR EMR will identify to the Charter OSP the requirement to communicate with a Client regarding non-compliance, and will provide a draft of the communication material(s) and timeline for distribution, allowing a minimum of 5 business days for review and response; and
  - ii. the Charter OSP will have the opportunity to request revisions to the communication material(s) and to provide additional material(s) for inclusion in the distribution where deemed appropriate to ensure a Client has all relevant information to assist OSCAR EMR and the Charter OSP in assessing and resolving the non-compliance.
- c. communication to a Client or Clients is necessary to inform the Client(s) of any matter pertaining to OSCAR as an Affiliated Product, unrelated to compliance of the Charter OSP, including but not limited to notification of a critical bug. All such communication will be carried out in collaboration with the Charter OSP to ensure optimal support and clarity for Client(s).

**Amendment #2:**

**Affirming Charter OSP’s Commitment to Fulfilling OSCAR EMR’s Affiliated Product Requirements**

3.02 The Charter OSP shall include the ***OSCAR EMR Affiliated Product Charter*** and the ***OSCAR EMR Affiliated Product Terms of Use Agreement*** as mandatory Appendices to every Service Contract going forward as of the date of this Amending Agreement, and will ensure execution by the Client of the TOU concurrent with execution of the Service Contract. With respect to existing Clients as of the date of this Amending Agreement, the Charter OSP will offer to append the Charter to the existing Service Contract.

- The Charter summarizes key requirements of OSCAR EMR’s ISO 13485:2003 certified QMS related to the OSCAR (Affiliated Product) software in use by the Client, and affirms the Charter OSP’s commitment to fulfill the requirements in collaboration with OSCAR EMR on behalf of the Client. In so doing, it strengthens the open-source OSCAR community’s collaboration together (One Team) to provide a robust and comprehensive software product (One OSCAR) that furthers the shared vision of continuous health improvement for all (One Cause).
- The TOU defines the terms under which the Client receives OSCAR as an Affiliated Product of OSCAR EMR, the administration of which is set out in the Affiliation Agreement between OSCAR EMR and the Charter OSP.

**Amendment #3:**

**Offering Greater Transparency to Inform Due Diligence in Selection of OSP**

3.03 The Charter OSP will participate in an ongoing process of evaluation, the results of which will be made available to OSCAR Users via OSCAR EMR’s web-site, with the Charter OSP having the opportunity to preview the results and identify any errors five (5) business days before posting. The focal areas for evaluation will include:

<b>Evaluation Focus</b>	<b>Input</b>
a. Installation of OSCAR as an Affiliated Product	<ul style="list-style-type: none"><li>▪ Client survey submitted to OSCAR EMR with each installation or version upgrade</li><li>▪ Random audits conducted by OSCAR EMR</li></ul>
b. Migration to OSCAR from another system	<ul style="list-style-type: none"><li>▪ Client survey submitted to OSCAR EMR after each completed migration</li></ul>
c. Development	<ul style="list-style-type: none"><li>▪ Compliance with code management processes (Change</li></ul>

	<ul style="list-style-type: none"> <li>▪ Requests; Bug Fixes) as assessed by OSCAR EMR</li> </ul>
d. Training	<ul style="list-style-type: none"> <li>▪ Initial training – Client survey submitted to OSCAR EMR with each new installation after going live</li> <li>▪ Quarterly reporting of aggregate results of Client training surveys, validated on regular random sampling audit by OSCAR EMR</li> </ul>
e. Support	<ul style="list-style-type: none"> <li>▪ Client satisfaction surveys administered directly by OSCAR EMR annually or more frequently in its sole discretion</li> <li>▪ Quarterly reporting of performance on Service Contract targets for response time, issue resolution, etc. per relevant regulatory requirements</li> </ul>

The metrics and measures for evaluation will be published on the OSCAR EMR web-site and revised from time to time, with any revision subject to written agreement from OSCAR EMR and the Charter OSP prior to implementation to ensure validity and feasibility. OSCAR EMR will at all times ensure the posted evaluation results are fully compliant with the published metrics and measures, and on that basis the Charter OSP agrees not to dispute the posted evaluation results, and further agrees not to assert or pursue any claim against OSCAR EMR related to the posted evaluation results.

**Amendment #4:**

**Confirming OSCAR EMR’s Authority and Discretion to Audit Compliance**

3.04 Notwithstanding any provision contained in the Affiliation Agreement to the contrary and in addition to the rights and responsibilities related to audits defined in the Affiliation Agreement, the Charter OSP agrees OSCAR EMR has the right to randomly select which Client’s system will be the subject of the audit. The Charter OSP further agrees that OSCAR EMR has the right to require additional audits where, in its sole discretion and acting reasonably, the minimum sampling of Clients’ systems defined in OSCAR EMR’s QMS does not yield sufficient assessment data for a conclusive determination of satisfactory compliance with requirements. The Charter OSP agrees that the minimum number of audits conducted by OSCAR EMR in a given year shall be three (3) unless the Charter OSP’s Client base warrants more in accordance with the proportional sampling formula specified in the QMS, as provided for herein.

