



Interconnect Software Consortium Managed Consortium Membership Agreement

Agreement dated this _____ day of _____, _____

BETWEEN

The Open Group, L.L.C., a limited liability company organized under the laws of the State of Delaware, of Thames Tower, 37-45 Station Road, Reading, Berkshire, United Kingdom

and

_____, _____, _____,
(Organization) (Street Address) (City)

_____, _____, _____ (“Member”).
(State/Region) (Postal Code) (Country)

WHEREAS, The Open Group has established the Interconnect Software Consortium (Managed Consortium) for the benefit of its members, and

WHEREAS, Member wishes to join and participate in such Managed Consortium on the terms and conditions set out below,

IT IS HEREBY AGREED as follows:

1. DEFINITIONS

Administrator means the representative(s) of The Open Group responsible for providing administrative support to the Managed Consortium.

Affiliates means an entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity, so long as such Control exists.

Alternate Director means an individual notified to the Steering Committee by a Regular Director as an alternative representative in accordance with the Procedures.

Associate Member means a Member having paid the Associate Member fee as given in Schedule 1 and having the membership entitlements as given in Schedule 2.

Compliant Portion means only those specific portions of products that: (i) implement and are compliant with all relevant portions of a Specification, and (ii) are within the bounds of the Scope. The Compliant Portion must pass the applicable Compliance Test Suite adopted by the Steering Committee, if available at the time that specific portion of products were made generally commercially available. If no such Compliance Test Suite was available at the time that specific portion of products were made generally commercially available, the Member must reasonably believe that the specific portion of products fully implements all of the required elements of the applicable Specification in order to be a Compliant Portion.

Confidential Information means and includes: (i) written materials marked as confidential at the time of disclosure; and (ii) orally-disclosed material that is designated as confidential at the time of disclosure, and is memorialized with specificity in the written minutes of a Working Group or the Steering Committee, and attributed in the meeting minutes to the submitting Member or Members, summarizing the Confidential Information sufficiently for identification.

Compliance Test Suite means any test suite developed or adopted by the Managed Consortium and approved by the Steering Committee for the purpose of determining the compliance of an implementation to a Specification adopted by the Steering Committee.

Contribution means a submission to or for a Working Group or the Steering Committee, provided that the submission is either (i) submitted in writing (including a writing in

electronic medium) or (ii) stated orally, memorialized with specificity in the written minutes of a Working Group or the Steering Committee, and attributed in the meeting minutes to the submitting Member or Members, provided that the minutes are promptly provided to the individual representing the submitting Member or Members, unless the submitting Member or Members withdraws its submission in writing as soon as practicable and in any event, no later than forty-five (45) days of receipt of such written minutes.

Control means beneficial ownership of more than fifty percent (50%) of the voting power or equity in an entity.

Draft Guide means a proposal, document or documents entitled Draft Guide in draft or non-final form, being worked on or considered by Managed Consortium prior to adoption as a Guide. Draft Guides may be approved for public release by the Steering Committee.

Draft Specification means a proposal, document or documents entitled Draft Specification in draft or non-final form, being worked on or considered by Managed Consortium prior to adoption as a Specification. Draft Specifications may be approved for public release by the Steering Committee.

Fees means the fees for membership in the Managed Consortium as given in Schedule 1. The Fees may be amended from time to time by the Steering Committee and shall from the date of such amendment replace the previously existing Fees.

Any such change to the Fees shall not require re-execution of this Agreement.

Founding Date means the date of formation of the Managed Consortium, which is January 11, 2002.

Founding Member means a Member having executed this agreement before the Founding Date and having paid the Founding Member fee as given in Schedule 1 and having the membership entitlements as given in Schedule 2.

Guide means a document entitled Guide containing functional and technical information to aid in the implementation of a Specification as adopted and approved for release by the Steering Committee.

Members mean all Managed Consortium Members, regardless of membership class, including Members who may become Members after the undersigned Member joins.

Necessary Claims means those claims of all patents and patent applications, other than design patents and design registrations, throughout the world which a Member and its Affiliates or a third party and its Affiliates have the right to grant licenses of the nature agreed to be granted herein without such grant resulting in payment of royalties or other consideration to other parties (except for payments to Affiliates or employees), which claims are necessarily infringed by an implementation of a Specification adopted and approved for release by the Steering Committee and which are within the bounds of the Scope, where such infringement could not have been avoided by another commercially reasonable non-infringing implementation of such Specification. Necessary Claims do not include any claims other than those set forth above even if contained in the same patent as Necessary Claims.

Principal Member means a Member having paid the Principal Member fee as given in Schedule 1 and having the membership entitlements as given in Schedule 2.

Procedures means the Managed Consortium Procedures as set forth in Schedule 4 of this Agreement and presented on the Managed Consortium web site.

Regular Director means an individual who is appointed or elected to a Regular Director position on the Steering Committee in accordance with the Procedures.

Scope means the software interfaces solely to the extent disclosed with particularity in a Specification where the sole purpose of such disclosure is to enable products to interoperate, interconnect or communicate as defined within a Specification, together

with any Compliance Test Suite adopted to test the compliance of an implementation to a Specification. Notwithstanding the foregoing, the Scope shall not include (i) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a Specification, but are not themselves expressly set forth in a Specification (e.g. compiler technology, object oriented technology, basic operating system technology); (ii) the implementation of other published specifications not developed by or for Managed Consortium but referred to in the body of a Specification.

Specification means a document entitled Specification adopted and approved for release by the Steering Committee, and any updates or revisions adopted and approved for release by the Steering Committee.

Statement of Services means the statement of services provided to the Managed Consortium by The Open Group as given in Schedule 5. The Statement of Services may be amended from time to time by the Steering Committee and shall from the date of such amendment replace the previously existing Statement of Services.

Any such change to the Statement of Services shall not require re-execution of this Agreement.

Steering Committee means the group set up to manage the work of the Managed Consortium in accordance with this Agreement.

Working Group means a group set up by the Steering Committee to carry out technical activities of the Managed Consortium in accordance with this Agreement.

2. MEMBERSHIP

2.1. **Membership.** In consideration of the payment by the Member of the Fees as set out in Schedule 1, to be paid upon execution of this Agreement and on each anniversary thereof, Member shall become a member of the Managed Consortium as indicated in Schedule 2, as a Founding, Principal, or Associate Member.

- 2.2. **Support for Mission.** During the term of its membership in Managed Consortium, the Member expects to support the design, development, or application of software products that will implement the Specifications adopted and released by Managed Consortium. However, nothing in this Section or in this Agreement shall obligate Member to manufacture or use products complying with the Specifications or preclude the use of alternate or competing specifications, or preclude participation in different or competing consortia or other organizations.
- 2.3. **Member Benefits.** The Member shall be entitled to the benefits provided by this Agreement and the Procedures. The Member shall be entitled to participate in Managed Consortium as specified in Schedule 2 and in the Procedures.

