

Amended: August 19, 2008

**COUNTRY CODE 1 ENUM LLC**

**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY OPERATING AGREEMENT**

**a Delaware  
limited liability company**

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**COUNTRY CODE 1 ENUM LLC  
AMENDED AND RESTATED LIMITED LIABILITY COMPANY  
OPERATING AGREEMENT**

**SECURITIES LAW NOTICE**

GENERAL NOTICE OF NON-REGISTRATION: THE MEMBERSHIP INTERESTS IN THE COUNTRY CODE 1 ENUM LLC (the “Company”) HAVE NOT BEEN REGISTERED UNDER THE FEDERAL SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE, IN PART, UPON EXEMPTIONS FROM REGISTRATION THEREUNDER WHICH APPLY IF SUCH INTERESTS ARE COVERED BY SUCH ACT, OR UNDER THE SECURITIES ACT OF ANY STATES, IN RELIANCE, IN PART, ON EXEMPTIONS FROM REGISTRATION THEREUNDER WHICH APPLY IF SUCH INTERESTS ARE COVERED BY ANY SUCH STATE SECURITIES ACTS.

ACKNOWLEDGMENT OF MEMBERS’ INVESTMENT REPRESENTATIONS: FOR PURPOSES OF DETERMINING ANY APPLICABLE EXEMPTIONS FROM REGISTRATION UNDER ANY FEDERAL OR STATE SECURITIES ACTS, EACH MEMBER ACKNOWLEDGES THAT SUCH MEMBER HAS MADE THE INVESTMENT REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 16 OF THIS AGREEMENT, AND EACH MEMBER IS AWARE THAT THE COMPANY HAS RELIED UPON SUCH REPRESENTATIONS.

NOTICE OF RESTRICTIONS ON TRANSFER: MEMBERSHIP INTERESTS IN THE COMPANY MAY NOT BE OFFERED, SOLD OR TRANSFERRED EXCEPT AS PERMITTED BY THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT AND THEN ONLY IN A TRANSACTION EXEMPT FROM, OR OTHERWISE IN COMPLIANCE WITH, SUCH FEDERAL AND STATE SECURITIES ACTS AND THE LAWS OF SUCH OTHER JURISDICTION WHICH IN THE OPINION OF THE COMPANY MAY BE APPLICABLE. WITHOUT LIMITING THE FOREGOING, MEMBERSHIP INTERESTS MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE FEDERAL SECURITIES ACT, APPLICABLE STATE SECURITIES ACTS AND ANY APPLICABLE SECURITIES LAWS OF ANY OTHER STATE, OR AN OPINION OF COUNSEL, WHICH OPINION AND COUNSEL MUST BE ACCEPTABLE TO THE COMPANY, TO THE EFFECT THAT SUCH REGISTRATION IS NOT REQUIRED AND THAT ALL OTHER REQUIREMENTS OF APPLICABLE FEDERAL AND STATE SECURITIES ACTS HAVE BEEN SATISFIED. ADDITIONAL RESTRICTIONS ON SALES AND OTHER TRANSFERS ARE CONTAINED IN THIS AGREEMENT.

This **AMENDED AND RESTATED LIMITED LIABILITY OPERATING COMPANY AGREEMENT** (the “Agreement”) governing the COUNTRY CODE 1 ENUM LLC (the “Company”) is made to be effective as of the 19th day of August 2008, by and among the Company and each of the Members of the Company who are signatories to this Agreement.

### **RECITALS**

**WHEREAS**, the parties hereto desire to affirm the establishment of the COUNTRY CODE 1 ENUM LLC (the “Company”) in accordance with this Agreement as a Delaware limited liability company;

**WHEREAS**, the parties have determined that in order to promote the development of ubiquitous IP based communications infrastructure in the United States and within other countries that rely on the North American Numbering Plan, and to further enable the interoperability of the IP network with the circuit switched network, it is necessary to implement a Country Code 1 ENUM system that will provide the functionality to translate E.164 telephone numbers into addresses of IP based communications end points and points of interconnection between networks;