For all audits, OSCAR EMR will provide a minimum of five (5) business days’ notice to the Charter OSP of the audit requirement, selected OSCAR system and timeframe, and the Charter OSP will liaise with the Client to facilitate the audit, it being understood OSCAR EMR will conduct the audit remotely unless, in its sole discretion and acting reasonably, OSCAR EMR

deems it necessary to extend the audit to include an on-site assessment. The Charter OSP shall continue to be responsible for the costs incurred by OSCAR EMR in conducting the audit, understanding OSCAR EMR will endeavour to minimize costs while achieving the required assessment.

**Amendment #5:**

**Confirming OSCAR EMR's Authority and Discretion to Manage Issue Resolution**

3.05 Notwithstanding anything contained in the Affiliation Agreement to the contrary, OSCAR EMR shall have the right, acting reasonably, to specify the required cure period for any identified non-compliance by the Charter OSP of the Affiliation Agreement or this Amending Agreement.

**Amendment #6:**

**Confirming Charter OSP's Commitment to Promoting OSCAR as an Affiliated Product of OSCAR EMR**

3.06 Notwithstanding anything contained in the Affiliation Agreement to the contrary, the Parties affirm:

- a) the obligation of the Charter OSP (specified in paragraph 4.02(d) of the Affiliation Agreement) to ensure execution of the OSCAR EMR Affiliated Product Terms of Use Agreement by the Client. This Amending Agreement further affirms the Charter OSP's commitment to promote and encourage the use of OSCAR as an Affiliated Product, including the completion of TOU and payment of Certification Fees. Where a Client identifies real or potential barriers to choosing OSCAR as an Affiliated Product, the Charter OSP agrees to facilitate communication between OSCAR EMR and the Client, ensuring transparent dialogue between OSCAR EMR, the Charter OSP and the Client regarding any constraints of the Affiliated Product that may present barriers to the Client, and the opportunity to collectively explore options to remove those barriers.
- b) a Client has two options for payment of Certification Fees:
  - i. via Charter OSP; or
  - ii. directly to OSCAR EMR
- c) payment of Certification Fees is the responsibility of the Client, unless responsibility for payment is otherwise assumed by the Charter OSP as part of the Service Contract. In keeping with this, a Charter OSP will not be deemed non-compliant in the event a Client

defaults on, or fails to pay, Certification Fees provided the Charter OSP has fulfilled its role in promoting and encouraging compliance with the terms of OSCAR as an Affiliated Product. In the event of default or non-payment of Certification Fees, OSCAR EMR will liaise directly with the Client unless otherwise requested by the Charter OSP.

**Amendment #7:**

**Confirming Charter OSP's Commitment to Supporting Client's Choice of Preferred OSP**

3.07 This Amending Agreement affirms the Charter OSP's commitment to ensuring that each Client experiences freedom of choice of preferred OSP affiliated with OSCAR EMR. This is achieved through full compliance with all requirements of OSCAR as an Affiliated Product, including the Approved OSP Code of Conduct, and the requirement that the Service Contract for a Charter OSP include a termination provision allowing the Client the option of early termination upon 60-day's written notice. Should a Client choose to exercise the option to receive support services from an alternate Charter OSP or Approved OSP, the affected Charter OSP shall support the transition in a manner that enables the continued and effective functioning of the OSCAR (Affiliated Product) software, it being understood there may be terms in the Service Contract between the Client and the Charter OSP that need to be fulfilled prior to or during the process of transition.

For greater clarity and to allow for a transparent and predictable transition, the Charter OSP further agrees to define and include in the Service Contract an exit process that clearly describes the steps that will be followed during the transition. The Charter OSP will also itemize in the Service Contract any tools, functions and/or processes that are unique to the Charter OSP's management of the Client's environment and delivery of services, and for which the Charter OSP retains intellectual property (herein referred to as "IP") rights, it being understood a Client's access to the IP will cease upon termination of the Service Contract unless otherwise negotiated with the Charter OSP.

**Amendment #8:**

**Supporting Freedom of Choice for OSCAR Users Requiring Data Sharing Between Practices**

3.08 The Charter OSP shall use its best efforts to facilitate a Client's participation in a Shared OSCAR Integrator Service in the event this service is available and such participation is deemed best by and for the Client.



