



**Operating Procedures  
21 October 2005**

**Apdex Alliance**

(Organized as a Program of the IEEE Industry Standards and  
Technology Organization (IEEE-ISTO))

**OPERATING PROCEDURES**

**DEFINITIONS**

"AFFILIATE" of a Member hereto or of a third party shall mean a corporation, company or other entity that, now or hereafter, directly or indirectly controls, is controlled by or is under common control with the MEMBER, but such corporation, company or other entity shall be deemed to be an AFFILIATE only so long as such control exists. For purposes of this definition "control" means direct or indirect ownership of or the legal right to exercise:

(a) more than fifty percent (50%) of the outstanding shares or securities (representing the right to vote for election of directors or other managing authority); or

(b) in the case of a corporation, company or other entity which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, more than fifty percent (50%) of the ownership interest representing the right to make the decisions for such corporation, company or other entity.

Only one (1) vote shall be accorded a MEMBER and its AFFILIATES on matters for which it is able to cast a vote pursuant to these Operating Procedures.

"CONFIDENTIAL INFORMATION" means and includes: (i) any DRAFT or FINAL DRAFT SPECIFICATION prior to its adoption and public release by the MANAGEMENT BOARD; (ii) all meetings, together with all minutes and other records thereof, of the MANAGEMENT BOARD and its subcommittees, including without limitation the TECHNICAL WORKING GROUP and any of its Working Groups; (iii) CONTRIBUTIONS; (iv) written materials marked as confidential at the time of disclosure; and (vii) orally- or visually-disclosed material that is identified as confidential at the time of disclosure and summarized in a written memorandum sent to the appropriate Working Group, committee or the MANAGEMENT BOARD within thirty (30) days of disclosure.

"CONTRIBUTIONS" shall mean technical work, output or commentary that is submitted, presented or otherwise made available to the Apdex Alliance in the development of SPECIFICATIONS, provided that the submission is either (i) submitted in writing (including a writing in electronic medium) or (ii) stated orally and memorialized with specificity in the written minutes of the TECHNICAL WORKING GROUP, or Working Group, and attributed in the meeting minutes to the submitting MEMBER, provided that the minutes are promptly provided to the individual representing the MEMBER, unless the submitting MEMBER withdraws its submission in writing as soon as practicable and in no event later than thirty (30) days after receipt of such written minutes.

"DRAFT SPECIFICATION" shall mean a document in draft or non-final form being worked on by the TECHNICAL WORKING GROUP prior to adoption by the

MANAGEMENT BOARD as a FINAL SPECIFICATION that contains a set of technical criteria (including reference to existing SPECIFICATIONS and protocols) that support the MISSION.

“FINAL DRAFT SPECIFICATION” shall mean a DRAFT SPECIFICATION submitted by the TECHNICAL WORKING GROUP to the MANAGEMENT BOARD for final approval.

"FINAL SPECIFICATION" shall mean a document recommended by the TECHNICAL WORKING GROUP and approved by the MANAGEMENT BOARD as a final release pursuant to Article VIII Section 6(ii) below that contains a set of technical criteria (including reference to existing specifications and protocols) that support the MISSION. The term “FINAL SPECIFICATION” shall also include any updates, revisions or new versions of the foregoing that are adopted by the MANAGEMENT BOARD pursuant to Article VIII Section 6(ii) below.

"FULLY COMPLIANT IMPLEMENTATION" shall mean: (a) an implementation (software or hardware) which implements all of the “Required” (mandatory) portions of a FINAL SPECIFICATION; or (b) an implementation which implements all of the "Required" portions of an optional portion (not mandatory) of a FINAL SPECIFICATION; and, in each instance, (c) an implementation of all portions of a FINAL SPECIFICATION required for a specific type of product or component thereof.

“IPR REVIEW PERIOD” shall have the meaning set forth in Article VIII Section 5.

“LICENSE AGREEMENT” shall have the meaning set forth in Article VIII, Section 4(iv)(b).

"LICENSED MATERIALS" shall mean any literary work or other work of authorship, including but not limited to toolkits, software development kits (“SDK”), sample code, reference implementations, prototypes, software, software protocols, formats, interfaces and test tools, whether pre-existing or newly created or prepared under the auspices of the TECHNICAL WORKING GROUP, that is offered by one or more MEMBERS for use in the development of or for inclusion in a SPECIFICATION.

“MANAGEMENT BOARD” shall have the meaning set forth in Article VI.

“MEMBER” shall have the meaning set forth in Article III.

“MEMBER REPRESENTATIVE” shall have the meaning set forth in Article III.

“MISSION” shall have the meaning set forth in Article I.

"NECESSARY CLAIMS" shall mean those claims of all patents, pending patent applications and utility models, regardless of when issued or effective, under which a MEMBER, has the right, at any time during the term of their participation, to grant licenses of the scope contemplated herein, all to the extent and only to the extent that the MEMBER, has the right to grant such licenses as of the date of any license to be entered into with the other MEMBER(S) as contemplated in Article VIII Section 4(v) of these Operating Procedures without compensation to a third party other than employees of the MEMBER, and which are necessarily infringed by a FULLY COMPLIANT IMPLEMENTATION of a specific FINAL SPECIFICATION approved by the

MANAGEMENT BOARD pursuant to Article VIII Section 6 below, where such infringement could not have been avoided by another technically feasible non-infringing implementation of such FINAL SPECIFICATION. Notwithstanding the foregoing sentence, NECESSARY CLAIMS do not include any claims other than those set forth above even if contained in the same patent as NECESSARY CLAIMS.

“NECESSARY CLAIMS DISCLOSURE NOTICE” shall have the meaning set forth in Article VIII Section 7(i)(a).

NECESSARY CLAIMS WITHDRAWAL NOTICE shall have the meaning set forth in Article VIII Section 8.

“QUORUM” shall mean that more than fifty percent (50%) of the MEMBERS of the applicable group (i.e. the MANAGEMENT BOARD or TECHNICAL WORKING GROUP) are present at a meeting, either in person, by telephone or by such other means as may be prescribed by such group or by these Operating Procedures.

“SPECIFICATION” means a DRAFT SPECIFICATION, FINAL DRAFT SPECIFICATION and/or FINAL SPECIFICATION where, in the specific context in which the term is used in these Operating Procedures, there is no need to distinguish whether the document in question is a DRAFT SPECIFICATION, FINAL DRAFT SPECIFICATION or a FINAL SPECIFICATION.

“TECHNICAL WORKING GROUP” shall have the meaning set forth in Article III Section 6.

## **ARTICLE I MISSION**

Section 1. The MISSION of the Apdex Alliance is to develop open standards that define standardized methods to report, benchmark, and track application performance.

## **ARTICLE II PROGRAMS**

Section 1. The Apdex Alliance shall function with planned programs which shall include:

- a. the development of SPECIFICATIONS, and all revisions, versions and extensions thereof adopted by the Apdex Alliance;
- b. promoting the use of FINAL SPECIFICATIONS;
- c. liaisons with standards development organizations ("Industry Body") to adopt and/or further develop the FINAL SPECIFICATIONS;
- d. the preparation and distribution of educational and scientific materials;

- e. the establishment of liaison and cooperation with private and governmental groups establishing SPECIFICATIONS for the use in industry;
- f. promoting a better understanding of the SPECIFICATIONS in industry and government;
- g. working closely with user groups to communicate the benefits and applications of the SPECIFICATIONS, and;
- h. maintaining a membership representative of the industry and through internal committees as necessary to provide an orderly and efficient method of accomplishing the programs and achieving the stated objectives of the Apdex Alliance.