**WHEREAS**, the parties have further determined that it is beneficial to establish the Company in order to ensure that the Country Code 1 ENUM system is implemented in an efficient and timely manner;

**WHEREAS**, the purpose of the Company will be to engage in business activities related to the management and the selection of a vendor or vendors for, and the ongoing administration and oversight of such vendor or vendors in connection with, a contract or contracts for (i) the creation of a Country Code 1 ENUM Skinny Tier 1 “A” Registry for numbering resources for those nations within Country Code 1 that choose to participate, and (ii) the creation of a ENUM Tier 1 “B” Registry for numbering resources allocated for use within any North American Numbering Plan nations that choose to use the COUNTRY CODE 1 ENUM LLC for this purpose;

**WHEREAS**, the Company (as defined herein) is organized as a limited liability company under the Delaware Limited Liability Company Act for the purposes set forth in this Agreement;

**WHEREAS**, the Company does not intend to earn a profit from its activities;

**WHEREAS**, the Members previously entered into that certain Operating Agreement of the Company, dated as of September 30, 2004 (the “Original Agreement”);

**WHEREAS**, the Members later amended and restated the Original Agreement on January 12, 2005 and November 19, 2007, to further describe the rights and set forth the details of the relationship of the Members and the governance and management of the Company (the “Prior Agreement”); and

**WHEREAS**, in accordance with Section 17.5 of the Prior Agreement, the Members of the Company now desire to further amend and restate the Prior Agreement to clarify the eligibility requirements for membership to the Company.

**NOW THEREFORE**, in consideration of the premises and the mutual agreements and representations herein contained, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows.

## **ARTICLE 1 DEFINITIONS**

As used in this Agreement, unless the context otherwise requires:

“Act” means the Delaware Limited Liability Company Act set forth at Title 6, Chapter 18 of the Delaware Revised Statutes, as it may be amended from time to time.

“Additional Capital Contributions” means a Member’s contributions to the capital of the Company for which each Member is assessed as provided in Section 12.2.

“Advisory Committee” means an Advisory Committee created under Section 6.2 of this Agreement.

“Affiliate” is any Person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with another Person who is a Member or who is seeking admission as a Member. The term “control” in the preceding sentence shall mean either the right to exercise, directly or indirectly, more than 10% of the voting rights attributable to the controlled Person or the ownership, directly or indirectly, of more than 10% of the total interest in the profits or losses of the controlled Person. For purposes of determining whether a Member or Person is an “Affiliate” of another Member or Person, transactions which result in

the requisite control being achieved, as set forth above, through merger, consolidation or by other means by which one or more Members no longer exist as a separate legal entity, shall be included. In addition, for purposes of determining whether and at what point in time such control, as defined in Article 1, is achieved, rights to exercise voting rights attributable to the controlled Person shall only be considered in determining whether the requisite rights and ownership exceed 10% when such rights and ownership have been legally transferred, assigned and conveyed, thereby entitling such transferee to the exclusive exercise of such rights and the exclusive benefit of such ownership. By way of example, such “control” of a Member shall be considered to have been achieved upon the actual transfer, assignment and conveyance of that number of shares of stock of a Member to a transferee which gives such transferee ownership of stock in the Member which exceeds the 10% of the Member’s voting rights or interests in profits and losses.

“Affiliation Event” means an event as defined in Section 4.1.4.2.

“Agreement” means this Limited Liability Company Operating Agreement as this Agreement is amended from time to time.

“Alternate Representative” means that individual, and “Alternate Representatives” means those individuals, other than the Primary Representative, who are designated to act on behalf of a Member Representative on the form provided by the Company to the Member and completed by the Member and delivered to the Company, as set forth in Section 5.1.1., and who shall act for such Member, as set forth in Section 5.1, including the First Alternate Representative and all other Alternative Representatives.

“Annual Budget” means the budget for the Company as determined by the Company under Section 12.2.

“Annual Budgeted Assessment” means the dollar amount approved by the Members for the current fiscal year for all Members’ cumulative Additional Capital Contributions, as set forth in Section 12.2.

“Applicable Country” means the United States or any country within Country Code 1.

