

# Delaware

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*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "OPEN EHEALTH FOUNDATION", FILED IN THIS OFFICE ON THE TWENTY-FIRST DAY OF MAY, A.D. 2008, AT 4:58 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

4550782 8100

080585564



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6609165

DATE: 05-22-08

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 04:59 PM 05/21/2008  
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SRV 080585564 - 4550782 FILE

**STATE OF DELAWARE**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**OPEN eHEALTH FOUNDATION**

**THE UNDERSIGNED**, for the purpose of forming a nonstock, nonprofit corporation pursuant to Section 101 of the General Corporation Law of the State of Delaware (the "DGCL"), hereby certifies:

**FIRST:** The name of the Corporation is Open eHealth Foundation.

**SECOND:** The address of the registered office of the Corporation in the state of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, State of Delaware 19808. The name of the registered agent of the Corporation at that address is Corporation Service Company.

**THIRD:** The Corporation shall be organized as a nonstock, nonprofit organization within the meaning of section 501(c)(6) of the Internal Revenue Code of 1986, as now in effect or as may hereafter be amended (the "Code"). The purposes for which the Corporation is formed are to promote and represent the common business interests of its members, and to improve the business conditions in the fields of health care, technology infrastructure, and software applications in health care, and to conduct or engage in any lawful act or activities that are in furtherance of the purposes of the Corporation or incident thereto and for which corporations may be organized under the DGCL. The specific purposes include, but are not limited to, collaborative development, open source licensing, and promotion of a framework to serve as a common platform for the development of healthcare solutions based on open standards and community collaboration providing interoperable components and services for increased healthcare information technology adoption; to promote public policy consistent with the above-stated purposes; and to engage in such other activities as are consistent with section 501(c)(6) of the Code. The Corporation is not organized for profit or to provide particular services to members, and it shall not engage in any business activities ordinarily engaged in for profit.

In furtherance thereof, the Corporation shall have all the general powers enumerated in Sections 121 and 122 of the DGCL.

**FOURTH:** The Corporation shall not have authority to issue capital stock.

**FIFTH:** The Corporation initially shall have two classes of members: Promoter, and Contributor members. Members shall consist of legal entities and natural persons supportive of the mission and goals of the Corporation. For each class of members, the qualifications,

conditions, duties, voting rights, project participation rights, and dues obligations shall be determined by the Board of Directors and stated in the Bylaws of the Corporation as amended from time to time, or other policies of the Corporation. The Board of Directors may add, eliminate, subdivide, or modify the classes of membership at any time.

**SIXTH:** The name and mailing address of the incorporator, is as follows:

<u>Name</u>	<u>Address</u>
Carlos Guevara	c/o Morrison & Foerster LLP 2000 Pennsylvania Ave., NW Washington, DC 20006-1888

**SEVENTH:** Except as otherwise provided by law, or in any Bylaw of the Corporation, the business of the Corporation shall be managed and all of the powers of the Corporation shall be exercised by the Board of Directors of the Corporation. The manner of election of Directors shall be stated in the Bylaws. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide. The Board of Directors shall serve as such without compensation from the Corporation.

The initial directors of the Corporation, who shall serve until their successors are elected and shall qualify, will be as follows:

<u>Name</u>	<u>Address</u>
1. Thomas Liebscher	InterComponentWare AG Industriestr. 41 69190 Walldorf Germany
2. Lindsay Strait	Sun Microsystems, Inc. 15395 SE 30 <sup>th</sup> Place Suite 120 and 220 Bellevue WA 98007 USA
3. Evgueni Loukipoudis	Agfa Healthcare Septestraat 27 2640 Mortsel Belgium

**EIGHTH:** The duration of the existence of the Corporation is perpetual.

**NINTH:** No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, any director or officer of the Corporation, or any other private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for

services rendered to or for the Corporation and to make payments and distributions in furtherance of the purposes set forth in Article THIRD hereof.

**TENTH:** In the event of dissolution or final liquidation of the Corporation, all of the remaining assets and property of the Corporation shall, after paying or making provisions for the payment of all of the liabilities and obligations of the Corporation and for necessary expenses thereof, be distributed exclusively to one or more organizations which are exempt from Federal income tax under Section 501(c)(3), 501(c)(4), or 501(c)(6) of the Code or corresponding provisions of any future Federal tax code, or in furtherance of the common business interests of its members, in accordance with the Plan of Dissolution adopted by the Board of Directors; provided, however, such Plan is not inconsistent with any provision of the DGCL of the State of Delaware or any Code provision applicable to corporations described in Section 501(c)(6) of the Code. In no event shall any such assets or property be distributed to any director, officer, or any private individual.

**ELEVENTH:** To the fullest extent permitted by the DGCL, as now in effect or as may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or to its members for monetary damages for any breach of fiduciary duty as a director; provided, however, such relief from liability shall not apply in any instance where such relief is inconsistent with any provision of the Code applicable to corporations described in §501(c)(6) of the Code.

*[Signature Appears on Next Page]*