The Open Group shall perform the tasks and provide the administrative support for the Managed Consortium as set forth in Schedule 5, and as may be subsequently amended from time to time by agreement between The Open Group and the Steering Committee.

- 2.4. **Use of Name.** The Member may publicly disclose that it is a Member of Managed Consortium. The Member may publicly identify Compliant Portions as being compliant with the applicable version of the Specification. The Member may in its discretion create and distribute products or prototypes that implement Draft Specifications provided that the Member may not make any claims regarding compliance of such products or prototypes with the Draft Specification. Except as explicitly set forth in this Section 2.4, the Member may not identify any product or service as being sanctioned by, sponsored by or associated with Managed Consortium, unless in accordance with policies and procedures which may be established by the Steering Committee and notified to Members.

Member agrees to have its name added to The Open Group published list of members; have an authorized representative of Member attend meetings of the Managed Consortium; and work within the Managed Consortium per the terms of this Agreement.

2.5. **Affiliates.** The Member acknowledges and agrees that it and its Affiliates shall be treated for all purposes as one Member, entitled to one vote on all matters upon which the Member is entitled to vote. Member also acknowledges and agrees that Section 5 of this Agreement, entitled “Intellectual Property,” binds Member and Member’s Affiliates in accordance with its terms.

3. OBLIGATIONS OF MEMBERS

3.1. **Procedures.** The Member has reviewed, hereby approves and agrees to abide by the Procedures. Terms used in this Agreement have the same meaning as when the same terms are used in the Procedures.

3.2. **Contribution.** The Member may make Contributions to Specifications, Guides, and Compliance Test Suites subject to the terms and conditions of this Agreement and the Procedures.

3.3. **Expenses.** The Member shall bear its own costs and expenses for its participation in Managed Consortium, such as travel, employee compensation, and incidental expenses.

3.4. **Antitrust Policy.** The Member agrees to comply with all applicable antitrust laws pertaining to the Member’s participation in Managed Consortium. Nothing in this Agreement shall be construed to require or permit conduct that violates any applicable antitrust law. Member agrees that execution of this Agreement authorizes The Open Group to fulfill its reporting obligations on Member’s behalf to U.S. Government as cited in the National Collaborative Research and Production Act of 1993 (15 U.S.C. §§4301, et seq.).

4. INFORMATION

4.1. **Confidential Information.** The Open Group, the Member and its Affiliates agree that Confidential Information is confidential and shall be protected from disclosure using at least the same degree of care that it uses to protect its own confidential and

proprietary information, but no less than a reasonable degree of care under the circumstances. Member and its Affiliates will neither disclose nor distribute Confidential Information, except as necessary for its employees or, contractors (under a comparable confidentiality agreement with such contractors which contains confidentiality terms no less restrictive than those set forth in this Agreement) with a need to know for the purpose of creating Contributions, developing or updating Draft Specification, Draft Guide, Specification and/or Guide documents, developing or maintaining Compliance Test Suites, and/or developing, maintaining and/or supporting products, technologies, documentation, or related materials in connection with or based upon such documents. Any information incorporated in a particular revision of such documents, including any exhibits or attachments thereto, shall be permitted to be released upon agreement of the Steering Committee, or as otherwise provided in the Procedures. Any copies which are made will be marked “confidential,” “proprietary” or with a similar legend as on the original. This obligation of confidentiality will expire three (3) years from the date of the disclosure to the Member and its Affiliates. However, no Member or its Affiliates will be liable for the disclosure of any information that is:

- 4.1.1. publicly available other than by the recipient’s breach of a duty of confidentiality;
- 4.1.2. rightfully received from another Member or a third party without any obligation of confidentiality; or
- 4.1.3. rightfully known to the recipient without any limitation on disclosure prior to its receipt from the disclosing party; or
- 4.1.4. independently developed by employees or contractors of the recipient; or
- 4.1.5. disclosed as required by law; or
- 4.1.6. made public by agreement of the Steering Committee; or

4.1.7. inherently disclosed in the manufacture, marketing, sale or maintenance of a product or service.

The obligations of this Section shall survive termination of this Agreement.

4.2. **Residuals.** Any party shall be free to use the residuals of Confidential Information for any purpose including use in the development, manufacture, marketing and maintenance of its products and services, 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 memories of individuals who have had rightful access to such Confidential Information under this Agreement. It is understood that receipt of Confidential Information under this Agreement shall not create any obligation in any way limiting or restricting the assignment and/or reassignment of any employees of a Member within Member’s organization. However, this Section 4.2 shall not be deemed to grant to any party a license under the discloser’s copyrights or patents.

5. **INTELLECTUAL PROPERTY**

5.1. **Agreement to Grant Licenses.** When the Member or its Affiliates makes a Contribution or when the Steering Committee adopts and approves for release a Specification or Compliance Test Suite, the Member and its Affiliates hereby agree to grant to Members, third parties and their Affiliates under reasonable and non-discriminatory terms and conditions (including without limitation price), a nonexclusive, nontransferable, worldwide license under its Necessary Claims to allow such Members, third parties and their Affiliates to make, have made, use, import, offer to sell, lease and sell and otherwise distribute Compliant Portions, provided that such agreement to license shall not extend to any part or function of a product in which a Compliant Portion is incorporated that is not itself part of the Compliant Portion. Such obligation to license shall be effective as of the time that the Member has direct and actual knowledge of the status of such claims as Necessary Claims, provided that at such time the claims meet the licensability requirement for Necessary Claims set forth in Section 1 above. The obligation to license shall cover both future use of Necessary Claims and prior use of Necessary Claims dating back

in time to either: (i) the issue date of the patent (or earlier date, such as application publication date, on which the Member or Affiliate acquired enforceable rights in such claims); or (ii) the claims becoming Necessary Claims, whichever occurs last. Member agrees that it will not transfer patents having Necessary Claims for the purpose of circumventing this Section 5.1.

5.1.1. **Reciprocity Required.** The Member's agreement in Section 5.1 to grant patent licenses to Members, third parties and their Affiliates shall not be effective as to any Member and its Affiliates or third party and its Affiliates, if such Member and its Affiliates or third party and its Affiliates does not make the patent license grant of Section 5.1 available to the Member and its Affiliates.

5.2. **Limited Agreement to Disclose.** Member shall make reasonable efforts to disclose to the Steering Committee the existence of patents or patent applications that may contain Necessary Claims as soon as possible after discovering that they may contain Necessary Claims. This obligation is limited to Necessary Claims that are personally known as such to the individuals acting on behalf of such Member with respect to the Managed Consortium. For patents and published applications, the disclosure shall identify the patent or application in question as well as the claims of such patent or application that may be Necessary Claims. For unpublished applications, the disclosure shall indicate that the party has one or more patent applications that may have Necessary Claims, but need not provide any other information with regard to such patent applications. In no event is Member obligated to conduct a search of its patents or pending applications.

