

SIGIS: Special Interest Group for IAS Standards
Membership Agreement (Second Amended)

This Membership Agreement ("Agreement") is entered into as of the Effective Date (as defined in Section 4) by and between the SIGIS: Special Interest Group for IAS Standards (the "Corporation"), a Delaware non-profit corporation, and the entity wishing to become a Member of the Corporation ("Applicant") that has executed this Agreement and completed a membership application ("Application") submitted together with this Agreement.

Background

The Corporation is a nonprofit association that has been formed for the Purposes set forth in the Bylaws which include among other things to promote and certify implementations of inventory information approval systems (IAS) and transactions among merchants, payment card companies, card issuers, card processors, and plan administrators for merchant-based substantiation of claims for health flexible spending accounts and health reimbursement arrangements that implement the requirements for an IAS as currently required by IRS Notices 2006-69 and 2007-2 and Prop. Treas. Reg. 1.125-6 (the "Regulations") and as the regulations may be modified in the future. Applicant wishes to become a Tier I, Tier II, Tier III or Tier IV Member of the Corporation as indicated on Applicant's Application and obtain the benefits of participation at the designated level.

The Corporation requires that Applicant, as a condition to its admission as a member of the Corporation, agree to the terms, conditions and provisions of this Agreement. In addition, Applicant's Application must describe its direct and material interest in the Corporation's work, its willingness to participate actively in the Corporation's work, and its willingness to meet its obligations under the Articles of Incorporation and Bylaws of the Corporation, a copy of which the Applicant specifies as having received, including its Financial Obligation to pay the membership fees as described in the Bylaws. The Board of Directors of the Corporation shall approve or reject Applicant's Application and inform Applicant of its decision within thirty (30) days of receiving Applicant's completed Application and Applicant's signed Agreement as described in detail in the Bylaws.

Agreement

In consideration of the admission of Applicant to the Corporation, Applicant hereby agrees as follows:

Definitions: The following capitalized terms shall have the meaning set forth below.

"Administrative Fees" mean those fees that the Corporation pays to a third party independent investigator or to an independent third party that is retained to hear an appeal from a Member that has committed an Infraction as described in detail in the Corporation's *Policies and Procedures for Compliance Enforcement*.

"Affiliate" means any entity that is directly or indirectly controlled by, under common control with or that controls the subject entity. For purposes of this definition control means direct or indirect ownership of or the right to exercise (a) more than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject entity; or (b) more than fifty percent (50%) of the controlling interest representing the right to make the decisions for the subject entity.

"Annual Membership Fee" has the meaning set forth in the Bylaws.

"Applicant" means the entity that executes this Agreement and submits a completed Application to the Corporation together with its executed Agreement.

"Application" means the form provided by the Corporation entitled *SIGIS: Special Interest Group for IAS Standards, Application for Membership*.

"Compliant Implementation" has the meaning set forth in the IPR Policy.

“**Deliverable**” or “**Deliverables**” has the meaning set forth in the Corporation’s IPR Policy.

“**Effective Date**” has the meaning set forth in Section 4 below.

“**Governance Documents**” means the Corporation’s Articles of Incorporation, Bylaws, IPR Policy, the terms of this Agreement, and any guidelines, policies, or procedures in effect from time to time, including any rules or directives adopted and published to the Members by the Board of Directors.

“**Infraction**” has the meaning contemplated by the Corporation’s *Policies and Procedures for Compliance and Enforcement*.

“**Initial Participation Fee**” has the meaning set forth in the Bylaws.

“**Member**” means an Applicant that has been approved by the Board of Directors for membership in the Corporation in accordance with the applicable provisions of the Bylaws.

“**Notification**” or “**Notice**” means any notices provided pursuant to Section 12 hereof.

“**Special Assessment**” has the meaning set forth in the Bylaws.