### **ARTICLE III MEMBERSHIP**

Section 1. **MEMBERSHIP.** Membership in the Apdex Alliance shall be open to persons from all countries of the world that qualify under Section 2 of this Article III. Provisions for each level of membership will be defined in the Apdex Alliance's Membership Application. For the purposes of these Operating Procedures, "person" means any individual, proprietorship, partnership, firm, association, corporation, division of a corporation or other business or legal entity organized under the laws of any jurisdiction. MEMBERS are defined collectively as Contributing Members, Board Members, Supporting Members, and Associate Members. In the event a MEMBER is other than an individual such MEMBER shall designate one or more MEMBER REPRESENTATIVES to represent the MEMBER in the Apdex Alliance.

#### Section 2. **QUALIFICATIONS.**

**A. Contributor Membership** shall comprise those elected by the MANAGEMENT BOARD who have applied for such membership, have executed the Membership Application form and paid the membership fee (Contributor Member). Application for Contributor Membership shall be open to any person who expresses a willingness to support the FINAL SPECIFICATIONS and activities of the Apdex Alliance and a desire to have its name identified as such on the Apdex Alliance's website and other materials of the Apdex Alliance. Contributor Members will have an opportunity to review DRAFT SPECIFICATIONS, and will have voting privileges in any Technical and/or Marketing Working Groups in which such Contributor Member participates. Contributor Members shall be able to participate in all MEMBERS meetings. Each Contributor Member must actively participate in at least one Technical Working Group per year. Contributor Members can: recommend the creation of a new Technical Working Group to the MANAGEMENT BOARD; propose a chair for a Technical Working Group to the TECHNICAL WORKING GROUP or Executive Director; use the Apdex Alliance Member logo on their website

(under appropriate usage guidelines approved and implemented by the MANAGEMENT BOARD)

NetForecast shall retain a perpetual, no-fee Contributor Membership for its role as founder and inventor of Apdex.

- B. Management Board Membership** – The Contributing Members nominate and elect a Board of Directors from among their membership at the annual meeting of the Alliance. The Board Member companies will designate a specific person who will be that company’s “Representative to the Management Board.” This individual is expected to serve for a one year term. The Management Board is responsible for governance, operational policy, business development, membership recruitment, engaging contractors to work for the Alliance, defining membership categories, and setting membership fees. The Board defines working groups and approves their charters. The Board defines the document approval process that the TWG must follow to ratify an official Alliance public document. The Board has final authority for accepting the work of a working group and publishing a document. The Board is initially limited to five Contributing Members. The Board can choose to change this number at a later date. There is no additional fee to be a Board Member. However, Contributing Member Representatives to the Board are expected to contribute time and expenses associated with Board duties and meetings.
- C. Supporting Membership** - A Supporting Member is an individual who is interested in learning more about Apdex or applying Apdex to his/her environment. Supporting Members receive educational material that is not publicly available on the Apdex Alliance web site. A Supporting Member may attend some of the periodic tutorials on how to use Apdex that will be presented by the Alliance. Supporting Members are invited to attend an annual users’ meeting. They will also be invited to give presentations about their experiences with or suggestions to improve Apdex at the users’ meeting. Attendance at the users’ meeting is included in the membership (but not travel expenses). The annual fee for Supporting Membership shall be established by the Management Board on an annual basis.
- D. Associate Membership** - shall be open to governmental agencies, educational institutions, and other not-for-profit entities that have completed the application forms, satisfied the objective membership criteria for participation in the Apdex Alliance;

executed a copy of the Associate Membership Agreement and subject to the approval of the MANAGEMENT BOARD. There shall be no membership fee for Associate Members.

Section 3. **APPLICATION.** Application for membership in the Apdex Alliance shall be extended by the MANAGEMENT BOARD and made in writing on the required form as established by the Apdex Alliance.

Section 4. **MEMBERSHIP ELIGIBILITY.** It is a condition of continuing membership in the Apdex Alliance that all dues and assessments of a MEMBER shall be paid. The Board shall have the right to suspend or terminate membership of any MEMBER if its membership dues assessments remain unpaid for more than 30 days after written notice by the Apdex Alliance's Secretary. If requested by the MANAGEMENT BOARD at any time, a MEMBER shall be required to submit to the Secretary such statements as may be determined necessary to support continuing membership eligibility appropriate to the MEMBER'S membership level.

Section 5. **Technical Working Group.**

(a) The MANAGEMENT BOARD shall establish a TECHNICAL WORKING GROUP and its charter.

(b) (i) The TECHNICAL WORKING GROUP shall be responsible for coordinating all technical activities of the Apdex Alliance, including all SPECIFICATION writing programs. The TECHNICAL WORKING GROUP shall make recommendations regarding the Apdex Alliance's technical programs to the MANAGEMENT BOARD for final approval.

(ii) The membership of the TECHNICAL WORKING GROUP shall comprise a technical representative from each Contributor Member. Each Contributor Member shall have one vote on the TECHNICAL WORKING GROUP. Each representative shall be responsible to pay their own meeting expenses. All meetings of the TECHNICAL WORKING GROUP and its Technical Working Groups shall be open only to Contributor Members and Management Board Members. The TECHNICAL WORKING GROUP shall create such Technical Working Groups as are needed for the completion of Apdex Alliance objectives. The initial Chairperson of the TECHNICAL WORKING GROUP shall be appointed by the MANAGEMENT BOARD, and thereafter the MANAGEMENT BOARD shall appoint a chairperson from those person(s) recommended by the TECHNICAL WORKING GROUP. The initial chairpersons of each Technical Working Group shall be designated by the TECHNICAL WORKING GROUP and shall be charged with establishing objectives and time frames for completion thereof. The REVIEW BOARD shall approve the objectives and time frames prior to the working group commencing work pursuant thereto.

**ARTICLE IV  
TERMINATION OF MEMBERSHIP**

Section 1. **REASONS FOR SUSPENSION OR EXPULSION.** Any MEMBER or MEMBER REPRESENTATIVE may be suspended or expelled from membership from the Apdex Alliance by a two-thirds (2/3) vote of the MANAGEMENT BOARD for any of the following reasons:

- (a) Failure to conform to these Operating Procedures and any other agreements executed between the Apdex Alliance and its MEMBERS;
- (b) For any conduct unbecoming of a MEMBER or MEMBER REPRESENTATIVE of the Apdex Alliance, or calculated to bring the Apdex Alliance into disrepute;
- (c) Failure to continue to meet Membership or representative eligibility requirements; or
- (d) Failure to pay membership fees or assessments.

Section 2. **PROCEDURE FOR SUSPENSION OR EXPULSION.** Upon being advised that an event has happened which would constitute grounds for suspension or expulsion of any MEMBER or MEMBER REPRESENTATIVE under Section 1 of this Article, the MANAGEMENT BOARD may suspend or expel such MEMBER establishing an effective date for suspension or expulsion upon a vote of two-thirds (2/3) of the MANAGEMENT BOARD. Such vote shall be convened utilizing confidential ballots by a representative of the IEEE-ISTO, results of which shall be reported in summary such that individual votes shall not be disclosed. Such suspended or expelled MEMBER may appeal such suspension or expulsion by notifying the Secretary within ten days of being advised in writing of such MANAGEMENT BOARD action. Upon receipt of such notice, the entire MANAGEMENT BOARD shall schedule a hearing at its next meeting to hear such appeal under such procedures as it shall determine in advance thereof.