5.3. **No Other License.** No patent license, immunity or other right is granted under this Agreement by any Member or its Affiliates to any other Member or its Affiliates or to The Open Group, either directly or by implication, estoppel or otherwise, other than the agreements to grant licenses expressly set forth herein.

5.4. **Transfer of Necessary Claims to Third Parties.** Any transfer by Member to a third party of a patent having Necessary Claims shall be subject to the terms and conditions of this Agreement as they specifically relate to such patents to the extent

such obligation was effective before such transfer, including the agreement to grant licenses pursuant to Section 5.1 and Section 5.1.1 of this Agreement

5.5. Ownership and Grant of Copyright Licenses. Any Contributions submitted by a Member alone, or in combination with other Members ("Submitting Members") shall be owned by the Submitting Members (or other Members or third parties as the case may be) ("Licensed Contributions") without a duty of accounting to each other, the other Members or The Open Group. The Submitting Members hereby grant The Open Group an irrevocable, perpetual, non-exclusive, worldwide, paid-up license to reproduce, display, perform, prepare and have prepared derivative works based upon and distribute and sublicense the Licensed Contributions and derivative works thereof. A Member may only include copyrightable material of another Member or a third party in Licensed Contributions if such Member has sufficient rights and licenses to enable it to grant The Open Group the rights and licenses set forth above. To the extent that Licensed Contributions consist of software, Member shall deliver to The Open Group a copy of Licensed Contributions, in source code and object code form.

Any copyrightable materials created by an employee of The Open Group alone or a contractor to The Open Group performing work for The Open Group on a "works for hire" basis or otherwise assigned to or procured by The Open Group in connection with the Managed Consortium (collectively "TOG Materials"), shall be owned exclusively by The Open Group. The Open Group hereby grants to Member and its Affiliates an irrevocable, perpetual, non-exclusive, worldwide, paid-up license to reproduce, display, perform, prepare and have prepared derivative works based upon and distribute and sublicense the TOG Materials and Licensed Contributions and derivative works thereof (including the right to authorize Affiliates to do any, some or all of the foregoing). To the extent that TOG Materials or Licensed Contributions consist of software, The Open Group shall deliver to Member, a copy of all TOG Materials and all Licensed Contributions received by The Open Group, in source code and object code form, promptly after completion or receipt, as the case may be.

Subject to any third party intellectual property rights, Member is authorized to create

and have created, and to reproduce and license, lease, sell or otherwise distribute (directly and indirectly) implementations based on Guides and Specifications.

6. WARRANTY AND LIABILITY

6.1. ALL MATERIALS AND INFORMATION PROVIDED BY THE OPEN GROUP, MANAGED CONSORTIUM, AND ITS MEMBERS ("MATERIALS") ARE PROVIDED "AS IS", AND THE OPEN GROUP, MANAGED CONSORTIUM, AND ITS MEMBERS MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL THE OPEN GROUP, MANAGED CONSORTIUM, OR ITS MEMBERS BE LIABLE FOR ANY LIABILITY WHETHER IN CONTRACT, TORT OR OTHERWISE FOR ANY LOSSES OR DAMAGE ARISING OUT OF OR RELATING TO THIS AGREEMENT. IN NO EVENT SHALL THE OPEN GROUP, MANAGED CONSORTIUM, OR ITS MEMBERS BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL LOSSES INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS, CONTRACTS, PRODUCTION OR USE.

6.2. If any third party makes or threatens to make any claim (or if, in the opinion of The Open Group or the Member that contributed such Materials ("Contributing Member") such a claim is likely) that the use by the Member of any Materials infringes any intellectual property right of such third party, The Open Group or the Contributing Member, as the case may be, shall inform Member immediately, and 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 month's written notice whereupon the Member acknowledges that any further use of the Materials shall be at its own risk. This sub-clause states the entire responsibility of The Open Group and Member concerning infringement of third party intellectual property rights.

6.3. The Member agrees that its representatives to the Managed Consortium shall not submit a Contribution that such representatives personally know to infringe the

intellectual property rights of any other Member or third party. Nothing in the foregoing is intended to create a duty for Member or its representatives to the Managed Consortium to conduct a search of any patent databases or other records.

7. TERM AND TERMINATION

7.1. **Renewal.** This Agreement shall automatically renew annually upon Member's payment of dues, unless terminated earlier in accordance with Section 7.2 below.

7.2. **Termination.** Member's participation in the Managed Consortium under this Agreement may be terminated:

7.2.1. by The Open Group giving to Member sixty (60) days notice in writing before the anniversary of the Founding Date, whilst simultaneously terminating all similar agreements with other Members of Managed Consortium.

7.2.2. by Member giving to The Open Group sixty (60) days notice in writing.

7.2.3. by either party immediately on giving written notice to the other party if the other party has committed any material breach of this 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 notifying such breach and requiring it to be remedied.

7.2.4. by The Open Group on written notice to the Member if the Member fails to pay any sum(s) due to The Open Group under this Agreement and such sum(s) remain unpaid for thirty (30) days after written notice from The Open Group that such sum(s) have not been paid.

In addition, this Agreement shall terminate concurrently with the termination of the Managed Consortium if the Managed Consortium is disbanded in accordance with the Procedures.

7.3. Survival of Agreement to Grant License If Member Terminates. Notwithstanding the Member's termination of this Agreement and except as provided in Section 7.3.1, Member's agreement to grant a license as provided in Sections 5.1 and 5.1.1 shall remain in full force and effect: (i) for Specifications to which the Steering Committee gave notice of its approval more than sixty (60) days before the effective date of Member's termination ("Committed Specifications"); (ii) for any Contribution made by the terminating Member to a Specification prior to the effective date of its termination; and (iii) for unmodified portions of Committed Specifications that are contained in Specifications approved after the effective date of Member's termination. Such agreement shall extend to all Members of Managed Consortium, including Members who become Members after the effective date of Member's termination. In addition, licenses granted to Member in accordance with Section 5.5 prior to the date of termination shall survive any such termination in accordance with its terms.

7.3.1. Exception in the Event of Noncompliance. The agreement to license, which survives under Section 7.3, shall terminate completely: (i) as to any Specification which does not include all applicable requirements for interoperating, communicating or connecting with or to products that comply with Specifications that were in effect sixty (60) days prior to the effective date of Member's termination; or (ii) as to Specifications, any portion of which is inconsistent with or exceed the bounds of the specific purpose of Managed Consortium as stated in its Procedures prior to or as of sixty (60) days before the effective date of Member's termination.