“Applicable Country Authority” or “Applicable Country Regulatory Agency” means the applicable regulatory body or bodies of an Applicable Country with respect to ENUM.

“Authorized Representative” means that individual, and “Authorized Representatives” means those individuals, who are designated to act on behalf of a Member on the form provided by the Company to the Member and completed by the Member and delivered to the Company, as set forth in Section 5.1.1., and who act for such Member in accordance with Section 5.1. The term “Authorized Representatives of a Member” includes the Primary Representative and all Alternate Representatives.

“Breach Notice” means the notice described in Section 4.5.2.6.

“Capital Account” means the Capital Account of a Member under Section 12.5.

“Capital Contributions” means Initial Capital Contributions and Additional Capital Contributions, all of which are non-refundable.

“Code” means the Internal Revenue Code of 1986, as it may be amended from time to time.

“Company” means the COUNTRY CODE 1 ENUM LLC.

“Company Confidential Information” means all confidential information developed by the Company in the course of the establishment or operation of a System as set forth in Section 3.3, excluding such confidential information which, by the terms of this Agreement or by the terms of the Company’s agreements with the Vendor(s) or other vendors of goods or services, is to be owned by or controlled directly by Members, the Vendor(s), other vendors or others.

“Company Marks” shall have the meaning ascribed to it in Section 3.3.1.2.1.

“Company Technology” shall have the meaning ascribed to in Section 3.3.1.1.1.

“Company Terms and Conditions” shall have the meaning ascribed to it in Section 3.3.1.1.2.

“Confidential Information” means, inclusively, Company Confidential Information and Member Confidential Information as set forth in this Agreement.

“Contact Information Record” shall have the meaning ascribed to it in Section 17.2.4.

“Contribution Default Date” means the date described in Section 4.5.2.3.

“CC1” means Country Code 1.

“Cumulative Quarterly Budgeted Amount” shall have the meaning ascribed to it in Section 8.5.

“Delivered Authorized Representatives Designation Form” means the form described in Section 5.1.1.

“Dissociation Event” means an event set forth in Section 4.5, which upon the expiration of any applicable cure period, constitutes an Event of Withdrawal, as defined in this Agreement.

“ENUM” means the capabilities described by RFC 3761, its successors, as well as other relevant RFCs developed by the Internet Engineering Task Force (IETF).

“ENUM Tier 1 Registry” means, as the context may require, (i) an entity responsible for providing ENUM Tier 1 Registry services, which services include management of pointers to ENUM Tier 2 Provider nameservers; (ii) the function that registers CC1 E.164 numbers under the domain e164.arpa, as shown in RFC 3761, or any other domain specified by the Company to implement an ENUM System; or (iii) the entity that provides such a function.

“ENUM Skinny Tier 1 “A” Registry” means, as the context may require, (i) an entity responsible for providing a portion of the ENUM Tier 1 Registry services including management of pointers to ENUM Tier 1 “B”; (ii) the functions that registers the “1+NPA” portion of CC1 E.164 numbers under the domain e164.arpa, as shown in RFC 3761, or any other domain specified by the Company to implement an ENUM System; or (iii) the entity that provides such a function.

“ENUM Tier 1 “B” Registry” means, as the context may require, (i) an entity responsible for providing a portion of the ENUM Tier 1 Registry services including management of pointers to ENUM Tier 2 providers, and could be pointed to from the Skinny Tier 1 “A” registry; (ii) the function that registers full “1+NPA-NXX-XXXX” CC1 E.164 numbers under the domain e164.arpa, as shown in RFC 3761, or any other domain specified by the Company to implement an ENUM System; or (iii) the entity that provides such a function.

“ENUM Forum” means the advisory body that is developing the implementation framework for deploying RFC 3761 in a two-tiered DNS structure rooted under “e164.arpa” for E.164 numbers within the United States and a potential common implementation with other countries served by the North American Numbering Plan.

“Event of Withdrawal” means the expiration of any cure period for any Dissociation Event which, upon such expiration, results in the termination of a Person’s membership in the Company pursuant to Section 4.7.2 of this Agreement.