Section 3. **SUSPENDED AND EXPELLED MEMBERS.** Any MEMBER or MEMBER REPRESENTATIVE suspended from the Apdex Alliance under this Article shall have no claim against, or vote in the Apdex Alliance until such suspension has expired. Any MEMBER expelled from the Apdex Alliance under this Article shall have no further interest in the property of, or claim against, the Apdex Alliance, and shall be entitled to reapply for membership only through reconsideration by the MANAGEMENT BOARD as set forth in Section 2 of this Article and upon payment in full of all obligations to the Apdex Alliance outstanding at the time of expulsion; provided however that the license agreement of such MEMBER shall remain in full force and effect as to such MEMBER'S intellectual property rights as set forth in greater detail therein. Any MEMBER expelled from the Apdex Alliance shall be entitled to receive a prorated refund of any membership fees paid minus any outstanding balances owed to the Apdex Alliance by such MEMBER. Any MEMBER REPRESENTATIVE expelled from the Apdex Alliance under this Article shall have no further interest in the property of, or claim against, the Apdex Alliance, and shall be entitled to represent the MEMBER or any other MEMBER only through reconsideration by the MANAGEMENT BOARD as set forth in Section 2 of this Article.

Section 4. **RESIGNATION. (A)** Resignations of MEMBERS shall be submitted in writing to the Secretary. Except as hereinafter stated, a resignation shall not be retroactively effective but shall be effective on the date received. All normal and regular dues of a resigning MEMBER shall accrue and be payable to the Alliance. A MEMBER shall not be liable for any special assessments imposed after the effective date of its resignation ; **(B)** Any MEMBER shall be permitted to resign from the Apdex Alliance at any time by giving written notice of its intent to terminate its participation but shall still be

bound to its obligations under Article VIII, Section 4 (iv)(b) with respect to FINAL DRAFT SPECIFICATIONS that have been circulated to the MEMBERS by the MANAGEMENT BOARD unless such resignation occurs during the IPR REVIEW PERIOD and conforms with the notice requirements of Article VIII, Section 8 and further is subject to any further limitations defined in Article VIII, Section 8. Any MEMBER that resigns from the Apdex Alliance shall not have any licenses granted to such MEMBER pursuant to Article VIII, Section 4 (iv)(b) be prejudiced as a result of such resignation. Upon its withdrawal, any fees owed by a resigning MEMBER prior to such MEMBER'S resignation shall become immediately due and payable.

## **ARTICLE V MEETINGS AND QUORUMS**

Section 1. **ANNUAL MEETING.** The Apdex Alliance shall hold an annual meeting of its MEMBERS (the "Annual Meeting" or "All Participants Meeting") during each calendar year, the time and place of which shall be determined by the MANAGEMENT BOARD for the introduction of elected Board Members, appointed officers and for the transaction of any other business placed on the agenda for the meeting by the MANAGEMENT BOARD. Notice of such meeting and the agenda shall be sent by the Secretary to each MEMBER at least thirty (30) days in advance of the day specified for the meeting, including a statement of the day, time and place of the meeting and information as to the subject matter to be considered at the meeting. The MANAGEMENT BOARD may invite any other person to such meeting as it deems necessary and appropriate.

Section 2. **SPECIAL MEETINGS.** Special meetings of the Board Members, any MANAGEMENT BOARD committees or the TECHNICAL WORKING GROUP may be called by the Chairman of the MANAGEMENT BOARD at a place designated in the notice of such meeting ("Special Meeting"). Special meetings shall be called by the Chairman upon the request of not less than thirty three (33%) percent of the MEMBERS of the respective body wishing to call the Special Meeting . Notice of such Special Meeting shall be sent at least three (3) days before but not more than forty-five (45) days before said Special Meeting date. Special Meetings of Board Members, any MANAGEMENT BOARD committee or the TECHNICAL WORKING GROUP may be held by telephone as set forth in Section 6 of this Article. Votes may be recorded via telephone conference, by e-mail, by letter ballot signed by the MEMBER or MEMBER REPRESENTATIVE of the MANAGEMENT BOARD, any MANAGEMENT BOARD committee or the TECHNICAL WORKING GROUP attending the Special Meeting and sent by facsimile within three (3) working days to the Apdex Alliance. A quorum of either Board Members, MEMBERS of the MANAGEMENT BOARD committee or the TECHNICAL WORKING GROUP entitled to vote shall be required to constitute a valid vote at a Special Meeting, and a majority of such quorum shall be necessary to authorize any action under consideration.

Section 3. **QUORUM, VOTING AND PROXIES.** The presence in person by MEMBERS, MEMBER REPRESENTATIVES or by proxy of a majority of the MEMBERS having voting rights pursuant to these Operating Procedures ("Voting Members") at any Annual or Special Meeting of the MEMBERS, the MANAGEMENT BOARD, a MANAGEMENT BOARD committee or the TECHNICAL WORKING GROUP shall be necessary to constitute a quorum for the transaction of business. A meeting at which a quorum is present shall be duly constituted for the transaction of business even though a

lack of a quorum may subsequently arise. All Voting Members shall each have one vote on matters relating to each committee or working group on which such MEMBER participates. Each Voting Member shall have only one vote regardless of the number of MEMBER REPRESENTATIVES who may be present at the meeting, except as set forth in Article VI, Section 1. Each Voting Member may attend by proxy, which shall be in writing or facsimile received by the Secretary prior to the noticed time for the meeting or submitted at the time of the meeting by the MEMBER REPRESENTATIVES. Each proxy shall be valid only for the meeting for which it is submitted, provided that no proxy shall be valid for more than three consecutive working days.

Section 4. **PROCEDURES.** If, after any meeting of the MEMBERS of the Apdex Alliance the Board Members and/or the TECHNICAL WORKING GROUP has been duly called, it is found by the Chairperson of meeting that an insufficient number will be present to constitute a quorum, the Secretary may, with the consent of the Chairperson, establish a new date and place for the meeting, and a new notice shall be sent by Chairperson at least three days in advance of the date of the meeting. The MEMBERS present at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough MEMBERS to leave less than a quorum. The Chairperson shall chair all meetings of the MANAGEMENT BOARD.

Section 5. **MINUTES.** At all meetings of the MEMBERS of the Apdex Alliance, the MANAGEMENT BOARD or the TECHNICAL WORKING GROUP, a record of the proceedings shall be preserved as the minutes of the meeting, subject to approval by the participants.

Section 6. **REMOTE MEETINGS.** MEMBERS or Board Members, as the case may be, may participate in meetings of the MEMBERS, the TECHNICAL WORKING GROUP or the MANAGEMENT BOARD as set forth in Section 2 or a subcommittee thereof or any Committee by conference telephone or similar communications equipment by means of which all parties participating in the meeting can participate effectively. All such meetings shall commence by a roll call identifying each participating party and their affiliations, and each such person shall identify when they are leaving the conference call and any other person who becomes a party to the call. Special Meetings may be conducted by electronic mail including voting on the Specifications.

Section 7. **GUESTS.** Attendance at meetings shall be limited to MEMBERS and guests invited by the Apdex Alliance.

## ARTICLE VI MANAGEMENT BOARD

Section 1. **BOARD MEMBERS.** The MANAGEMENT BOARD of the Apdex Alliance shall be comprised of Contributor Members elected by the Contributing Membership to serve on the Management Board of the Apdex Alliance, whereby each Contributor Member elected shall be afforded one (1) vote on the MANAGEMENT BOARD. The specific election process shall be determined and approved by the MANAGEMENT BOARD. The Chairperson shall be a nonvoting *ex-officio* member of the MANAGEMENT BOARD, except that if the Chairperson is appointed from the membership of the Board then he shall have only the Board vote. The MANAGEMENT BOARD shall be limited to five (5) Contributing Members. The MANAGEMENT BOARD may change this number at a later date.