7.4. Survival of Agreement to Grant License if The Open Group Terminates. Notwithstanding The Open Group's termination of this Agreement and except as provided in Section 7.4.1, Member's agreement to grant a license as provided in Sections 5.1 and 5.1.1 shall remain in full force and effect: (i) for Committed Specifications; (ii) for any Contribution made by the terminated Member to a Specification prior to the effective date of its termination; and (iii) for unmodified portions of Committed Specifications that are contained in Specifications approved after the effective date of Member's termination. Such agreement shall extend to all

Members of Managed Consortium, including Members who become Members after the effective date of Member's termination. In addition, licenses granted to Member in accordance with Section 5.5 prior to the date of termination shall survive any such termination in accordance with its terms.

7.4.1. Exception in the Event of Non-Compliance. The agreement to license, which survives under Section 7.4, shall terminate completely: (i) as to any Specification which does not include all applicable requirements for interoperating, communicating or connecting with or to products that comply with Specifications that were in effect sixty (60) days prior to the effective date of Member's termination; or (ii) as to Specifications, any portion of which is inconsistent with or exceed the bounds of the specific purpose of Managed Consortium as stated in its Procedures prior to or as of sixty (60) days before the effective date of Member's termination.

For the avoidance of doubt, termination of this Agreement for any reason shall not entitle the Member to any refund of the fees due under this Agreement.

7.5 Continuing Obligations With Respect to Specifications. In the event that the Managed Consortium is terminated for any reason, The Open Group shall continue to make any Specifications that were approved by the Steering Committee prior to the effective date of termination of the Managed Consortium generally available in accordance with the applicable terms of this Agreement for a period of one (1) year following the effective date of such termination, unless notified otherwise by the Steering Committee.

8. OTHER PROVISIONS

8.1. No Modification. This Agreement constitutes the entire agreement of the parties relative to this subject, and supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties relating to this subject. Any reproduction of this Agreement by reliable means shall be considered an original of this document.

The Open Group represents that all other Members of the Managed Consortium have entered into agreements in identical form to this Agreement and all future parties who wish to join the Managed Consortium will enter into such an agreement as a condition of becoming Members of the Managed Consortium (such that The Open Group and all Members shall be regarded as parties to a single instance of this Agreement).

Except as may otherwise be explicitly set forth in the Procedures, this Agreement may not be modified except upon unanimous consent of the Steering Committee and The Open Group, evidenced by a writing signed by the parties.

Oral collateral agreements do not exist. No approval, consent or waiver shall be enforceable unless signed by the granting party. Failure to insist on strict performance or to exercise a right when entitled does not prevent a party from doing so later for that breach or a future one.

- 8.2. **No Transfer.** The Member may not transfer, assign or sublicense any of its rights or obligations under this Agreement without the prior written consent of The Open Group, except to its Affiliates so long as its Affiliate becomes a Member of Managed Consortium and executes this Agreement. In the case of such a transfer to an Affiliate, the Affiliate shall be entitled to the benefit of any unexpired period of the Member's membership without the payment of any additional fee. Any attempted transfer in violation of this Section is null and void.
- 8.3. **Notice.** The Member designates the representative identified in Section 4 of Schedule 3 for the purpose of receiving notice under this Agreement. The Member may change the designated representative by written notice to The Open Group. If the Member fails to designate a representative, notice may be sent to the Member at its address stated in Section 5 of Schedule 3. Any notification made under this Agreement shall be deemed delivered on the next business day following it being sent by electronic mail, by express mail or by courier, or three (3) days after being

sent first-class mail, postage prepaid, addressed to the Member's designated representative at the address provided. Notice of a breach of this Agreement and notice of termination of this Agreement shall be given both by express mail or by first class mail, postage prepaid, and, in addition, by electronic mail.

- 8.4. **No Joint Venture.** Nothing contained in this Agreement and no action taken by the Member shall be deemed to render the Member or its Affiliates an employee, agent or representative of The Open Group or any other Member or their Affiliates, or shall be deemed to create a partnership, joint venture or syndicate among or between any of the Members or their Affiliates or with The Open Group.
- 8.5. **Compliance with Laws.** The obligations of the parties hereto shall be subject to all laws, present and future, of any government having jurisdiction over the parties hereto, pertaining to The Open Group's administration of Managed Consortium and the Member's participation in Managed Consortium.
- 8.6. **Severability.** If any provision of this 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 this Agreement in other countries.
- 8.7. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- 8.8. **Integration.** This Agreement supersedes and replaces any and all prior representations, agreements and understandings relating to the Member's membership in Managed Consortium.
- 8.9. **Limitation on Actions.** Neither Member nor The Open Group shall bring any legal action against the other or against any of the other Members in connection

with this Agreement or the Managed Consortium more than (2) two years after the cause of action arose.

8.10. **Jury Waiver.** Member and The Open Group each waive any right they may have to a jury trial in any dispute arising out of this Agreement. The United Nations' Convention on International Sale of Goods does not apply.

8.11. **Force Majeure.** Neither Member nor The Open Group shall be responsible for failure to fulfill its obligations under this Agreement to the extent that such failure is due to any cause beyond its reasonable control.

8.12. **Headings.** The headings in this Agreement are for reference only. They shall not affect the meaning or interpretation of this Agreement.

9. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

FOR AND ON BEHALF OF
The Member

FOR AND ON BEHALF OF
The Open Group

Name: _____

Name: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____

Schedule 1
Managed Consortia Membership Fees

All fees are in US Dollars (\$)

Annual Membership Fee

Upon payment of the following fees the Member is entitled to the entitlements of the Members of the Managed Consortium:

Interconnect Software Consortium:

Membership Level	Fees	Tick to indicate desired level of membership
Founding Member	\$10000	Not Available
Principal Member	\$5000	
Associate Member	\$0	

Schedule 2

Managed Consortia Membership Entitlements

1. Managed Consortium - Membership Entitlements

- Associate Members shall be entitled to:
 - Participate in the technical development activities of the Managed Consortium.
 - Attend all meetings of the Managed Consortium.
 - Receive all papers of or from the Managed Consortium.
 - Access World Wide Web pages maintained by the Managed Consortium.
 - Receive, and be entitled to participate in, all communication in electronic mail of or from the Managed Consortium.
- A “Principal Member” shall be entitled to all the entitlements of an Associate Member, and additionally the right to chair Working Committees and to be elected to the Steering Committee.
- A “Founding Member” shall be any entity that signed the Agreement with The Open Group on or before the Founding Date. Founding Members shall be entitled to all the entitlements of a Principal Member, and additionally the right to nominate a representative to a permanent seat on the Steering Committee.

Schedule 3

Membership Information

1. Organization:

Organization Name: (Please print) _____

2. Membership Listing

The Open Group realizes that each organization places a very high value on its name and its use. To ensure the accuracy of our records, please indicate below the way in which your organization's name should appear in the membership listing:

Formal Organization Name, including classification (trademark, service-mark, etc.).

Acceptable Shortened Version(s) of Organization Name

The Open Group prints and distributes a "Member List" at industry events and as a part of general communications and presentation materials. This list will only contain the formal organization name of our members.