“First Alternate Representative” means that Alternate Representative who is the first individual designated explicitly as an Alternate Representative or, in the absence of such explicit designation, the first individual designated as an Authorized Representative after the Primary Representative on the Delivered Authorized Representatives Designation Form, as set forth in Section 5.1.1.

“Founding Member” means a Member admitted to the Company on or before December 31, 2004.

“Ineligibility Date” means the date defined in Section 4.2.2.

“Initial Capital Contribution” shall have the meaning ascribed to it in Section 12.1.1.

“JAMS” means the Judicial Arbitration and Mediation Service/Endispute.

“Limited Liability Company Act” means the Delaware Limited Liability Company Act set forth at Title 6, Chapter 18 of the Delaware Revised Statutes, as it may be amended from time to time.

“Majority Approval,” means the affirmative vote of Members possessing Membership Interests in excess of 50% of the Membership Interests of all the Members entitled to vote on the particular action or matter, represented in person or by proxy, at a duly called meeting of the Members at which a quorum is present.

“Member” means, when the initial letter of such term is capitalized, each Person that has been admitted to the Company pursuant to Section 4.2.1 and at such time holds Membership Interests, except that a Member includes a Person holding Membership Interests for which a Dissociation Event has occurred and is continuing pursuant to Section 4.5, with the attendant loss of the right to vote and to participate in the management and affairs of the Company, so long as an Event of Withdrawal has not occurred. A Person for whom an Event of Withdrawal has occurred and who has not otherwise been readmitted as a Member in accordance with Section 4.8 shall not be considered a Member.

“Member Confidential Information” means information which consists of the business, financial, trade secrets, or other technical information owned by the Member as set forth in Section 3.3.2 and which is not generally known publicly.

“Member Dispute” shall have the meaning ascribed to it in Section 15.2.1.

“Membership Interest” means the entire ownership right of a Member in the Company at any particular time, including the right of a Member to any and all benefits to which a Member may be entitled as provided in this Agreement, the Certificate of Formation and the Limited Liability Company Act, together with the obligation of the Member to comply with this Agreement, the Certificate of Formation, the Limited Liability Company Act and the laws regarding limited liability companies of any state in which the Company is qualified to do business. The Membership Interest of a Member is expressed as a percentage and shall be as set forth in Exhibit A, initially, and thereafter, Exhibit A shall be considered to be amended without further action. Except as set forth below, the Membership Interest of a particular Member shall, at any point in time, be equal to the product of 100% times a fraction, the numerator of which is one and the denominator of which is the number of Members, including Members for which a Dissociation Event has occurred and is outstanding without an Event of Withdrawal. Accordingly, all Members shall have equal Membership Interests. Notwithstanding the foregoing, if the Members, by Supermajority Approval, amend this Agreement so that one or more Members are required to pay different Additional Capital Contributions in any one fiscal year than other Members, then the Membership Interests of all Members shall be recalculated and the Membership Interest of any one Member shall then be equal to the percentage derived by a fraction, the numerator of which is the Member’s total Capital Contributions and the denominator of which is the total Capital Contributions of all Members, including Members for which a Dissolution Event has occurred and is outstanding without an Event of Withdrawal. Membership Interests of each Member, expressed as a percentage, shall determine the right of each such Member: (i) to receive a percentage of the allocations of the Net Profits and the Net Losses, and of other items of income, loss, gain, deductions and credits of the Company (subject to the provisions of Section 12.6); and (ii) to approve or to cast votes on all matters for which Members are entitled to vote and to participate in the management of the business and affairs of the Company. Notwithstanding the foregoing, a Member’s entitlement to distributions prior to

liquidation shall be governed by Section 12.8, and a Member's entitlement to distributions upon liquidation shall be governed by Section 14.2.

“NANC” means the North American Numbering Committee, a Federal Advisory Committee that was created to advise the Federal Communications Commission on telephone numbering issues, resources and to make recommendations that foster efficient and impartial telephone number administration. NANC members are representatives from telecommunications carriers, state regulators, and consumer advocacy groups.