Section 2. **MEETINGS.** The MANAGEMENT BOARD shall meet during the time set for the Annual Meeting and such other times as determined by the MANAGEMENT BOARD, but not less frequently than twice annually. Each Board Member shall be responsible to pay his own meeting expenses.

### Section 3. **ACTION OF BOARD MEMBERS.**

(a) The direction, property, business and all affairs of the Apdex Alliance shall be managed by its MANAGEMENT BOARD. Except as otherwise provided by law, the Board Members may, at the request of the Chairman, take any action or adopt any resolution under such procedures as may be adopted from time to time by the MANAGEMENT BOARD. Such action or resolution shall be authorized, approved and adopted upon receiving the affirmative vote of at least a majority of the Board Members of the Apdex Alliance.

(b) The MANAGEMENT BOARD shall elect the officers from the Board Members at the annual meeting at which they are selected. Such election shall be by majority vote of those present at the meeting. The MANAGEMENT BOARD shall be responsible for establishing all rules and regulations, including quorum requirements for Committees and working groups

(c) The MANAGEMENT BOARD shall also elect the Apdex Alliance Director; approve new member applications by a simple majority vote; and review the budget and financials with the Treasurer at least three times per year.

Section 4. **EMERGENCY PROVISIONS.** Notwithstanding any other provisions of law or these Operating Procedures, during any emergency period caused by war or any other national catastrophe or local disaster of sufficient severity to prevent the conduct and management of the business and affairs of the Apdex Alliance by its MANAGEMENT BOARD and officers as contemplated by the other provisions of these Operating Procedures, a majority of the available Board Members (or the sole such Board Member) who have not been rendered incapable of acting because of incapacity or the difficulty of communication or transportation to the place of meeting shall constitute a quorum for the sole purpose of electing Board Members to fill the resulting emergency vacancies; and a majority of the Board Members present at such a meeting may act to fill such vacancies or to reduce the size of the full MANAGEMENT BOARD or both. Board Members so elected shall serve until the absent Board Members are able to

attend meetings or until the Contributor Members elect Board Members to succeed them. During such an emergency period, if the Board is unable to meet, action appropriate to the circumstances may be taken by such officers of the Alliance as may be present and able. Questions as to the existence of a national catastrophe or local disaster and the number of surviving persons capable of acting shall be conclusively determined at the time by the MANAGEMENT BOARD or the officers so acting.

Section 5. **RESIGNATIONS.** Any Board Member may resign by submitting to the Chairperson, with a copy to the Secretary, his resignation, which shall become effective upon its receipt by such officer or at any later time specified therein. Unless specified therein, the acceptance of any resignation shall not be necessary to make it effective.

Section 6. **VACANCIES IN THE BOARD.** Vacancies in the MANAGEMENT BOARD, including vacancies where a nominee has not commenced the term of office or who is unable to serve because of death, disability, withdrawal of his name, resignation or other cause, shall be filled within sixty (60) days by the Contributor Member whose representative is unable to serve. The MANAGEMENT BOARD may, by a two-thirds vote of the full MANAGEMENT BOARD, declare any Board Member position vacant upon the failure, for any reason, of its incumbent to attend two consecutive meetings of the MANAGEMENT BOARD or to perform the duties of the office.

Section 7. **COMMITTEES OF THE BOARD.** It will be the responsibility of the MANAGEMENT BOARD to establish committees as deemed necessary by a majority vote. The MANAGEMENT BOARD may, at its discretion, choose to appoint itself in the stead of establishing or continuing any standing committee.

(a) **STANDING COMMITTEES.**

(i) The MANAGEMENT BOARD may create Standing Committees to oversee the various functions of the Apdex Alliance. The initial Standing Committees of the MANAGEMENT BOARD shall be:

**A. TECHNICAL WORKING GROUP:** The duties of the TECHNICAL WORKING GROUP are set forth in Article III, Section 6.

**B. ADVISORY COMMITTEE:** The Board invites industry thought leaders to serve on a special committee of the Board called the Advisory Committee. Advisory Committee provides outside input to the Board. The Advisory Committee is made up of enterprise volunteers who have significant experience in application performance measurement and management. These individuals provide critical input to the Apdex Alliance on technical issues and how to apply Apdex within an IT organization. The Advisory Committee members shall enjoy all of the rights and privileges of a Contributing Member at no charge. However, this is not viewed as a corporate membership for the company where the Advisory Committee Representative may be employed.

(b) **ADDITIONAL STANDING OR TEMPORARY COMMITTEES.** Additional standing or temporary committees, consisting of one or more Board Members, may be

appointed by the MANAGEMENT BOARD from time to time by vote of a majority of the Board Members present at any regular or Special Meeting. The MANAGEMENT BOARD may from time to time vest committees with such power and authority, subject to such conditions, as it may see fit. An Executive Committee may be elected by the MANAGEMENT BOARD to exercise all of the powers and authority of the MANAGEMENT BOARD during intervals between meetings of the MANAGEMENT BOARD.

(c) **REMOVAL; VACANCIES; ABSENCE OR DISQUALIFICATION.** The MANAGEMENT BOARD may remove Board Members from committees and fill vacancies, designate one or more Board Members as Alternate Board Members of any committee, which Alternate Board Members may replace any absent or disqualified Board Member at any meeting. In the event of the absence or disqualification of any Board Member of any committee, the Board Member or Members present at any meeting, whether or not he or they constitute a quorum, may unanimously appoint another Board Member to act at the meeting in place of any such absent or disqualified Board Member.

(d) **ORGANIZATION; FINALITY OF ACTION.** All committees shall determine their own procedures and times and places of meeting, unless otherwise directed by the and subject to the approval of the MANAGEMENT BOARD. Any action taken by any committee shall be subject to approval, alteration or revocation by the MANAGEMENT BOARD; provided, however, that third parties shall not be prejudiced by such alteration or revocation.

## ARTICLE VII OFFICERS

Section 1. **OFFICERS AND TERMS.** Officers of the Apdex Alliance shall consist of: the Chairperson of the MANAGEMENT BOARD, an Executive Director (if such position is filled), a Treasurer, and a Secretary all of whom shall be elected by the MANAGEMENT BOARD. The term of the Chairperson shall be one year beginning with the conclusion of the Annual Meeting. The term of the Officers shall be one year.

Section 2. **CHAIRPERSON.** The Chairperson shall be elected by the MANAGEMENT BOARD, and shall preside at all meetings of the MANAGEMENT BOARD and at MEMBER meetings. In the absence of the Chairperson, any Board Member selected by the MANAGEMENT BOARD at such meeting may so preside. The Chairperson of the MANAGEMENT BOARD shall serve as the Executive Director until such time as an Executive Director is elected.

Section 3. **EXECUTIVE DIRECTOR.** The Executive Director may be elected by and serve at the will of the MANAGEMENT BOARD. The Executive Director shall be selected from either (i) a Founding Member, (ii) a Contributor Member, (iii) an independent contractor, or (iv) the IEEE-ISTO. The Executive Director shall be the Secretary and Assistant Treasurer of the Apdex Alliance. In addition to his other duties, the Executive Director shall be charged with carrying out the policies, programs, orders and resolutions adopted or approved by the MANAGEMENT BOARD. The Executive Director shall be responsible for membership and relationships with MEMBERS. The Executive Director shall attend all meetings of the MEMBERS and the meetings of MANAGEMENT BOARD. The Executive Director shall: be responsible for taking

minutes of the Management Board; responsible for; (i) the day to day operations of the Apdex Alliance, (ii) approving Apdex Alliance marketing materials and communications, (iii) providing guidance to marketing support staff, (iv) nominating MEMBERS to the marketing support staff, and (v) nominating working group chairs, as necessary. The Executive Director shall also be responsible for keeping a membership list, with the cooperation of the Treasurer. The Executive Director shall notify all MEMBERS of any amendments to these Operating Procedures. The Executive Director shall perform such other duties as requested by the MANAGEMENT BOARD. The Executive Director shall manage, supervise and exercise general powers concerning all the property, business and affairs of the Apdex Alliance, and shall have all powers and perform all duties incident to the office of secretary and any further powers and duties as from time to time may be prescribed by the MANAGEMENT BOARD.