1. **Governance Documents.** Applicant agrees that, as of the Effective Date, it is bound by and will comply with all Governance Documents, including the confidentiality provisions of Section 6 of the IPR Policy. Applicant acknowledges that it has reviewed each of the Governance Documents and that it understands the contents of each of those documents. Applicant acknowledges that these documents may be revised from time to time and new policies and guidelines may be added. The Corporation will notify Applicant of any amendments or new guidelines or policies that have been approved by the Board of Directors. The rules and procedures for amending the Articles of Incorporation, the Bylaws, and the IPR Policy are set forth in the Bylaws and IPR Policy. For clarity, Applicant agrees that it will adhere to the requirements as set forth in the Deliverables and use the Deliverables only in connection with Health FSAs, HRAs, and HSAs as those terms are defined in the IPR Policy.
2. **Order of Precedence.** In the event of a conflict between or among any of the Governance Documents, the order of precedence shall be the order set forth in the Bylaws.
3. **Membership Dues and Other Fees and Assessments.** The Applicant agrees to pay when due as required by the Bylaws, all dues, fees and assessments that are applicable to its elected class of membership as designated in its Application, including the Annual Membership Fees, Initial Participation Fees (for Tier I and Tier II Applicants), and Special Assessments (for Tier 1 Applicants) and all fees imposed in connection with the Applicant's elective participation in optional membership activities, including but not limited to certification. Except as provided for in the Bylaws, Applicant acknowledges that no pro-rated amount or other refund will be returned to Applicant if Applicant withdraws from the Corporation or if Applicant’s membership is terminated.
4. **Execution; Effective Date; Term.** This Agreement is executed by Applicant upon Applicant's submission to the Corporation of this Agreement and Applicant’s Application. This Agreement is executed by the Corporation and shall commence upon Notification by the Corporation that it has accepted Applicant’s Application for membership (the “**Effective Date**”). This Agreement shall remain in effect until the Corporation or Applicant terminates Applicant's membership as provided for in the Governance Documents or until the Corporation dissolves.
5. **Certification Programs.** The Corporation’s certification programs set forth in the Corporation’s *Certification Procedures* are available to any Member desiring to be qualified by the Corporation to use or implement the Deliverables; provided, however, that no Member is obligated to participate in the Corporation’s certification programs.

a. General. Should Applicant elect to participate in any of the Corporation’s certification programs, Applicant shall comply with all applicable program requirements as set forth in the Corporation’s

Certification Procedures including execution of a Certification Agreement, where applicable, including a Self-Assessment form, and any payment of fees as set forth in the Bylaws. Applicant agrees that it will not use any Deliverables to (i) transmit any transactions unless and until Applicant is certified by the Corporation, or (ii) process a transaction in accordance with the Corporation's Deliverables unless the transaction is in a format that indicates that it has been submitted by a certified Member of the Corporation or is in fact submitted by a certified Member of the Corporation. Applicant further agrees that unless and until it is certified it will not promote, advertise, publish or otherwise identify any of its processes, services, or products as being compliant with the Deliverables or certified by the Corporation. For clarity if Applicant's certification status is suspended or revoked pursuant to the procedures set forth in the Corporation's *Policies and Procedures for Compliance and Enforcement*, then Applicant is not considered certified for purposes of this Section.

b. Testing. Member agrees to complete all requirements for testing as set forth in the Corporation's *Certification Procedures*. The Corporation shall not certify any Member until the Corporation receives confirmation of the Member's successful testing and compliance with the testing requirements as set forth in the Corporation's *Certification Procedures*.

6. Compliance and Enforcement. Applicant acknowledges the importance of all Members adhering to the certification program requirements when transmitting or processing a transaction or, providing service, according to the Corporation's Deliverables.

a. Duty to Inform the Corporation. Applicant agrees to immediately inform the Corporation if Applicant becomes aware, based on a good faith belief and bona fide information, of any Member's potential Infraction with regard to such Deliverable ("**Potential Infraction**"). Applicant agrees and acknowledges that it will submit a complaint according to the *Corporation's Policies and Procedures for Compliance and Enforcement* identifying the Member it believes has committed the Potential Infraction, describing the nature of the Potential Infraction, and including supporting documentation provided that in disclosing such information Applicant would not be violating a non-disclosure agreement.