3. Web Address

The Open Group provides a list of Member organizations on our Web. If you supply your Web address, we will link it to this listing.

4. Designated Representative(s) (Please print)

	Primary Representative:	Primary Alternate:
<i>Name:</i>	_____	_____
<i>Title:</i>	_____	_____
<i>Organization Name:</i>	_____	_____
<i>Address:</i>	_____	_____
	_____	_____
	_____	_____
<i>Phone No:</i>	_____	_____
<i>Fax No:</i>	_____	_____
<i>Email Address:</i>	_____	_____

5. Billing Address (Please print)

	Representative:
<i>Name:</i>	_____
<i>Title:</i>	_____
<i>Organization Name:</i>	_____
<i>Address:</i>	_____

Phone No: _____

Fax No: _____

Email Address: _____

Schedule 4

Procedures of the Interconnect Software Consortium

1. DEFINITIONS

Definitions used within these Procedures are defined in Section 1 of the Membership Agreement.

2. PURPOSE

2.1. SPECIFIC PURPOSE

The specific purpose (Specific Purpose) of the Managed Consortium is to develop and publish software specifications, guidelines and compliance tests that enable the successful deployment of fast interconnects such as those defined by the InfiniBand™ specification.

Software specifications include programming interfaces and protocols. The specifications to be developed include:

- 2.1.1. Extensions to the UNIX Sockets API;
- 2.1.2. An API that provides direct user application access to interconnect transport;
- 2.1.3. APIs that provide application access to interconnect fabric management infrastructure.

The Managed Consortium will develop or contract for the development of compliance tests that make it possible to determine whether a product conforms to a specification. However, the Steering Committee may publish a specification prior to

the availability of a compliance test for that specification, as determined by Section 3.17 of Schedule 4.

The Specific Purpose of the Managed Consortium includes publishing its specifications for wide and unrestricted use.

3. STEERING COMMITTEE

3.1. NUMBER OF INDIVIDUALS ON STEERING COMMITTEE

The Steering Committee shall consist of a representative of each of the Founding Members plus a number of individuals, not exceeding the number of Founding Members minus one (1), elected to represent the Principal Members. The number of such elected individuals is set on an annual basis by the Steering Committee and must be approved by a unanimous minus one (1) vote of the Steering Committee. Such individuals may be referred to herein as “Regular Directors.” Collectively, they shall be known as the Steering Committee.

3.2. DUTIES OF STEERING COMMITTEE

It shall be the duty of the Steering Committee to:

- (a) Assure that the Managed Consortium confines its activities to those in furtherance of its Specific Purpose;
- (b) Perform all duties imposed on them collectively or individually by law, or by these Procedures;
- (c) Meet at such times and places as required by these Procedures;
- (d) Register the addresses of the individuals serving on the Steering Committee with the Administrator of the Managed Consortium (in which event notices of meetings provided to the individual at such addresses shall be valid notices thereof);
- (e) Elect annually 2 Co-Chairs who shall perform all duties as required by these Procedures;
- (f) Elect annually officers from the Steering Committee who shall perform all

- duties as required by these Procedures;
- (g) Set the technical direction for the Managed Consortium,
 - (h) Elect annually Working Group Chairs or Co-Chairs;
 - (i) Establish the charter for, form, and disband Working Groups as appropriate to conduct the work of the Managed Consortium;
 - (j) Administer and establish policies consistent with the Membership Agreement,
 - (k) Approve modifications of the Membership Agreement as needed,
 - (l) Approve modifications to the Statement of Services and the Fees in agreement with The Open Group as needed,
 - (m) Develop and approve Specifications or drafts thereof for limited or public release,
 - (n) Adopt, and/or publish Specifications and Guides and revisions thereto,
 - (o) Adopt and/or publish Compliance Test Suites and revisions thereto; and
 - (p) Take other action that it deems appropriate in furtherance of the purposes of the Managed Consortium.

3.3. COMPOSITION OF STEERING COMMITTEE

For the first three (3) months of the Managed Consortium's existence ("Initial Period"), the Regular Directors of the Steering Committee shall consist of individuals appointed by each Founding Member to be their representative.

After the Initial Period, the Steering Committee shall agree on the number of representatives to be elected by the Principal Members, with a minimum number of one (1). An election shall be conducted among the Principal Members to elect the agreed number of representatives. All Principal Members may nominate individuals for election who must be representatives of a Principal Member. The successful candidate(s) shall be those that receive the greatest number of votes from those cast by the Principal Members. In the event of a tie, a second vote shall be held. In the event of a second tie, the Steering Committee shall resolve the issue by a majority vote. In the event that the Steering Committee vote cannot resolve the tie, the Steering Committee shall resolve the tie by drawing lots.

3.4. QUALIFICATIONS

An individual serving on the Steering Committee must be an employee of a Founding Member or a Principal Member. The individual's tenure on the Steering Committee shall automatically terminate, if he or she ceases to be an employee of the Member by whom he/she was employed at the time of his/her election or appointment, or if his/her employer ceases to be Member.

An individual serving on the Steering Committee is expected to attend, in person or by telephone, at least seventy-five percent (75%) of all duly noticed Steering Committee meetings and not to miss three (3) consecutive meetings, or to make available a suitable proposed Alternate Director. If an individual does not meet this requirement, the individual is subject to removal as provided in Section 3.6.

3.5. ALTERNATE DIRECTORS

Each Regular Director may nominate an Alternate Director to represent their employer in the event that the Regular Director is unable to attend a Steering Committee meeting.

For any Regular Director who does not attend a specific meeting of the Steering Committee (an "Absent Director"), the previously nominated Alternative Director may take their place on the Steering Committee. An Alternate Director must be an employee of the Steering Committee Member that employs the Absent Director whose absence from the meeting permits the appointment of such Alternate Director. The Alternate Director shall serve on the Steering Committee only until the earlier to occur of (i) adjournment of the meeting at which such Alternate Director is appointed or (ii) arrival at such meeting of the Absent Director whose absence resulted in the appointment of the Alternate Director. Such Alternate Director shall have all of the rights, including voting rights, and duties of a Regular Director for the duration his or her appointment.

3.6. VACANCIES, RESIGNATIONS, REMOVALS

Vacancies of the Regular Directors on the Steering Committee shall exist: (1)

whenever the number of Regular Directors on the Steering Committee is increased, or (2) whenever a Regular Director on the Steering Committee is removed or resigns or his or her tenure otherwise terminates.

Any Regular Director serving the Steering Committee may resign effective upon giving written notice to the Steering Committee, unless the notice specifies a later time for the effectiveness of such resignation.

Any Regular Director may be removed upon written notice being given to the Steering Committee by the Founding Member or Principal Member that they represent.

Any Regular Director serving on the Steering Committee may be removed if, without a leave of absence approved by the Co-Chairs, the individual (or an individual appointed as an Alternate Director in his or her absence) fails to attend three (3) consecutive meetings or misses more than twenty-five percent (25%) of meetings within a twelve (12) month period.