“NANP” means the North American Numbering Plan, an integrated telephone numbering plan serving 19 North American countries that share its resources. These countries include the United States and its territories, Canada, Bermuda, Anguilla, Antigua & Barbuda, the Bahamas, Barbados, the British Virgin Islands, the Cayman Islands, Dominica, the Dominican Republic, Grenada, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and Turks & Caicos.

“Net Losses” means the losses and deductions of the Company determined in accordance with generally accepted accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes, plus any expenditures described in Code Section 705(a)(2)(B).

“Net Profits” means the income and gains of the Company determined in accordance with generally accepted accounting principles consistently applied from year to year employed under the method of accounting and adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes, plus any income described in Code Section 705(a)(1)(B).

“Officer” shall mean the Chair, the Vice Chair, the Treasurer, the Secretary or such other positions as may be approved by the Members from time to time by Majority Approval.

“Permitted Business” shall mean the activities described in Section 3.2 hereof.

“Person” includes an individual, corporation, general or limited partnership, limited liability company, cooperative, association, joint venture, trust, or other form of business

organization, whether or not operated for profit, organized under the laws of any jurisdiction, including the laws of any state, territory or possession of the United States or a foreign country.

“Primary Representative” means that Authorized Representative who is the first individual designated explicitly as the Primary Representative, or, in the absence of such explicit designation, the first individual designated as an Authorized Representative on the Delivered Authorized Representatives Designation Form, as set forth in Section 5.1.1.

“Prohibition Notice” means the notice described in Section 4.5.2.4.

“Project Executive” means the Officer or Officers of the Company who are the primary contact between the Company and the Vendor or Vendors.

“Qualified Association” means a Person satisfying the requirements of Section 4.1.3 of this Agreement.

“Supermajority Approval” means the affirmative vote of Members possessing Membership Interests of at least 75% of the Membership Interests of all the Members entitled to vote on the particular action or matter, represented in person or by proxy, at a duly called meeting of the Members at which a quorum is present.

“System” means the ENUM Tier 1 Registry for Country Code 1, or the United States, as appropriate.

“Vendor” means the Person or Persons, who shall not be a Member or Members, and who shall not be Affiliated with any Member or Members, with whom the Company enters into an agreement to provide initially the design, establishment and initial operation of a System, or after such design and establishment, operates the System or any portion thereof.

“Vendor Confidential Information” means information which consists of the business, financial, trade secrets, or other technical information, owned by a Vendor, which the Company is required, by the Company’s agreement with the Vendor or otherwise, to keep confidential or which the Company by Majority Approval of the Members undertakes at the request of the Vendor to keep as confidential.

“Voluntary Withdrawal Date” means the date described in Section 4.5.1.

## **ARTICLE 2 THE COMPANY**

**Section 2.1 FORMATION.** The Company was formed as a limited liability company under the Delaware Limited Liability Company Act by the filing with the Secretary of State of Delaware a Certificate of Formation for the Company on September 28, 2004. The Certificate of Formation and this Agreement constitute the organizational documents of the Company.

**Section 2.2 NAME.** The name of the Company as set forth in the Certificate of Formation is the COUNTRY CODE 1 ENUM LLC. In addition, the Company may adopt trade names and trade styles as the Company, by the Majority Approval, may from time to time determine appropriate.

**Section 2.3 PRINCIPAL OFFICE.** The principal office of the Company shall be at McKenna Long & Aldridge LLP, 1875 Lawrence Street, Suite 200, Denver, Colorado 80202. With Majority Approval, the Company may relocate its principal office and may establish other places of business at any place or places within any Applicable Country as the Company may from time to time deem advisable.

**Section 2.4 REGISTERED OFFICE AND REGISTERED AGENT.** The Company's registered office shall be 1209 Orange Street, Wilmington, Delaware 19801, and the Company's registered agent at such address shall be The Corporation Trust Company. The registered office and registered agent may be changed from time to time by Majority Approval.