b. Duty to Cooperate. Applicant agrees to reasonably cooperate in good faith with the Corporation, including but not limited to any committee of the Corporation, and their contractors, chartered to investigate any complaints of Potential Infractions. Applicant acknowledges that, subject to applicable law, as part of any such investigation, Applicant may be required to disclose its confidential or proprietary information to employees and contractors of the Corporation, an independent third party investigator or an independent third-party review board, provided, however, such disclosure will be subject to the receiving party executing a non-disclosure agreement in the form attached hereto as Exhibit A or a substantially similar form adopted by the Board of Directors. In no event will Applicant be required to disclose its confidential or proprietary information to any Member of the Corporation as part of an investigation for a Potential Infraction or permit any third party investigator or third party review board to disclose Applicant's confidential or proprietary information to any Member.

c. Failure to Comply with the Certification Program Requirements. Applicant acknowledges that the Corporation may act to enforce the certification requirements by temporarily suspending Applicant's certification, revoking any or all benefits of certification, imposing Administrative Fees, or terminating Applicant's membership in the Corporation, if Applicant elects to participate in a certification program and commits an Infraction but only as described in the Corporation's *Policies and Procedures for Compliance and Enforcement* or the applicable provisions of the Bylaws. Applicant will not be responsible for any Administrative Fees unless and until a third party independent review established according to the procedures set forth in the *Policies and Procedures for Compliance and Enforcement* determines that Applicant has committed an Infraction that the Applicant did not resolve before such review was convened.

7. Transfer of Membership. Applicant's membership and this Agreement are personal to Applicant and as such are non-assignable and non-transferable without the prior written consent of the Corporation. A membership may only be transferred in accordance with the procedures set forth in the Bylaws and upon approval by the Board of Directors. Notwithstanding the foregoing, membership may be transferred to an Affiliate of the Applicant or to an entity that acquires the majority of the assets of Applicant without prior approval of the Board of Directors solely in accordance with the Bylaws and so long as the Affiliate or

acquiring entity, as applicable, agrees to the terms of this Agreement. Any purported assignment or transfer in violation of this Section shall be void, and may result in termination of Applicant's membership.

8. Indemnity. Except as otherwise provided in Section 24, Applicant agrees to defend and indemnify the Corporation and its officers, directors, employees, and agents (each an "Indemnified Party") and hold them harmless from and against any and all damages, judgments, costs, including without limitation reasonable attorneys' fees, claims and liabilities that an Indemnified Party may sustain as a result of (i) the material breach by Applicant of the provisions of this Agreement, or (ii) Applicant's failure to materially comply with the Governance Documents, such breach in subsection (i) or non-compliance in subsection (ii) to be determined by a court of competent jurisdiction.

9. Limitation of Liability. UNDER NO CIRCUMSTANCES WILL THE CORPORATION BE LIABLE TO ANY APPLICANT OR ITS AFFILIATES UNDER ANY CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INCIDENTAL INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR FOR ANY COMMERCIAL OR ECONOMIC LOSSES, WITHOUT LIMITATION, INCLUDING AS A RESULT OF INFRINGEMENT OR PRODUCT LIABILITY CLAIMS, LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF WHETHER THE CORPORATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND IRRESPECTIVE OF WHETHER SUCH DAMAGES WERE FORESEEABLE.

10. Governing Law. This Agreement shall be construed and controlled by the laws of the State of Delaware without reference to conflict of laws principles.

11. Jurisdiction. The Corporation and Applicant agree that all disputes arising in any way out of this Agreement shall be heard exclusively in, and the Corporation and Applicant irrevocably consent to jurisdiction and venue in, the state and Federal courts of the State of Delaware. The proceedings shall be conducted in the English language. The Corporation and Applicant hereby waive any right to trial by jury.

12. Notices. Any Notices given under this Agreement will be delivered in accordance with the Bylaws.

13. Representations and Warranties With Respect to Affiliates. Applicant (excluding its Affiliates) hereby represents and warrants that it has power to cause all intellectual property rights, including patents, patent applications, copyrights, trademarks, trade names, and the like owned or controlled by it and all of its Affiliates to be licensed, assigned, or restricted as set forth in the IPR Policy and that it and its Affiliates have ownership rights in all patents and patent applications covering inventions made by their employees in the course of their employment.