If two (2) or more Steering Committee Members that have employees serving on the Steering Committee become Affiliates, only one (1) of their employees may remain on the Steering Committee as a Regular Director and the other employee(s) tenure on the Steering Committee shall automatically terminate.

Regular Directors on the Steering Committee may be removed by a unanimous (with the exception of the individual under consideration) vote of the Steering Committee. Only one (1) Regular Director on the Steering Committee may be removed at any one (1) Steering Committee meeting.

3.7. FILLING VACANCIES OF REGULAR DIRECTORS

A vacancy of a Regular Director shall be filled by an individual appointed by the Founding Member or Principal Member who appointed the Regular Director whose resignation or removal created the vacancy. If such Founding Member or

Principal Member has ceased to exist, has become an Affiliate of another Founding Member or Principal Member, or has failed to remain a Founding Member or Principal Member, the Steering Committee, by the affirmative vote of two-thirds (2/3) of the remaining Regular Directors, may fill the vacancy by appointing an individual who is employed by a Member which is, or is willing to become, a Principal Member, subject to the provisions concerning the number of elected Regular Directors in Section 3.1.

3.8. NO LIABILITY

No person serving on the Steering Committee shall be personally liable for the debts, liabilities, or other obligations of the Managed Consortium.

3.9. TERM OF OFFICE

Founding Members appoint Regular Directors to the Steering Committee on a permanent basis. Regular Directors elected to represent the Principal Members serve until the anniversary of the Founding Date following their election.,

There are no limits on the number of consecutive terms that an elected Regular Director can serve.

3.10. COMPENSATION

Individuals on the Steering Committee shall serve without compensation from the Managed Consortium or The Open Group.

3.11. PLACE OF MEETINGS

Regular Steering Committee meetings shall be held at places and times agreed to by the majority of the Steering Committee. Meetings may be held in person or by any combination of audio or video conferencing techniques, so long as the participants in the meeting can hear one another.

3.12. ANNUAL MEETING

The annual organizational meeting of the Steering Committee may be held in

conjunction with an annual meeting of Members.

3.13. REGULAR AND SPECIAL MEETINGS

Regular and special meetings of the Steering Committee may be called by both Co-Chairs or at least two-thirds (2/3) of the Regular Directors of the Steering Committee.

Unless otherwise provided in these Procedures, the following provisions shall govern the giving of notice for meetings of the Steering Committee:

(a) Annual Meetings. At least thirty (30) days' prior written notice shall be given by the Administrator to each Regular Director serving on the Steering Committee.

(b) Regular and Special Meetings. At least seven (7) calendar days' prior written notice shall be given by the Administrator to each Regular Director (and, in addition, to one Alternate Director for each Regular Director who designates an alternate for purposes of notice) of each regular and special meeting of the Steering Committee.

Such notice may be given personally or by at least two (2) of postal mail, by express mail, by courier, or by electronic message with return notification. The notice shall be deemed delivered on the day it is personally delivered, or on the next business day if it is sent by express mail or by courier. If the notice is given by electronic message, it shall be deemed delivered on the next business day after it is sent, or, if it is given by mail, three (3) days after it is sent by first-class mail, postage prepaid. Such notice shall state the place, date, time and proposed duration of the meeting.

A valid meeting may be scheduled and held on shortened notice if a shorter notice is approved in writing or by electronic message by all Regular Directors, or if all Regular Directors attend the meeting.

A meeting may extend beyond the proposed duration stated in the notice only if such extension is approved by all Regular Directors and Alternate Directors present at the meeting.

3.14. AGENDA REQUIREMENTS – POSTPONEMENT OF A MEETING

The notice required by Section 3.13 shall also state all agenda items known at the time the notice is given. Additional agenda items may be added up to twenty-four (24) hours' prior to the time of the meeting. A matter not on the agenda may be taken up at a meeting provided that at least three (3) Regular Directors or Alternate Directors present at the meeting determine that such matter is of an urgent nature and approve placing the matter on the agenda.

However, no action may be taken or motion passed at any meeting, if the adoption of the action or passage of the motion requires more than the affirmative vote of a majority of individuals authorized to serve on the Steering Committee, unless the subject matter of the proposed action or motion was generally stated on an agenda delivered at least seven (7) days prior to the meeting, or unless each Regular Director who is not present at the meeting has agreed prior to the meeting that the action or motion may be considered and passed. Further, even if seven (7) days notice was given, the Steering Committee shall (on a "one time" basis) postpone consideration of any action or motion for at least fourteen (14) additional days, upon the written request received prior to the meeting from any Regular Director who is unable to be present at the noticed meeting when such matter was to be first considered, and who is also unable to send to the meeting a nominee as Alternate Director.

Nothing in this section shall refer to the appointment of Alternate Directors.

3.15. QUORUM FOR MEETINGS

A quorum shall consist of at least two-thirds (2/3) of the number of individuals authorized to serve on the Steering Committee as Regular Directors. However, an Alternate Director who is substituting for a particular meeting shall be counted as a

Regular Director in determining whether a quorum exists for that particular meeting. Accordingly, for example, so long as the Steering Committee is composed of six Regular Directors, the quorum is four, where the four may be comprised of either or both Regular Directors or Alternate Directors present at a meeting in person or as provided by Section 3.19.

3.16. STEERING COMMITTEE ACTION

Every motion, act or decision passed, done or made by the affirmative vote of Regular Directors and Alternate Directors in attendance at a meeting, if the number of affirmative votes equals or exceeds the number equal to a majority of the individuals authorized to serve as Regular Directors on the Steering Committee, is the motion, act or decision of the Steering Committee, unless Section 3.17, or another section of these Procedures, require a greater or different voting percentage or different rules for approval of a matter by the Steering Committee.

3.17. REQUIRED VOTING PERCENTAGES

The following voting percentages shall be required for any motion, act or decision to be a valid motion, act, or decision of the Steering Committee:

<u>Matter to be Voted On</u>	<u>Number of Affirmative Votes Required</u>
a) General business matters including expenditure of funds	majority of the number of Regular Directors authorized to serve on the Steering Committee.
b) Establishing the charter of, or materially changing the charter of, a Working Group, or the dissolution of a Working Group	at least two-thirds of the number of Regular Directors authorized to serve on the Steering Committee.
c) Approval, adoption and/or release of a Draft Specification or Draft Guide, or a Specification or Guide, or a	at least two-thirds of the number of Regular Directors authorized to serve on the Steering Committee.