## **Amendment #9**

### **Strengthening OSCAR Brand/Messaging and Consistency of Communication to OSCAR Users**

3.09 The Charter OSP shall ensure all Clients receive in a timely manner (target less than 48 hours) all communications issued by OSCAR EMR that OSCAR EMR identifies as relevant to OSCAR Users and that are not otherwise distributed directly to Clients by OSCAR EMR pursuant to Section 3.01. The Charter OSP further agrees to distribute the communication materials unmodified unless otherwise agreed to by OSCAR EMR.

Through this Amending Agreement, the Charter OSP affirms its commitment to be at all times an advocate and ambassador of OSCAR EMR and OSCAR as an Affiliated Product, and explicitly agrees to ensure all written communication to Clients pertaining in any way to OSCAR EMR (the not-for-profit organization governing OSCAR as an Affiliated Product) and/or OSCAR as an Affiliated Product of OSCAR EMR is consistent with communications from OSCAR EMR available in the public domain, or otherwise approved by OSCAR EMR prior to distribution, and that any other related messaging conveyed verbally is at all times consistent with messaging endorsed by OSCAR EMR.

## **Article 4: Terms and Termination**

4.01 Subject to Sections 4.03 and 4.04, this Amending Agreement shall remain in full force and effect during the term of the Affiliation Agreement.

4.02 Except as provided for in this Amending Agreement, all terms and conditions set out in the Affiliation Agreement shall remain in full force and effect unamended. It being understood however that in the event of any conflicting term or provision between the Amending Agreement and the Affiliation Agreement, the term in the Amending Agreement shall prevail.

4.03 The Charter OSP may terminate this Amending Agreement at any time in its sole and absolute discretion upon not less than thirty (30) business day's prior written notice to OSCAR EMR. Upon termination, the Charter OSP's listing on OSCAR EMR's web-site and in any communications materials will be revised to reflect removal from the category of Charter OSPs operating in accordance with the Amendment Agreement, it being understood OSCAR EMR has the right to provide notice of termination of this Amending Agreement to Clients of the Charter OSP, such notice including information deemed material by OSCAR EMR to the Affiliated Product in use by the Client. Where possible,

OSCAR EMR will work with the Charter OSP to collaboratively author the notice, it being understood that the final decision regarding the content of the notice will be made by OSCAR EMR, acting reasonably.

- 4.04 OSCAR EMR may terminate this Amending Agreement upon not less than thirty (30) business day's prior written notice in the event OSCAR EMR has notified the Charter OSP of a failure to fulfill one or more requirements of the Amending Agreement, and the Charter OSP has failed to remedy the breach within the cure period defined by OSCAR EMR in its sole discretion, acting reasonably. Upon termination, the Charter OSP listing on OSCAR EMR's web-site and in any communications materials will be revised to reflect removal from the category of Charter OSPs operating in accordance with the Amendment Agreement. OSCAR EMR shall have the right to accompany the change on the web-site with a written notice on the website describing the reason for the change, it being understood such notice shall be written in a manner that recognizes and supports the Charter OSP's ongoing affiliation with OSCAR EMR as an Approved OSP through the Affiliation Agreement. Where possible, OSCAR EMR will also work with the Charter OSP to collaboratively author the written message that will appear on the website to accurately reflect the reason for the change from both OSCAR EMR's and the Charter OSP's perspective, it being understood that the final decision regarding the content of the message will be made by OSCAR EMR, acting reasonably.
- 4.05 The termination of this Amending Agreement shall in no way affect the continuation of the Affiliation Agreement which shall remain in full force and effect in accordance with its terms.

## **Article 5: General**

- 5.01 This Amending Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts when taken together shall constitute one and the same instrument. An executed copy of this Amending Agreement may be delivered by a Party by electronic transmission to the other Party which, when received by the other Party, may be relied on by such other Party as though an original executed copy of this Amending Agreement had been delivered to it.
- 5.02 The invalidity of any provision of this Amending Agreement or any covenant contained in this Amending Agreement on the part of a Party shall not affect the validity of any other provision of this Amending Agreement.

- 5.03 This Amending Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.
- 5.04 This Amending Agreement shall be binding upon and shall enure to the benefit of each of the Parties to this Amending Agreement and their respective successors, heirs, personal representatives and permitted assigns.

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**OPEN SOURCE CLINICAL APPLICATION RESOURCE (OSCAR) ELECTRONIC MEDICAL RECORD (EMR) Inc.**

Per: \_\_\_\_\_

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

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

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

I/We have authority to bind the corporation

\_\_\_\_\_

Per: \_\_\_\_\_

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

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

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

I/We have authority to bind the corporation