

International Color Consortium Membership Agreement

The undersigned hereby agrees to become a Member of the International Color Consortium ("ICC") according to the terms of this Membership Agreement and to conform to all of the applicable terms and conditions set forth herein.

1.0. Purpose and Scope

The purpose of the ICC is to create, promote and encourage the standardization and evolution of an open vendor-neutral, cross-platform color management system architecture and components. Results of the work of the ICC shall be made available to the public and shall be submitted to appropriate international standards organizations.

2.0. Definitions

- 2.1. "**Agreement**" means this ICC agreement.
- 2.2. "**Chairperson**" means the elected chairperson of the ICC, who shall have the duties set forth in Section 5 of the Operating Procedures.
- 2.3. "**Fiscal Year**" means the fiscal year of the ICC, and which shall begin on January 1 during each calendar year.
- 2.4. "**Founding Member**" means an original Member of the ICC, as identified in Section 3.1 below.
- 2.5. "**Honorary Member**" means any Member who is not subject to payment of dues hereunder, and has no right to vote on matters before the ICC.
- 2.6. "**ICC**" means the International Color Consortium.
- 2.7. "**Member**" means a participant in the ICC.
- 2.8. "**Operating Procedures**" means the operating procedures attached hereto, including any changes that may be duly made by the Members by written amendment thereto.
- 2.9. "**Regular Member**" means a Member accepted by the Secretariat for a one (1) year term of participation in the ICC.
- 2.10. "**Secretariat**" means the organization that shall act as the secretary to the ICC hereunder. The Secretariat shall not be a Member. The current Secretariat is NPES The Association for Suppliers of Printing and Publishing Technologies ("NPES"). NPES' counsel is the law firm of Skadden, Arps, Slate, Meagher & Flom ("SASM&F"), and NPES may consult the firm in connection with matters arising from NPES' activities as Secretariat. Nothing in this Agreement is intended to or shall be construed to create an attorney-client relationship between SASM&F and any Member of the ICC, and each Member of the ICC hereby agrees not to provide confidential information to SASM&F or to assert in the future that SASM&F is prohibited from representing any other person (including a Member) in a matter adverse to a Member by virtue of SASM&F's association with NPES or the ICC.

- 2.11. "**Secretary**" means the secretary of the ICC, who shall be an NPES staff member appointed by the Secretariat and who shall have the duties set forth in Section 5 of the Operating Procedures.
- 2.12. "**Steering Committee**" means, collectively, (i) a delegate of each of the Founding Members, (ii) eight (8) delegates elected from the Regular Members, and (iii) the Technical Secretary.
- 2.13. "**Technical Secretary**" means the elected Technical Secretary of the ICC, who shall have the duties set forth in Section 5 of the Operating Procedures.
- 2.14. "**Vice Chairperson**" means the elected vice chairperson of the ICC, who shall have the duties set forth in Section 5 of the Operating Procedures.

3.0. Term and Termination of Membership and the ICC; Relationship between Secretariat and ICC.

- 3.1. Founding Members. The Founding Members of the ICC are Adobe Systems Inc., Agfa-Gevaert N.V., Apple Computer, Inc., Eastman Kodak Company, Forschungsgesellschaft Druck, FOGRA (an honorary member), Microsoft Corporation, Silicon Graphics, Inc., Sun Microsystems, Inc. and Taligent, Inc.
- 3.2. Adding Members to the ICC. The Secretariat may accept additional Members in the ICC, provided that such Members meet reasonably objective participation criteria to be established by the ICC, which shall include at a minimum: (i) commitment to the purposes of the ICC, (ii) willingness to support an ICC product on the Member's computer system or separate product, (iii) willingness to execute the then current form of the Agreement, and (iv) active participation, in the sense of regular attendance at meetings and participation in Working Groups.
- 3.3. Representation. Each Member shall be entitled to send at least one representative to each formally scheduled meeting of the ICC. At the Secretary's discretion, a limit may be set on the number of representatives Members may send to any meeting.
- 3.4. Term of Membership in the ICC. Regular Members may participate in the ICC for one (1) year terms, renewable in accordance with Section 4.0 of the Operating Procedures. Such Terms shall commence at the beginning of the Fiscal Year, provided, however, that Members may join at any time during a year and pay a membership fee prorated on the basis of the time remaining until the end of the Fiscal Year.
- 3.5. Duration of ICC. The ICC shall continue unless and until dissolved by a Super Majority vote of the Members.
- 3.6. Change in Secretariat. In the event that the ICC Members decide, by a Super Majority vote in accordance with Section 6.2(c) of the Operating Procedures, to transfer the Secretariat to a different organization, the ICC shall provide written notice thereof to the then-current Secretariat three (3) months prior to the end of the Secretariat's fiscal year. In such an event, the then-current Secretariat would have no residual duties and responsibilities to the ICC after its tenure.
- 3.7. Non-Voluntary Termination of Membership in the ICC. In the event of a material default or breach of this Agreement by a Member, if such Member does not cure

such default or breach within thirty (30) days after its receipt of written notice thereof from the Secretary, such Member's participation and membership in the ICC may be terminated by the Steering Committee at any time thereafter by written notice. The member may appeal this action to a vote of the full membership of the ICC. A terminated Member shall be responsible for payment of any amounts due to the ICC at the time of its termination.

