

ASCI Membership Agreement

Terms and Conditions

Definition of Terms

ASCI – Automation Standards Compliance Institute – Not for profit Section 501(c) (6) corporation whose purpose is to engage in conformity assessment activities, incorporated by ISA in the state of North Carolina. Articles of Incorporation and Bylaws can be found on the ASCI website.

Board – ASCI Forum Board of Directors (for example ISA Security Compliance Institute Governing Board)

Member - The company or organization that has joined ASCI to participate in the Forums through execution of the Membership Agreement. ASCI Forums (Interest Groups) will create membership levels and entitlements according to the needs of the Forum. Fees and membership categories will vary among the Forums and are determined by the Forum's founding leaders and ultimately the established Board of Governance for each Forum.

Participants – Non-members of ASCI who participate in the consortium such as subject matter experts whether on a voluntary basis or paid basis. Participants may contribute to the consortium but are not entitled to the rights of membership such as voting.

Forum(s) - Working entities set up by ASCI for the benefit of its members. Forums are also identified as 'Interest Area Groups' in the ASCI Bylaws. The ISA Security Compliance Institute is an example of a Forum or Interest Area Group.

Membership Agreement - The Agreement executed by ASCI and the Member through which the Member becomes a member of ASCI.

Adopted Specifications – Adopted Specifications also known as *Profiles* in the product conformance community, are the composition of functional requirements, technical specifications, testing requirements, and other documents that articulate measurable requirements that must be attained to claim the right to use a trademarked product designation.

Information - Specifications, drawings, sketches, models, samples, data, computer programs or documentation or other technical or business information in written, graphic or other tangible or electronic form.

Intellectual Property Rights (IPR)

- The Member retains its ownership rights to Information the Member furnishes or discloses in connection with any ASCI Forum or other activity but grants to ASCI a perpetual, royalty-free, worldwide license to use the same, in ASCI's discretion.
- Information and other intellectual property developed by participants in an ASCI Forum or otherwise under the auspices of ASCI becomes the property of ASCI, and the Member transfers to ASCI any ownership rights in or to the same that might, absent such transfer, accrue to the Member. Should any Information or other intellectual property developed by or through ASCI incorporate pre-existing Information provided by the Member, the Member does not forfeit its ownership rights to that pre-existing Information, but that Information is hereby licensed to ASCI, as referenced above.

Confidentiality

Member agrees to the following obligations of confidentiality with respect to information received through participation in the Forum(s):

- Information furnished or disclosed by ASCI to Member, or by any other member in the course of the Forums' activities, shall be confidential. Member agrees to maintain all such Information in confidence, using the same degree of care Member uses to protect its own proprietary information of like importance, but in no event less than a reasonable degree of care.
- Member agrees to disclose Information only to its employees and agents of Member or its affiliates for purposes of advancing the work of the Forums and to advise each such employee or agent of the confidentiality terms set out in this Agreement.
- The provisions set out in this section shall not apply to Information which:
 - i) is or becomes a part of the public domain ,except through breach of this agreement,

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- ii) is demonstrably known to Member prior to disclosure within the Forums,
 - iii) was independently developed by the Member without the use of information provided under the Membership Agreement,
 - iv) was rightfully obtained by Member from third parties with no obligation of confidentiality.
- The obligations of confidentiality set out above shall remain in effect for the duration of the Membership Agreement and two years subsequent to termination thereof.

Representation and Warranty

ALL MATERIALS AND INFORMATION (“MATERIALS”) PROVIDED BY ASCI ARE PROVIDED “AS IS”, AND ASCI MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL ASCI BE LIABLE, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY LOSSES OR DAMAGE ARISING OUT OF OR RELATING TO THIS AGREEMENT, TO ASCI MEMBERSHIP, OR TO ANY ASCI MATERIALS. THIS LIMITATION OF LIABILITY IS COMPLETE AND THEREFORE APPLIES TO ALL DIRECT, INDIRECT, AND CONSEQUENTIAL LOSSES INCLUDING, WITHOUT LIMITATION, ANY DAMAGES, LOSS OF PROFITS, CONTRACTS, PRODUCTION OR USE.

The Member acknowledges that because of the special nature of ASCI it is reasonable for ASCI to exclude liability as above and for the Member to take measures, including insurance where appropriate, to mitigate or prevent any potential losses that may arise (provided that such measures are not in breach of these Terms and Conditions).

If any third party makes or threatens to make any claim (or if, in the opinion of ASCI such a claim is likely) that the use by the Member of any Materials provided by ASCI infringes any intellectual property right of such third party, ASCI may, at its option, either secure the Member’s right to continue using the Materials, make the Materials non-infringing or withdraw the Materials on one months written notice whereupon the Member shall not be authorized to make any further use of the Materials. This sub-clause states the entire responsibility of ASCI concerning infringement of third party intellectual property rights.

Membership agreements for other Members participating in the same tier of membership shall have substantially similar terms and conditions.

Renewal

The Membership Agreement shall automatically renew upon each anniversary date, unless terminated in accordance with "Termination" below.