- | | |
|---|---|
| Compliance Test Suite | |
| d) Approval to submit a Specification or Guide into The Open Group Fast-Track process | at least two-thirds of the number of Regular Directors authorized to serve on the Steering Committee. |
| e) Revocation of the Steering Committee Member Status of a Steering Committee Member | the number of Regular Directors authorized to serve on the Steering Committee, minus one. |
| f) Determination of the number of elected Regular Directors representing the Principal Member | the number of Regular Directors authorized to serve on the Steering Committee, minus one. |
| g) Filling vacancies of Regular Directors | at least two-thirds of the number of Regular Directors authorized to serve on the Steering Committee. |
| h) Amend the Procedures, the Statement of Services, or the Fees | the number of Regular Directors authorized to serve on the Steering Committee, minus one. |
| i) Election or Removal of Officers of the Steering Committee | at least two-thirds of the number of Regular Directors authorized to serve on the Steering Committee. |
| j) Termination of the Managed Consortium | the number of Regular Directors authorized to serve on the Steering Committee, minus one. |

“Individuals authorized to serve on the Steering Committee” or “number of Regular Directors authorized to serve on the Steering Committee,” as used in these Procedures, refers to the number of authorized Regular Directors set forth in Section 3.1 of these Procedures. If an individual serving on the Steering Committee, whether a Regular Director or an appointed Alternate Director, is present at a meeting, but abstains from voting on a matter, for purposes of that vote, the number of “individuals authorized to serve on the Steering Committee” or “number of Regular Directors authorized to serve on the Steering Committee” shall be deemed reduced by one (1) for each individual abstaining, provided that the

total number may not be reduced to less than five (5).

3.18. CONDUCT OF MEETINGS

The Steering Committee shall be presided over by one or both of the Co-Chairs, or by a temporary Chair chosen by a majority of the Steering Committee present at the meeting. The Secretary of the Managed Consortium shall act as secretary of all meetings of the Steering Committee, provided that, in his or her absence, the presiding officer shall appoint another person to act as secretary of the meeting.

Meetings shall be governed by such procedures as may be approved from time to time by the Steering Committee, insofar as such rules are not inconsistent with or in conflict with these Procedures or with provisions of law.

3.19. MEETINGS BY TELEPHONE OR VIDEO CONFERENCE

Steering Committee individuals may participate in a regular or special meeting through use of conference telephone, videoconference, or similar communications device, or in person, so long as all people participating in such meeting can hear one another. Participation in a meeting pursuant to this Section constitutes presence at such meeting for all purposes, including the existence of a quorum and voting.

3.20. STEERING COMMITTEE ACTION WITHOUT A MEETING

Any action that the Steering Committee is required or permitted to take may be taken without a meeting if all Regular Directors on the Steering Committee consent in writing or by electronic message to that action. Such action by written consent shall have the same force and effect as any other validly approved action of the Steering Committee. All consents shall be filed with the minutes of the proceedings of the Steering Committee.

4. ADMINISTRATION

4.1. ADMINISTRATOR

Administrative services for the Managed Consortium will be provided by The Open Group which will designate a specified individual to act as the primary point of contact (“Administrator”).

4.2. ADMINISTRATOR DUTIES

Subject to policies and procedures adopted by, or specific directions from, the Steering Committee, the Administrator will carry out such undertakings as are necessary to manage the day-to-day needs of the Managed Consortium, including:

- (a) Scheduling and setting up meetings of the Steering Committee and membership;
- (b) Facilitating communication among Members, including providing timely notices of meetings, maintaining electronic mailing lists, and maintaining a site on the World Wide Web;
- (c) Facilitating the liaison to other consortiums or associations with which the Managed Consortium may choose to associate;
- (d) Providing individuals on the Steering Committee and Members with timely minutes, summaries and other reports with respect to the activities of the Managed Consortium;
- (e) Receiving and processing membership applications;
- (f) Such other activities as may be agreed between by the Steering Committee and The Open Group.

5. OFFICERS

5.1. DESIGNATION OF OFFICERS

The officers of the Managed Consortium shall be a two (2) Co-Chairs, and a Secretary. The Managed Consortium may also have such officers with such titles as may be determined from time to time by the Steering Committee. Officers shall be employees of Steering Committee Members. The Co-Chairs shall be Regular Directors. The Secretary may be, but need not be, a Regular Director. The same

person may hold more than one office.

5.2. ELECTION AND TERM OF OFFICE

Officers shall be elected by the Steering Committee at an initial organizing meeting and at each annual meeting thereafter of the Steering Committee, and each officer shall hold office until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected, whichever occurs first.

5.3. REMOVAL AND RESIGNATION

Subject to the provisions of Section 5.2, any officer may be removed, either with or without cause, by the Steering Committee at any time. Any officer may resign at any time by giving written notice to the Steering Committee or to the Co-Chairs or Secretary of the Managed Consortium. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

5.4. VACANCIES

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the Steering Committee. In case of a vacancy in any office other than that of Co-Chair, such vacancy may be filled temporarily by appointment by one of the Co-Chairs until the Steering Committee shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the Steering Committee may or may not be filled, as the Steering Committee shall determine.

5.5. DUTIES OF CO-CHAIRS

The Co-Chairs shall preside over the meetings of the Steering Committee.

5.5.1. RESOLUTION OF DISAGREEMENT

In the event that the Co-Chairs disagree over an issue in the performance of their duties, the issue shall be resolved by a vote of the Steering Committee as

provided for in 3.17 of Schedule 4.

5.6. DUTIES OF SECRETARY

The Secretary shall:

Keep a book of minutes of all meetings of the Steering Committee, and, if applicable, meetings of committees of the Steering Committee and of Members, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof, including all ballots and proxies.

See that all notices are duly given in accordance with the provisions of these. Advise the Members in writing of all results of any election of Steering Committee Members.

Act as secretary at Steering Committee meetings.

In general, perform all duties incident to the office of Secretary and such other duties as may be assigned to him or her from time to time by the Steering Committee.

6. WORKING GROUPS

6.1. WORKING GROUPS

The Managed Consortium shall have such Working Groups as may from time to time be determined by the Steering Committee. Working Groups will be responsible for the development of Specifications, Guides, and Compliance Test Suites as determined by the Steering Committee. The Steering Committee may terminate the existence of a Working Group at any time if it determines that it unable to effectively complete its assigned task, for example, due to insufficient participation.

6.2. MEETINGS AND ACTION OF WORKING GROUPS

Meetings of the Working Groups shall be governed by, noticed, held and taken in

accordance with policies and procedures established by the Working Groups, as approved or ratified by the Steering Committee. Notice of the time and place and purpose of holding any meeting of a Working Group shall be given by the Chair or Co-Chairs of the Working Group to the persons entitled to participate in such meeting at least seven (7) calendar days prior to the scheduled date for the meeting. The Steering Committee may also adopt rules and regulations pertaining to the conduct of meetings of Working Groups to the extent that such rules and regulations are not inconsistent with the provisions of these Procedures.

6.3. COMPOSITION OF WORKING GROUPS

The Steering Committee shall select the Chair or Co-Chairs of a Working Group. Such Chair or Co-Chairs shall serve for a one (1) year term. Chairs or Co-Chairs of Working Groups shall be employees of Founding Members or Principal Members, unless otherwise approved by the Steering Committee.