14. Complete Agreement; No Waiver. This Agreement sets forth the entire understanding of the Corporation and the Applicant and supersedes all prior agreements and understandings relating hereto, unless otherwise stated in this Agreement. The waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

15. Amendment. This Agreement may be amended by the Board of Directors in accordance with the Bylaws. Notice shall be provided to Applicant at least thirty (30) days before any such amendment takes effect and the terms of the amended Agreement will be effective with respect to Applicant unless Applicant provides its Notice of withdraw within thirty (30) days of the Notice of amendment.

16. No Rule of Strict Construction. Regardless of which party drafted this Agreement, no rule of strict construction shall be applied against the Corporation or Applicant. If any provision of this Agreement is determined by a court to be unenforceable, the Corporation and the Applicant shall deem the provision to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted from this Agreement, and the remainder of the Agreement will continue in effect.

17. No Third Party Beneficiaries. This Agreement is entered into for the benefit of Applicant and the Corporation and not for the benefit of any third party. Similarly, Applicant agrees that it will not assert rights under any agreement between the Corporation and any other Member unless such agreement provides by its express terms that Applicant is an intended beneficiary of that agreement. Notwithstanding any contrary provision in this Section 17 or any other provision in this Agreement, the Applicant hereby acknowledges and agrees that each Member of the Corporation has a right under this Agreement, independent of any similar rights of the Corporation, to enforce against the Applicant those provisions of the IPR Policy requiring the Applicant to grant "Royalty Free Licenses" to Members of the Corporation and their Affiliates, such right to include, but not be limited to, instituting a legal cause of action against the Applicant to compel such enforcement.

18. Compliance with Laws. Notwithstanding anything contained in this Agreement to the contrary, the obligations of the Corporation and the Applicant shall be subject to all laws, present and future, of any government having jurisdiction over the Corporation and the Applicant, and to orders, regulations, directions or requests of any such government. It is the intention of the Corporation and the Applicant that this Agreement and all Governance Documents shall comply with all applicable laws and regulations.

19. Headings. The Corporation and the Applicant acknowledge that the headings to the sections hereof are for reference purposes only and shall not be used in the interpretation of this Agreement.

20. Force Majeure. Neither the Corporation nor Applicant shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes or any other cause which is beyond its reasonable control.

21. General Construction. As used in this Agreement, the plural form and singular form each shall be deemed to include the other in all cases where such form would apply. "Includes" and "including" are not limiting, and "or" is not exclusive.

22. Independent Contractors. The relationship of the Corporation and the Applicant established by this Agreement is that of independent contractors. This Agreement does not give the Corporation or the Applicant the power to direct and control the day-to-day activities of another, constitute the Corporation, the Applicant, or any Member of the Corporation as partners, joint venturers, co-owners, principal agent, or otherwise participants in a joint or common undertaking, or allow the Corporation or the Applicant to create or assume any obligation on behalf of another for any purpose whatsoever.

23. Import and Export Controls. The Corporation and Applicant shall comply with all applicable laws, including export, re-export and foreign policy controls and restrictions that may be imposed by any government in connection with the Corporation's and Applicant's respective performance under this Agreement.

24. No Adverse Action. Member agrees on behalf of itself, and its Affiliates, that neither the Member nor its Affiliates will implement or use any Deliverable, or hire or license a third party to implement or use a Deliverable, for the primary purpose of destroying the functionality of a Deliverable. In the event that Member breaches this Agreement, the Corporation's remedies, in addition to any other rights of the Corporation under the Bylaws, are limited to seeking specific performance or injunctive relief without the posting a bond. Except as otherwise expressly stated in any of the Governance Documents, no Member is precluded from developing, using, promoting, testing or implementing any other standard, technology or process for merchant-based substantiation of claims that implements the requirements for an IIAS, as defined in the IPR Policy.

SIGNATURE PAGE

This Agreement must be signed by a representative of the Applicant that is authorized to commit the Applicant to all of the terms of this Agreement. By signing this Agreement, the person signing represents and warrants that he or she has been so authorized, has read and understood this Agreement and all other Governance Documents, and has sought or waived the right to seek legal counsel prior to executing this Agreement.