- 3.8. Voluntary Termination of Membership. Any Member of the ICC may resign from the ICC and terminate its participation in the ICC at any time by providing written notice of resignation to the Secretary. Member acknowledges and agrees that ICC membership fees, if any, are non-refundable. A resigning Member shall be responsible for payment of any amounts due at the time of its resignation.

4.0. Costs, Expenses and Resources

Each Member shall be solely responsible for its own costs and expenses incurred in matters and activities related to the ICC or otherwise arising out of this Agreement. Each Member except the Secretariat and Honorary Members may be required to pay an annual ICC membership fee to the Secretariat to cover the administrative expenses of the ICC. This membership fee will cover the expenses that the ICC incurs in its normal operations or any other activity duly approved by the Members. Any extraordinary expense shall be approved by the Members in advance of expenditure and funded by an additional levy on the Members. Any membership fee funds in excess of twenty-five percent (25 %) of the aggregate yearly fees of the membership remaining after such ordinary expenses have been paid at the end of any Fiscal Year will be credited proportionately to the Members. Membership fees will be due and payable annually to the Secretariat, on or before the beginning of each yearly term of membership in the ICC. The Secretary will issue an invoice for the membership fee to each Member except Honorary Members not later than thirty (30) days before the end of each Fiscal Year. Any Member that does not pay such fee within 60 days after receipt of the invoice therefor will be in default of this Agreement, and its membership in the ICC may be terminated at any time thereafter by the ICC provided, however, that except as otherwise provided, such Member shall have no liability to the ICC or any Member for its failure to pay such fee.

5.0. General

- 5.1. Limitation of Liability. Members and officers of the ICC participate in the ICC voluntarily, solely to advance the purposes of the ICC set forth in Section 1.0 above. The results of the work of the ICC shall be promulgated on an "as is" basis, with no warranty whatsoever. A sample of the disclaimer to be used whenever the results of work of the ICC are incorporated in the products or the specifications of any of the Members is set forth in Attachment B hereto, which disclaimer shall be incorporated in all documents and any source code provided by the ICC to anyone. In no event shall any Member be liable to any other Member or the Secretariat for any indirect damages, including special, incidental, or consequential damages, including loss of profits.
- 5.2. Independent Action. Each Member shall remain free to design, develop, market, modify or distribute any non-ICC products or services without restriction, notwithstanding anything to the contrary herein. Participation in the ICC shall not be deemed to constitute a partnership, joint venture, or other joint activity. No Member authorizes any other Member to make any commitments or representations on its behalf. Participation in the ICC shall not grant to any

Member the right to use the name or trademarks of any other Member in any publicity or advertising without the other Member's prior written consent.

- 5.3. Compliance with Laws. The ICC shall not take any action whatsoever in violation of any federal, state, or local law or regulation, and it is the intention of the ICC and its members to comply with all such laws, including specifically antitrust laws. No Member shall have authority, actual or implied, to bind any other Member in any way, to make any commitments or representations on behalf of another Member, or to act as an agent of another Member. It shall be the responsibility of all Members to take such steps as necessary to ensure their compliance with all laws in connection with their participation in the ICC. No Member or its representative (s) shall take any action in connection with the ICC that is not in furtherance of the lawful objectives of the ICC.
- 5.4. Assignment. Neither this Agreement nor any rights or obligations under this Agreement, in whole or in part, are assignable or otherwise transferable without the prior written approval of the Secretariat and any attempted assignment or transfer shall be void and without effect, provided however, that this Agreement may be assigned to a purchaser of all, or substantially all, of a party's assets without such approval.
- 5.5. No Other Rights. No license, rights or title in or to any software or other intellectual property are provided hereunder, either expressly or by implication, estoppel or otherwise.
- 5.6. No Agency. The parties hereto are independent contractors, and nothing herein shall be construed to create an agency, joint venture, partnership or other form of business association between the parties hereto.
- 5.7. Complete Agreement. This Agreement and its Attachments constitutes the complete and exclusive statement of the Agreement between the parties, and supersedes all previous proposals, verbal or written, and all other communications or understandings between the parties relating to the subject matter of this Agreement. Each party acknowledges that it has not relied upon any representation or statement not contained herein. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by all parties hereto. This Agreement may be executed in counterparts, each of which shall constitute an original of this Agreement.

One of the following Membership levels must be checked:

- Founding Member
- Regular Member
- Honorary Member

COMPANY: _____

By: _____

NAME (PRINT OR TYPE)

TITLE

DATE

FINAL VERSION FEBRUARY 14, 1995