Section 4. **TREASURER.** The Treasurer shall be the chief financial officer of the Apdex Alliance. The Treasurer shall be elected by, and report to, the MANAGEMENT BOARD. He shall collect the assessments from the MEMBERS as authorized and shall pay all expenses of the Apdex Alliance, subject to the general approval and direction of the MANAGEMENT BOARD. He shall render to the MEMBERS a detailed statement showing the financial status of the Apdex Alliance annually and at such other times as may be directed by the MANAGEMENT BOARD. His accounts shall be audited from time to time as may be directed by the MANAGEMENT BOARD or by a Founding or Contributor Member; provided that no Founding or Contributor Member, whether an officer or not, shall have access to figures which would indicate the business of any other MEMBER of the Apdex Alliance. If required by the MANAGEMENT BOARD, the Treasurer shall give a good and sufficient bond in such sum as the MANAGEMENT BOARD may require as security for the faithful discharge of his duties. Such bond shall be subject to the approval of the General Council of the IEEE-ISTO. At the expiration of his term of office, the Treasurer shall deliver over to his successor, all books and other property of the Apdex Alliance in his possession.

Section 5. **Secretary.** The Secretary shall be responsible for the taking of minutes of all meetings of the MANAGEMENT BOARD and official correspondence. The Secretary can be a member of the IEEE-ISTO staff.

## **ARTICLE VIII INTELLECTUAL PROPERTY RIGHTS**

Section 1. **COPYRIGHTS IN DRAFT SPECIFICATIONS.** Each Contributor Member shall grant to each of the other MEMBERS participating in the Apdex Alliance a non-exclusive, nontransferable, worldwide license under such granting MEMBER'S copyrights to reproduce, distribute, display, perform and create derivative works of such Contributor and Contributor Member's Contributions contained in any DRAFT SPECIFICATION for use in the development of the FINAL DRAFT SPECIFICATION and for each of the other MEMBER'S internal use. This Section 1 shall survive any withdrawal of a MEMBER.

Section 2. **COPYRIGHTS IN FINAL SPECIFICATION.** Effective upon approval of the FINAL DRAFT SPECIFICATION, each MEMBER grants to the ISTO, in trust for the Apdex Alliance, undivided ownership in the copyrights in the collective work that is the FINAL SPECIFICATION. This Article VIII, section 2, shall survive any withdrawal of a MEMBER.

Section 3. **COPYRIGHT NOTICES AND ENFORCEMENT.** Any publication of the FINAL SPECIFICATION shall contain an appropriate copyright notice in the name of the Apdex Alliance, a program of the IEEE-ISTO. Written public references to a FINAL SPECIFICATION shall attribute authorship to the Contributor and Contributor Members.

#### Section 4. **Ownership and Licensing of Intellectual Property**

- (i) Each MEMBER shall retain ownership (including, but not limited to, the right to publish or distribute without any obligation of confidentiality, notwithstanding any terms of these Operating Procedures to the contrary) of any of its LICENSED MATERIALS that such MEMBER offers for use in the development of or for inclusion in a SPECIFICATION, as well as of such MEMBER'S implementations of the technologies described in a SPECIFICATION. Where two or more MEMBERS jointly develop LICENSED MATERIALS or intellectual property appurtenant thereto (such as copyrights or patent rights) as part of their work in Apdex Alliance, such MEMBERS shall jointly own any such LICENSED MATERIALS and intellectual property, without any obligation of accounting to each other or to the other MEMBERS, unless otherwise agreed to, in writing, by the MEMBERS who engaged in such joint development. All the foregoing ownership rights are subject to any underlying licenses set forth in these Operating Procedures.
- (ii) Each MEMBER understands and agrees that neither the TECHNICAL WORKING GROUP nor the MANAGEMENT BOARD has any obligation to include as part of any SPECIFICATION any LICENSED MATERIALS offered by a MEMBER.
- (iii.) Each MEMBER hereby grants to each other MEMBER a limited, irrevocable, non-exclusive, worldwide, fair, reasonable and non-discriminatory license to copy, perform, display and make derivative works of such MEMBER'S LICENSED MATERIALS and under such MEMBER'S NECESSARY CLAIMS solely to conduct the work of the TECHNICAL WORKING GROUP up to the point at which the MANAGEMENT BOARD approves (or rejects) a FINAL DRAFT SPECIFICATION or other output recommended by the TECHNICAL WORKING GROUP.
- (iv.) If and to the extent a specific FINAL SPECIFICATION includes any LICENSED MATERIALS of a MEMBER or is subject to any NECESSARY CLAIMS of a MEMBER, such MEMBER grants the following licenses:
  - (a) Each MEMBER hereby grants to the Apdex Alliance an irrevocable, perpetual, non-exclusive, worldwide, paid-up copyright license to reproduce, display, perform, prepare and have prepared derivative works based upon, distribute and sublicense the LICENSED MATERIALS included in a specific FINAL SPECIFICATION and derivative works

thereof as set out in this Operating Procedure, including the right to authorize AFFILIATES to do any, some or all of the foregoing, provided, however, that each MEMBER acknowledges that the provisions described in Article VIII are the means by which the Apdex Alliance seeks to act as the steward for defining and revising FINAL SPECIFICATIONS, and no MEMBER shall take any actions under the foregoing license, including but not limited to granting sublicenses to third parties, that would be inconsistent with this intention.

- (b) Each MEMBER hereby covenants to grant to any other person or legal entity (whether or not such person or entity is also a MEMBER) a fair, reasonable, and non-discriminatory license under its NECESSARY CLAIMS to implement a FINAL SPECIFICATION, but only to the extent needed to be a FULLY COMPLIANT IMPLEMENTATION of such FINAL SPECIFICATION and make, have made, use, import, offer to sell, lease and sell and otherwise distribute the resulting FULLY COMPLIANT IMPLEMENTATION, which license may be made subject to the condition that those who seek licenses under this Section agree to grant reciprocal, fair, reasonable and non-discriminatory licenses under their NECESSARY CLAIMS to any MEMBER. Except as set forth herein, the negotiation of licenses pursuant to this Section shall be left to the parties concerned. Any license granted pursuant to this Article VIII, Section 4(iv)(b) shall be herein referred to as a "LICENSE AGREEMENT". Notwithstanding the foregoing, no MEMBER shall be required to grant a license pursuant to this Section with respect to: (i) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with a FINAL SPECIFICATION, but are not themselves expressly set forth in that FINAL SPECIFICATION (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, database technology, and the like); (ii) the implementation of other specifications, even if referred to in a FINAL SPECIFICATION; or (iii) any portion of any product and any combinations thereof the sole purpose or function of which is not required in order to be a FULLY COMPLIANT IMPLEMENTATION of a FINAL SPECIFICATION.
- (v.) Except as explicitly set forth in the LICENSE AGREEMENT, a MEMBER is not required to grant any other MEMBER or third party any rights or licenses to any patents, copyrights, trademarks, trade secrets or other intellectual property rights of such MEMBER.
- (vi.) By a seventy five percent (75%) majority vote of Board Members, the MANAGEMENT BOARD may agree to establish one or more certification trademarks ("TRADEMARK") where the MANAGEMENT BOARD concludes that such establishment will serve the goals and objectives of the Apdex Alliance including, for example, to indicate compliance of an implementation of a FINAL SPECIFICATION and any other requirements approved by the MANAGEMENT BOARD; provided, however, that the MANAGEMENT BOARD shall use reasonable efforts and act in good faith not to establish a TRADEMARK that would be confusingly similar to any trademark or service mark owned by any MEMBER. Any TRADEMARK established under this Section shall be owned by the IEEE-ISTO as a trustee for the Apdex Alliance