If Applicant is a Company or Association:

If Applicant is an individual:

Name of Applicant (Company/Association Name)

Name of person signing

Address of Applicant (Company/Association)

Address of person signing

By: _____
Signature

By: _____
Signature

Name of person signing

Employer if person signing is employed

Title of person signing

Address of employer if person signing is employed

Email of person signing

Email of person signing

Telephone of person signing

Telephone of person signing

Date

Date

ACCEPTED:

SIGIS: Special Interest Group for IAS Standards By: _____

Title: _____

Date: _____

**EXHIBIT A
FORM OF CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement (the "**Agreement**") is made effective as of the _____ day of _____ (the "**Effective Date**") by and between _____ ("**Disclosing Party**") and _____ ("**Investigator**"*).

WHEREAS, in order for Investigator to evaluate the complaints of the Disclosing Party in connection with the IIAS Corporation ("**Evaluation**"), it is necessary and desirable that the Disclosing Party disclose certain confidential and proprietary information to the Investigator; and

WHEREAS, Investigator desires to receive this information in confidence.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Disclosing Party and Investigator hereby agree as follows:

1.0 Confidential Information.

1.1 As used herein, "**Confidential Information**" means any and all nonpublic information that is marked as "confidential" and disclosed by Disclosing Party to Investigator in connection with the Evaluation. Notwithstanding the forgoing, "**Confidential Information**" does not include any information that is: (1) already known by the Investigator prior to disclosure; (2) publicly available through no fault of the Investigator; (3) rightfully received without a duty of confidentiality; (4) disclosed by the Disclosing Party to a third party without a duty of confidentiality on such third party; (5) independently developed by the Investigator; or (6) disclosed by the Investigator with the Disclosing Party's prior written approval.

1.2 Notwithstanding anything to the contrary herein, Investigator shall be free to use the residuals of Confidential Information for any purpose, subject only to the obligations herein with respect to disclosure of such Confidential Information. The term "residuals" means that Confidential Information in non-tangible form, which may be retained in the unaided memories of individuals who have not intentionally memorized such Confidential Information and have had rightful access to such Confidential Information under this Agreement. It is understood that receipt of Confidential Information hereunder shall not create any obligation in any way limiting or restricting the assignment or reassignment of any employees of the Investigator (or the Investigator's employer) within the Investigator's organization (or employer's organization as appropriate). However, this Section 1.2 shall not be deemed to grant a license under the Disclosing Party's copyrights or patents.

EXHIBIT A
FORM OF CONFIDENTIALITY AGREEMENT (Continued)

2.0 Restrictions.

2.1 Except for Confidential Information disclosed pursuant to an order of a court or other authorized governmental body, or as required by law, provided that the Investigator provides reasonable prior written notice to the Disclosing Party, and cooperates with the Disclosing Party, so that the Disclosing Party has the opportunity to oppose any such order, Investigator agrees to (i) keep all Confidential Information confidential, and (ii) only use Confidential Information in connection with the Evaluation.

2.2 In order to protect and prevent disclosures of Confidential Information, Investigator shall (i) exercise at a minimum the same care it would exercise to protect its own proprietary and confidential information and trade secrets; and (ii) not use, reproduce, distribute, disclose, or otherwise disseminate Confidential Information. In no event shall Investigator exercise less than a reasonable standard of care to keep Confidential Information confidential.

2.3 Investigator agrees to promptly return to Disclosing Party, upon demand, any and all Confidential Information furnished under this Agreement that is either received in or reduced to material or tangible form, and all copies thereof.

2.4 The covenants of confidentiality set forth in this Agreement will apply from the Effective Date and continue for the shorter of a period equal to five (5) years after completion of the Evaluation, or until such Confidential Information no longer qualifies as confidential under applicable law or under Section 1.1 of this Agreement.

3.0 Miscellaneous.

3.1 This Agreement shall be interpreted under the laws of the State of Delaware, without regard to conflict of law principles.

3.2 The invalidity or unenforceability of any particular provision of this Agreement shall not affect any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted. The waiver by Disclosing Party of a breach of any of the provisions of this Agreement shall not operate or be construed as a waiver of any subsequent or simultaneous breach.

3.3 This Agreement, when executed, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior written agreements, oral discussions, or understanding between them with respect to the subject matter hereof. No modifications of this Agreement or waiver of any of its terms will be effective unless set forth in a writing signed by both parties.

* If used with an Appeals Board Representative replace "Investigator" with "Appeals Board Representative"