Termination

The Membership Agreement may be terminated:

- By either party giving to the other party sixty (60) days notice in writing.
- By ASCI on written notice to the Member if the Member has committed any material breach of the Membership Agreement and in the case of a breach capable of being remedied, has failed to remedy the breach, within 30 days after the receipt of a written request in writing from ASCI notifying the Member of such breach.
- By ASCI on written notice to the Member if the Member fails to pay any sum(s) due to ASCI under the Membership Agreement and such sum(s) remain unpaid for thirty (30) days after written notice from ASCI that such sum(s) have not been paid.
- For the avoidance of doubt, termination of the Membership Agreement for any reason shall not entitle the Member to any refund of the annual sum due under the Membership Agreement.

Antitrust Guidance

Certain types of activities conducted by industry participants may be subject to scrutiny under antitrust laws as being anti-competitive. In order to minimize exposure of the ASCI and its Members to antitrust liability, the ASCI and each Member agree to abide by the following guidelines when participating with, for or on behalf of the ASCI:

1. Neither the ASCI nor any of its committees shall be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, among and between competitors or between a supplier and its customer(s) with regard to prices, terms or conditions of sale, distribution, volume of production, territories, customers, credit terms or marketing practices.

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2. The ASCI and its Members shall not discuss, communicate or engage in any other exchange between Members and/or Participants with regard to prices, pricing methods, production quotas or other limitations on either the timing, costs or volumes of production or sale, or allocation of territories or customers.
3. Neither the ASCI nor its Members and/or Participants shall engage in any activity or communication, other than unilateral action, that might be construed as an attempt to prevent any person or business entity from gaining access to any market or customer for goods and services, or to prevent any business entity from obtaining a supply of goods or services or otherwise purchasing goods or services freely in the market.
4. The qualifications for membership or participation in the ASCI are set forth in the ASCI Bylaws. No applicant for membership or participation, who otherwise meets the qualifications set forth therein, shall be rejected for any anti-competitive purpose or for the purpose of denying such applicant the benefits of membership or participation.
5. The ASCI shall not compel or coerce any Member and/or Participant into accepting or complying with any Adopted Specification.
6. Adherence to Adopted Specifications or sample implementations shall be voluntary on the part of the Members of the ASCI and shall in no way be compelled, directed or coerced by the ASCI, it being solely a voluntary decision on the part of the particular Member and/or Participant of the ASCI as to whether to adhere to or comply with any such Adopted Specifications or sample implementations.
7. Any Adopted Specifications or sample implementations shall be based solely and exclusively upon technical considerations and upon the merits of objective judgments and thorough procedures and shall in no way be based upon any effort, intention or purpose of any of its Members to reduce or eliminate competition in the sale, supply and furnishing of products and services.
8. If information, materials or reports of the ASCI for the use of the membership or participation is significant to third parties or others in the industry, then such information, material and reports will be made available by the ASCI to all such persons, on such reasonable terms and conditions as it may prescribe, in order to carry out its purposes.
9. To the extent that the purposes of the ASCI, as set forth in its Bylaws require, for the ASCI's purposes and objectives, joint research and development by two or more of its Members and/or Participants, or representatives thereof, any such joint research and development for the ASCI shall exclude the following activities:
 - the exchange of information among competitors relating to costs, sales, profitability, prices, marketing or distribution of any product, process, or service that is not reasonably required to conduct the research and development;
 - any agreement or any other conduct restricting, requiring, or otherwise involving the production or marketing by any Member and/or Participant of the ASCI of any product, process or service, other than the production or marketing of proprietary information developed through such joint research and development, such as patents and trade secrets; and
 - any agreement or any other conduct restricting or requiring the sale, licensing or sharing of inventions or developments not developed through such joint research and development, or restricting or requiring participation by any Member and/or Participant of the ASCI in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any Member and/or Participant of the ASCI, or representative thereof, or of the results of such joint research and development.

Modification

These Terms and Conditions may be modified by the inclusion by ASCI of additional requirements or terms on ninety (90) days written notice to the Member. In the event Member does not agree to such additional requirements, Member may resign from ASCI upon thirty (30) days written notice. Member shall not be entitled to a refund of membership fees pursuant to such resignation.

Governing Law

The Membership Agreement shall be governed by and interpreted in accordance with the laws of the state of North Carolina.

If any provision of the Membership Agreement is for any reason declared illegal in any country, all other provisions shall remain in full force and effect to the fullest extent permitted by such law.

For the avoidance of any doubt, any such finding of illegality in any country shall not affect the validity of any provisions of the Membership Agreement in other countries.

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The parties hereto expressly agree that (i) each party is acting solely on its own behalf and in its own interest, (ii) none of the parties has an intent to operate under this Agreement as a partnership of any form whatsoever, and (iii) each of the parties hereby elects not to apply the provisions of Subchapter K of the Internal Revenue Code to this Agreement.

Notification

ASCI is required by the National Cooperative Research and Production Act (NCRPA) to notify the US Department of Justice and the Federal Trade Commission of new members. Member agrees that execution of this Agreement authorizes ASCI to fulfill its reporting obligations on Member's behalf to U.S. Government as cited in the NCRPA.

Approved by

Printed Name _____

Title _____

Authorized Signature _____ Date _____