("TRADEMARK OWNER"). The TRADEMARK OWNER will use commercially reasonable efforts to clear and register the TRADEMARK in those countries designated by the MANAGEMENT BOARD, with appropriate input from the MEMBERS. The TRADEMARK OWNER will license all MEMBERS to use the TRADEMARK pursuant to terms to be stated in a separate Trademark License Agreement, which must be executed in a form approved by the MANAGEMENT BOARD.

- (vii.) Each MEMBER shall be offered access to specific password-protected areas of the Apdex Alliance website.

Section 5. **DISCLOSURE OF PATENTS.** Within 45 days from the date a FINAL DRAFT SPECIFICATION is circulated for review by, and for comment from, the MEMBERS (the "IPR REVIEW PERIOD"), each MEMBER shall disclose to the MANAGEMENT BOARD, in writing, the existence of its patents or patent applications which may include NECESSARY CLAIMS with respect to the FINAL DRAFT SPECIFICATION that are personally known to the individuals participating in or involved in developing the FINAL DRAFT SPECIFICATION by attending meetings or providing substantive technical comments or contributions but not by merely reviewing SPECIFICATIONS for development of implementation. It is understood and agreed that such individuals do not represent that they personally know of all potentially pertinent claims of patents and patent applications owned or claimed by the MEMBER they represent or any third parties. It is further understood that the knowledge is only that of the individuals and those individuals are not representing or implying any knowledge on behalf of the MEMBER as an institution.

The obligation set forth above does not, however, imply any obligations on MEMBERS (collectively or individually) to perform or conduct patent searches. Further, nothing in these Operating Procedures nor the act of a MEMBER submitting, supporting, or approving a proposal for a SPECIFICATION shall be construed or otherwise interpreted as any kind of express or implied representation that such MEMBER does or does not hold any patents or patent applications which contain claims that cover such SPECIFICATION.

Section 6. **SPECIFICATION APPROVAL AND MARKING REQUIREMENTS.** The TECHNICAL WORKING GROUP may decide by vote to circulate interim drafts or releases of DRAFT SPECIFICATIONS to MEMBERS for review and comment.

- (i) In addition, the TECHNICAL WORKING GROUP may request that a DRAFT SPECIFICATION be circulated for review by and comment from non-MEMBERS. This request, along with the associated DRAFT SPECIFICATION, shall be formally submitted to the MANAGEMENT BOARD and upon a greater than fifty percent (50%) majority vote by the MANAGEMENT BOARD, shall be published.

- (ii) The primary deliverable of the TECHNICAL WORKING GROUP shall be DRAFT SPECIFICATIONS in the form of "FINAL DRAFT SPECIFICATIONS" on the subject matter or undertaking assigned to each Working Group of the TECHNICAL REVIEW BOARD, which drafts or proposals shall be formally submitted to the MANAGEMENT BOARD. When the TECHNICAL WORKING GROUP by a seventy five per cent (75%) majority vote of MEMBERS of the TECHNICAL WORKING GROUP voting when a QUORUM exists, reports to the

MANAGEMENT BOARD that a FINAL DRAFT SPECIFICATION proposed for final approval is complete, or at any other time upon majority vote of the MANAGEMENT BOARD, the MANAGEMENT BOARD will take steps to accept or reject the FINAL DRAFT SPECIFICATION as set forth herein. To adopt the FINAL DRAFT SPECIFICATION, written notice (which shall include a copy of the FINAL DRAFT SPECIFICATION) shall be sent to all MEMBERS advising that a MANAGEMENT BOARD meeting will be held for the purposes of adopting such FINAL DRAFT SPECIFICATION. Such meeting shall take place no sooner than forty-five (45) days after transmission of the written notice by the MANAGEMENT BOARD to all MEMBERS. At such meeting, the MANAGEMENT BOARD shall vote on the FINAL DRAFT SPECIFICATION up for a vote. Adoption of the FINAL DRAFT SPECIFICATION requires approval of seventy-five percent (75%) of the MANAGEMENT BOARD. After approval by the MANAGEMENT BOARD, such FINAL SPECIFICATION shall be made publicly available by the Apdex Alliance.

(iii) After any FINAL SPECIFICATION has been approved in accordance with Section 6(ii) above, any updates or alterations thereto shall be treated as a proposal to develop a new SPECIFICATION and shall be subject to the same processes and procedures used for development of SPECIFICATIONS as set forth above. The adoption of new FINAL SPECIFICATIONS shall not terminate any right or obligation of any MEMBER under the LICENSE AGREEMENT, including any licenses or covenants granted or received by a MEMBER with respect to any earlier adopted FINAL SPECIFICATIONS.

(iv). Any SPECIFICATION published by the Apdex Alliance shall contain the following printed notice in a clear and conspicuous place:

"Implementation of certain elements of this SPECIFICATION may require licenses under third party intellectual property rights, including without limitation, patent rights. The Apdex Alliance and its MEMBERS and the ISTO are not, and shall not be held responsible in any manner, for identifying or failing to identify any or all such third party intellectual property rights. THIS SPECIFICATION IS PROVIDED "AS IS", AND NO MEMBER OF THE APDEX ALLIANCE PROGRAM MAKES ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, AND FITNESS FOR A PARTICULAR PURPOSE. Implementers of this Specification are advised to review the Apdex Alliance website ([www.Apdex.org](http://www.Apdex.org)) for information concerning any notices of intellectual property rights that have been received by the Apdex Alliance."

(v.) For any published SPECIFICATION for which any relevant non-MEMBER patent has been reported to the MANAGEMENT BOARD a notice shall be published on the Apdex Alliance's website accessible to those who may wish to implement the SPECIFICATION to which such patent relates. The notice shall include an identification of the relevant patent number(s), the owner(s), if known, and any known contact at such owner(s) and the SPECIFICATION to which such patent(s) are relevant. The notice on the website shall include the following in a clear and conspicuous place:

“Implementation of this SPECIFICATION may involve the use of technology covered by one or more third party patents identified on the Apdex Alliance website ([www.Apdex.org](http://www.Apdex.org)). The Apdex Alliance and its MEMBERS and the ISTO take no position concerning the ownership, enforceability, validity and/or scope of any such third party patent right. Implementation of certain elements of this SPECIFICATION may also require licenses under third party intellectual property rights other than those identified above, including without limitation, patent rights. The Apdex Alliance and its MEMBERS and the ISTO are not and shall not be held responsible in any manner for identifying or failing to identify any or all such intellectual property rights that may be involved in the implementation of this SPECIFICATION.”