All Members of the Managed Consortium in good standing are eligible to submit a request to a Working Group Chair or Co-Chairs to have an employee included in a Working Group. Each Founding Member and Principal Member shall be entitled to have an employee included in any Working Group. From the other Member requests, a Working Group Chair or Co-Chairs shall select the remaining individuals to serve on a Working Group. If a Working Group Chair or Co-Chairs cannot decide on the remaining individuals to serve, the Steering Committee shall select the remaining individuals to serve on a Working Group. For reasons of operational efficiency of a Working Group, the Chair or Co-Chairs have the discretion to limit the size of a Working Group.

6.4. SCHEDULE OF MEETINGS

At the first meeting of a Working Group or an established subgroup, a schedule for meetings and completion dates will be proposed.

6.5. CONDUCT OF MEETINGS

The Working Groups will maintain minutes of their meetings. Representatives of at

least two-thirds (2/3) of the Members represented on a Working Group, in attendance in person or by electronic means, shall be necessary to constitute a quorum for the submission of a proposal to the Steering Committee.

6.6. **VOTING**

Each Member with a representative(s) on a Working Group may have only one (1) vote on matters put before such Working Group. Each Member with a representative on a Working Group must have had a representative (or a substitute representative) present at three (3) of the last four (4) meetings of a Working Group in order for its representative to be eligible to vote. A majority vote of Working Group Members represented at a meeting at which a quorum is present shall be required to adopt any resolution or proposal before a Working Group. Upon completion of a recommendation, a Working Group must agree by a majority vote before submitting the recommendation to the Steering Committee.

Schedule 5

Statement of Services

The Open Group will provide the following services to the Managed Consortium

1. CORE SERVICES

The following activities will comprise the core services for the day-to-day running of the Managed Consortium and the achievement of its core goals. These are the deliverables that are included in the management fee for the first year from the Founding Date.

1.1. MANAGED CONSORTIUM SETUP AND OPERATION

Establishment and operation of a Managed Consortium including Founding Member companies, Principal Member companies, and an unlimited number of Associate Members. This includes:

- i. Provision of legal framework for Managed Consortium, including assistance in the establishment of procedures, and membership categories for the Managed Consortium.
- ii. Set-up and operation of multiple e-mail reflectors for the members (including the ability for members to create and manage their own mail reflectors).
- iii. Web services to manage a website of up to 100 web pages. Web services will comprise the creation and maintenance of simple, primarily text-based, web pages, and also the provision of the ability for members, e.g. working groups, to maintain and upload their own areas.
- iv. The Open Group will fulfill its reporting obligations on Members' behalf to the U.S. Government as cited in the National Collaborative Research and Production Act of 1993.

1.2. FACILITATION OF THE DEVELOPMENT PROCESS

Organization of regular meeting for members, including face-to-face meetings and telephone conferences.

- i. If required, The Open Group will organize up to 2 face-to-face meetings per year, thus providing the possibility of meetings of the full membership of the Managed Consortium. Services to include establishing contracts with the hotel, arranging any required meals, room logistics, publishing agenda's, taking and distributing Steering Committee minutes. This is a meeting management service and does not include the payment of money for the hotel services out of The Open Group funds.
- ii. Management of regular Steering Committee conference calls (up to 1 per month, 12 per year). This includes the establishment of a conference bridge, publishing the agenda, taking and distribution of minutes for approval and maintaining an ongoing action list of outstanding participant actions.

1.3. PROVISION OF DOCUMENT MANAGEMENT SERVICE

Services of a Technical Editor to control and manage the draft and approved specifications and other documents produced by the Managed Consortium. The service allows for any number of documents, whose combined size does not exceed 500 pages, excluding standard header, table of contents, index pages. If the combined size exceeds 500 pages, then The Open Group will charge an incremental \$10,000 per additional 50 pages or part thereof.

Assumptions:

- i. No more than 1 revised draft of each document per month, and
- ii. The Open Group style guide for Technical Standards is used
- iii. The Open Group's current understanding of the ICSC plans are that the following documents are proposed to be developed:
 - a. Sockets API Extensions (anticipated ~200 pages)
 - b. Native API (anticipated ~200 pages)
 - c. Management APIs (anticipated ~100 pages)

1.4. APPROVAL PROCESS FOR ADOPTION OF MANAGED CONSORTIUM DOCUMENTS AS OPEN GROUP TECHNICAL STANDARDS

The process described above will produce Specifications that are attributed to the Managed Consortium. This item covers the process of having those Specifications

adopted as Open Group Technical Standards, and their incorporation into a subsequent revision of the Single UNIX Specification.

Management of the fast-track process, to review and potentially approve specifications created by the consortium. For successfully adopted Technical Standards, this includes the publication and distribution of such documents.

There may be any number of review cycles conducted in the review of a document, but document is deemed to have failed and the process will be terminated 6 months after the start of the fast-track process.

The service includes:

- i. managing the distribution of draft documents,
- ii. collecting and coordinating the comments received,
- iii. managing the review of those comments at telephone conferences, or face-to-face meetings,
- iv. managing the ballot process to final approval or rejection of the standard, and
- v. if approved, organizing and making widely available the Technical Standard through The Open Group's web site and other mechanisms
- vi. fast-track process for 3 documents only.

2. CONSORTIUM MANAGEMENT FEE

The Open Group's fee for the above listed services listed as core services is \$200,000 for year one. This fee is due upon creation of the Managed Consortium.

3. SUBSEQUENT YEARS

The Open Group proposal allows for the consortium to continue operation into second and subsequent years of operation. No later than 60 days before the anniversary of the establishment of the consortium, The Open Group will discuss with the members of the

consortium, the overall costs and expenses related to the operation of the consortium, such that these expenses, and the membership fees, can be adjusted up or down in line with the expected activity during the next year of operation. It should be noted that some of the costs provided in this proposal are non-recurring, e.g. Setup, and Fast-Track costs for the 3 documents identified herein.

4. **APPLICATION OF FUNDS**

The Open Group's fee for Year One Consortium core services is \$200,000. All revenues exceeding the \$200,000 fee generated by Membership of the Managed Consortium in Year One, will be split 90 to 10 percent, with 10 percent going to The Open Group and 90 percent going into an account maintained by The Open Group on behalf of the Managed Consortium. The purpose of this account is to allow the Managed Consortium to accumulate funds for future products and/or services required by the Managed Consortium, such as a certification & testing program. The use of this fund is at the direction of the Steering Committee as specified in Section 3.17 of Schedule 4. In the event of termination of the Managed Consortium, The Open Group will distribute 90 percent of the balance of the account back to the companies who contributed to it's balance on a pro rata basis. The remaining 10 percent will be retained by The Open Group to cover the costs of distribution and processing.