#### Section 7. IDENTIFICATION OF NECESSARY CLAIMS DURING IPR REVIEW PERIOD

- (i) With respect to the disclosure of its NECESSARY CLAIMS pursuant to Section 5 of this Article, each such MEMBER shall provide the following identification of such claims.

a. Such identification shall be made by notifying the MANAGEMENT BOARD in writing (“NECESSARY CLAIMS DISCLOSURE NOTICE”) on a good faith basis, setting forth:

- i. that it claims to be the owner of certain patents or patent applications which may include NECESSARY CLAIMS with respect to such FINAL DRAFT SPECIFICATION and that the notifying MEMBER elects to identify such patents or patent applications which may include NECESSARY CLAIMS that are to be in the license grant set forth in Article VIII, Section 4(iv)(b);

and

- ii. For each patent or patent application identified in the NECESSARY CLAIMS DISCLOSURE NOTICE pertaining to such FINAL DRAFT SPECIFICATION, the following information shall be provided:

(A) the countries in which the patent(s) or application(s) in which they are contained was issued or is pending;

(B) the patent number for such patent, the publication number for such published patent applications, the serial number of such unpublished patent applications and, if applicable, a statement indicating that such unpublished application will not be published; and

(C) the portion of the FINAL DRAFT SPECIFICATION to which the MEMBER believes the patent or patent application which may include NECESSARY CLAIMS relates.

- iii. This notice specifically will not require the inclusion of any claim or infringement analysis of the NECESSARY CLAIMS.
  - b. The NECESSARY CLAIMS DISCLOSURE NOTICE shall be effective on the date it is received by the MANAGEMENT BOARD, provided that it contains the information required by Section 7a.
  - c. The MANAGEMENT BOARD shall report to the TECHNICAL WORKING GROUP AND MEMBERSHIP any NECESSARY CLAIMS DISCLOSURE NOTICE received hereunder.
  - d. If a FINAL DRAFT SPECIFICATION (or, with respect to Article VIII, Section 6, a FINAL SPECIFICATION is modified in response to a NECESSARY CLAIMS DISCLOSURE NOTICE, then each MEMBER shall have 45 days from the date on which the modified FINAL DRAFT SPECIFICATION is provided to each MEMBER to again submit a NECESSARY CLAIMS DISCLOSURE NOTICE to the MANAGEMENT BOARD.
  - e. The obligation to disclose NECESSARY CLAIMS shall also arise during the first 45 days after a FINAL DRAFT SPECIFICATION has been released for review by all MEMBERS if such draft has been modified in a way that causes a MEMBER to conclude in good faith that it now has NECESSARY CLAIMS whereas it previously did not.
  - f. A MEMBER'S license grant under Article VIII, Section 4(iv) that were relevant to a previously circulated FINAL DRAFT SPECIFICATION that were not identified in a NECESSARY CLAIMS DISCLOSURE NOTICE are also included after resignation from Membership.
  - g. A MEMBER also cannot exercise its rights with respect to NECESSARY CLAIMS that pertain to LICENSED MATERIALS where any individual acting on the MEMBER'S behalf contributed such LICENSED MATERIALS with knowledge that such materials likely would be subject to the MEMBER'S NECESSARY CLAIMS, except when the MEMBER'S NECESSARY CLAIMS have been declared with specificity required by Article VIII Section 7 by the MEMBER upon the contribution of such LICENSED MATERIALS.
- (ii.) Any MEMBER that joins the Apdex Alliance after the MANAGEMENT BOARD has already adopted a FINAL SPECIFICATION shall have until 45 days after joining the Apdex Alliance to deliver a NECESSARY CLAIMS DISCLOSURE NOTICE relating to such FINAL SPECIFICATION to the MANAGEMENT BOARD, as set forth in Article VIII, Section 7.

Section 8. **BINDING EFFECT.** A MANAGEMENT BOARD Member shall be deemed to have approved all FINAL SPECIFICATIONS, with all rights and obligations with respect thereto under these Operating Procedures, if such MANAGEMENT BOARD Member (i) voted in favor of the proposed FINAL SPECIFICATION; (ii) abstained or voted against such proposed FINAL SPECIFICATION

Section 9. **NON-ASSERTION.** Contributor Members shall not assert against any MEMBER any trademark, trade name or similar rights they may have now or hereafter in

the name "Apdex Alliance", or any derivative names, when used to identify or refer to a FINAL SPECIFICATION and of FULLY COMPLIANT IMPLEMENTATIONS .

## ARTICLE IX LIAISON

Section 1. **LIAISON AGREEMENTS.** The MANAGEMENT BOARD may enter into Liaison Agreements with one or more Industry Standard Bodies that set forth the process for transition of a FINAL SPECIFICATION to such Industry Standard Bodies and which shall include the responsibilities and obligations of both parties. Such Liaison Agreements are subject to approval of the Contributor Members and shall, at a minimum cover the following items:

- a. Establishment of a Liaison Member of the Industry Standard Body who will serve as the point of contact for all issues and status between the Industry Standard Body and the Apdex Alliance;
- b. Apdex Alliance obligations in support of transition of FINAL SPECIFICATIONS from the Apdex Alliance to the Industry Standards Body (e.g., licensing and IP commitments);
- c. Industry Standards Body obligations in support of transition of FINAL SPECIFICATIONS from the Apdex Alliance to the Industry Standards Body (e.g., trademark initiation
- d. Processes to provide Industry Standards Bodies access to DRAFT SPECIFICATIONS (with MANAGEMENT BOARD approval), and for such Industry Standards Body to provide feedback to the Apdex Alliance
- e. Acceptance processes for the transition of the Apdex Alliance specifications to the standards body) including criteria and time deadlines, milestones.
- f. Coordination of public statements/press releases
- g. Termination of the Liaison Agreement.

Section 2. **CONTINGENCIES.** In the event that an Industry Standards Body: a) chooses to not enter into a Liaison Agreement or terminates a Liaison Agreement; b) chooses not to or fails to undertake an action requested by the Apdex Alliance regarding the usage of a FINAL SPECIFICATION, then that Industry Standards Body shall not be considered by the Apdex Alliance as an acceptable Industry Standards Body for further liaison responsibilities and obligations. The MANAGEMENT BOARD may extend, modify or rescind the Liaison Agreement according to the terms and conditions of the Liaison Agreement.

Section 3. **INDEPENDENT BODY.** The MANAGEMENT BOARD may decide to publish, maintain and update a FINAL SPECIFICATION beyond the time that an Industry Standards Body has initially adopted the FINAL SPECIFICATION, for the purpose of

continued promotion of the FINAL SPECIFICATION to other Industry Standards Bodies and other standards organizations.

## ARTICLE X CONFIDENTIALITY

- (i) As a general principle, no MEMBER wishes to receive from any other MEMBER under this Agreement any information which the disclosing MEMBER considers to be confidential; however, the MEMBERS do wish to allow the work of the Apdex Alliance to proceed in a constructive manner under conditions which promote candid and open discussions.
- (ii.) Each receiving MEMBER agrees to hold the CONFIDENTIAL INFORMATION of any other MEMBER in confidence for a period of five (5) years following the date of disclosure, by using the same degree of care each uses for its own CONFIDENTIAL INFORMATION, but not less than reasonable care, to avoid the use of CONFIDENTIAL INFORMATION by the Receiving Member for any purpose other than in furtherance of the Mission of the Apdex Alliance, and the disclosure of such CONFIDENTIAL INFORMATION to any third parties (including its parent, or affiliated corporations of a Receiving MEMBER or its employees or consultants, except employees and consultants of such Receiving MEMBER who have a need to know the information disclosed hereunder and are subject to confidentiality obligations no less restrictive than those set forth herein. The receiving MEMBER shall have the right to make a limited number of copies of CONFIDENTIAL INFORMATION for internal use only, but only in furtherance of the development of a particular SPECIFICATION for which the CONFIDENTIAL INFORMATION was disclosed to such MEMBER.
- (iii.) The obligations of confidentiality under this Article X shall not apply to information designated as CONFIDENTIAL INFORMATION which (a) is already known to the receiving MEMBER at the time of disclosure, (b) is or becomes publicly known through no wrongful act of the receiving MEMBER; (c) is rightfully received by the receiving MEMBER from a third party without restriction on disclosure and without breach of this Article; (d) is approved for release by written authorization of the disclosing MEMBER; (e) was developed by the receiving MEMBER independently and without the use of any of the CONFIDENTIAL INFORMATION; or (f) is required to be disclosed by the receiving MEMBER pursuant to any order of a court, administrative agency, or any other governmental agency, provided that the receiving MEMBER shall give the disclosing MEMBER prompt written notice of such order and an opportunity to contest or seek an appropriate protective order.
- (iv.) Notwithstanding this Article X, MEMBERS may be currently or in the future developing information internally, or receiving information from third parties that may be similar to the CONFIDENTIAL INFORMATION received from a disclosing MEMBER. Accordingly, nothing herein shall be construed as a representation or inference that any MEMBER will not develop products, or have products developed for it, or enter into joint ventures, alliances, or licensing arrangements that, without violation of this Article, compete with the products or systems embodying the CONFIDENTIAL INFORMATION. Nothing herein shall be interpreted as restricting the assignment or reassignment of employees by the receiving MEMBER.

- (v.) Except as set forth in Article VIII, Section 4 (iii.) and (iv.), no license is granted by the disclosing MEMBER to a receiving MEMBER under any patent, copyright mask work right, or trademark owned by or licensed to the disclosing MEMBER.
- (vi.) Upon written request of a disclosing MEMBER, each receiving MEMBER shall promptly return to the disclosing MEMBER, or certify destruction of, all documents, plans, drawings, and other tangible items designated as CONFIDENTIAL INFORMATION furnished by the disclosing MEMBER, and all copies thereof.

### **Article XI COMPLIANCE WITH ANTITRUST LAWS**

- (i) The MEMBERS will be combining unique experience and skills to create SPECIFICATIONS. The MEMBERS are committed to fostering open competition in the development and sales of products and services related to Apdex Alliance SPECIFICATIONS. The MEMBERS also understand that in certain lines of business they are direct competitors and that it is imperative that they and their representatives act in a manner which does not violate any applicable antitrust or competition laws pertaining to monopolistic or anti-competitive practices. Thus, all MEMBERS shall comply with all applicable antitrust and competition laws of all relevant jurisdictions. In addition, with the advice of ISTO Counsel the MANAGEMENT BOARD shall from time to time promulgate detailed Antitrust Compliance Guidelines for the consideration of the MEMBERS concerning their participation in the Apdex Alliance. These Guidelines are not intended to replace or displace each MEMBER'S own antitrust policies, but shall operate to guide the MEMBERS' participation in the Apdex Alliance.
- (ii) As a result of joining the Apdex Alliance, participating in the development of SPECIFICATIONS, or in any way voting for or endorsing SPECIFICATIONS , the MEMBERS are not required to develop or market any offerings, and are not precluded from engaging in any business activities whatsoever, even if they are competitive with the activities conducted under these Operating Procedures.

### **ARTICLE XII REPRESENTATIVES OF MEMBERS**

Section 1. **DELEGATES OF MEMBERS.** Whenever membership is held in the name of a firm or corporation, one individual, certified in writing by a responsible official of the MEMBER to represent the MEMBER to the Apdex Alliance, shall be designated the "Voting Delegate", and shall exercise the power of the MEMBER, if any, and such individual's name shall be certified to the Secretary of the Apdex Alliance together with an Alternate ("Alternate Voting Delegate")

Section 2. **CHANGE OF DELEGATE.** A MEMBER of the Apdex Alliance may change from time to time its Voting Delegate or Alternate Voting Delegate by notifying the Secretary of such change in accordance with the provisions of the preceding section. In the event the Voting Delegate changed is an officer or Board Member of the Apdex Alliance, such shall be deemed to be vacant and shall be filled in accordance with these Operating Procedures

### **ARTICLE XIII**

## DUES, INITIATION FEES AND ASSESSMENTS

Section 1. **DUES, INITIATION FEES AND ASSESSMENTS.** The MANAGEMENT BOARD shall adopt an annual budget of all proposed expenses for the current fiscal year. The expenses of the Apdex Alliance shall be distributed among and paid by the MEMBERS in accordance with Article III above, The MANAGEMENT BOARD also shall determine from time to time the membership fees.

Section 2. **ANNUAL BUDGET.** The MANAGEMENT BOARD shall approve an annual budget for the next fiscal year at or before an Annual Meeting which can be distributed to the MEMBERS at the Annual Meeting.

Section 3. **DELINQUENCY.** It shall be the duty of the Treasurer to report to the Chairperson, on or before an Annual Meeting of the Apdex Alliance or upon request, the name of any MEMBER who may, at the time of the meeting, be sixty (60) days or more in arrears of its dues or assessments. No such MEMBER so in arrears shall have its individual vote counted on any matter submitted in such meeting or be counted in ascertaining a quorum.

## ARTICLE XIV DISSOLUTION

Section 1. **DISSOLUTION:** The MANAGEMENT BOARD of the Apdex Alliance may dissolve the organization by the affirmative vote of seventy-five (75%) per cent of the entire MANAGEMENT BOARD at a meeting called therefor upon thirty (30) days written notice by the Chairperson. The Chairperson shall be responsible for winding down the business during dissolution.

Section 2. **DISTRIBUTION OF ASSETS UPON DISSOLUTION, SALE OR REORGANIZATION.** Upon dissolution of the Apdex Alliance, if there shall be any surplus of assets derived from the dues, fees and other assessments of the MEMBERS subsequent to the formation date of the Apdex Alliance ("Formation Date") remaining after the payment of all obligations of the Apdex Alliance, the Treasurer or Chairperson shall distribute to each current Contributor and Contributor Member such percentage of the surplus as such MEMBER'S contribution of dues during the 10-year period last past bears to the total dues paid by all current MEMBERS during the same 10 year period. If upon dissolution there is a deficit, then the deficit, shall be pro rata paid by the MEMBERS based upon the relationship with the number of MEMBERS in the Apdex Alliance. Any assets contributed to the Apdex Alliance by Contributor and Contributor Members on the Formation Date shall be distributed in any Dissolution, Sale, Reorganization or Merger in accordance with the vote of the majority of the Contributor and Contributor Members contributing such assets. A listing of all such assets shall be maintained by the Apdex Alliance.

Section 3. **Disposition of Contributed Assets.** Any proposed sale of assets contributed on the Formation Date shall be first approved by a majority of the Contributor Members contributing such assets and, if approved by the MANAGEMENT BOARD, shall be distributed in accordance with the plan proposed for the sale of such assets.

**ARTICLE XV  
GENERAL**

Section 1. **OFFICE.** The official business office of the Apdex Alliance shall be located in Piscataway New Jersey, USA, unless otherwise specified the MANAGEMENT BOARD.

Section 2. **FISCAL YEAR.** The fiscal year of the Apdex Alliance shall be the calendar year.

Section 3. **GENDER.** Whenever used in these Operating Procedures, the use of any gender shall be applicable to any other gender or to all genders as may be appropriate in the context.

**ARTICLE XVI  
AMENDMENTS**

Section 1. **AMENDMENTS.** These Operating Procedures may be amended upon the affirmative vote of two-thirds (2/3) of the MANAGEMENT BOARD.