**Section 2.5 RESERVATION OF REGULATORY AGENCY REDRESS.** It is understood by the Members that any Person may file a complaint with any Applicable Country Regulatory Agency pursuant to rules and regulations of such Applicable Country Regulatory Agency in regard to the activities of either any Member of the Company or the Company. Neither the creation nor existence of the Company nor Membership in the Company is intended to limit the rights of any Member to bring any lawful action against any other Member or against the Company; provided, however, that any dispute subject to mandatory arbitration under Article 15, the Members shall comply with such Article.

**Section 2.6 NO OTHER CONSENT TO JURISDICTION.** Without Supermajority Approval, the Company shall not otherwise consent to jurisdiction for governance of the Company or the System by any Applicable Country Regulatory Agency.

**ARTICLE 3**  
**BUSINESS AND DURATION OF THE COMPANY**

**Section 3.1 LIMITED PURPOSE.** The Company is organized for the limited purposes and scope set forth in this Agreement.

**Section 3.2 PERMITTED BUSINESSES.** The business of the Company shall be as follows (subject to the specific requirements of Article 7 regarding the requisite Member approval for each action):

3.2.1 To issue requests for proposals and/or invite potential Vendors to bid on any matter directly or indirectly related to the System;

3.2.2 To negotiate, award, execute, administer and enforce contracts with Vendor(s) on any matter directly or indirectly related to the System, including specifying compensation, technical requirements, deliverable dates and services required;

3.2.3 To serve as the primary business interface between the Vendor(s) and outside bodies (*e.g.*, the ENUM Forum, the North American Numbering Council, the Canadian Steering Committee on Numbering, etc.) and to administer contracts with Vendor(s) on matters directly or indirectly related to the System;

3.2.4 To administer the System contracts with the Vendor(s) and to engage in business activities related to the System;

3.2.5 To engage in other business activities related to the System as mandated by Applicable Country Regulatory Agencies;

3.2.6 To engage in business activities with Vendor(s) for System development and enhancements to the System as necessitated by industry or business requirements and improvements in technology, subject to the specific approval requirements of Article 7 of this Agreement;

3.2.7 To maintain the integrity, interoperability and transferability of the ENUM Tier 1 Registry;

3.2.8 To own, license or otherwise control any and all intellectual property rights and any other proprietary rights developed for the System and to preserve all Confidential

Information associated or developed in connection with the activities of the Company, pursuant to the terms and conditions set forth in this Agreement.

3.2.9 To establish or expand the System as appropriate, provided that appropriate amendments to this Agreement are adopted with Supermajority Approval;

3.2.10 To engage in all activities necessary, customary, convenient, incidental or related to Sections 3.2.1 through 3.2.9; and

3.2.11 To engage in such other activities as are permitted under applicable law and not prohibited by statute or by a regulation, order or directive of any Applicable Country Regulatory Agency possessing jurisdiction over the Company or by the final order of a court of competent jurisdiction.

### **Section 3.3 INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION.**

#### 3.3.1 Intellectual Property.

##### 3.3.1.1 Rights In and To Technology.

3.3.1.1.1 To the extent that any new technology and/or any improvements, enhancements or modifications to existing technology are developed for the Company (the “Company Technology”), the Company may endeavor to obtain appropriate ownership or use rights in and to the Company Technology and all intellectual property and other proprietary rights therein.

3.3.1.1.2 To the extent the Company obtains ownership or use rights, upon request and to the extent allowed by the owner and/or licensor, a Member or its Affiliate(s) may obtain a license for the use of the Company Technology on terms and conditions established by Supermajority Approval for Member use of the Company Technology to be developed for or by the Company (“Company Terms and Conditions”). If the Company grants to any Member or Affiliate the right to use Company Technology, then each Person shall have the right to use the Company Technology on the same terms and conditions, without discrimination, on which such right to use has been granted to any Member or Affiliate.

3.3.1.1.3 Any such Member license rights are transferable, sublicensable or assignable to a Member’s Affiliate(s) in accordance with the Company Terms and Conditions.

3.3.1.1.4 Upon the withdrawal or expulsion of a Member from the Company or other termination of a Member's Membership in the Company, any license rights granted to such Member in and to the Company Technology shall be treated in accordance with the Company Terms and Conditions.

3.3.1.1.5 Upon the dissolution and termination of the Company pursuant to Section 14.1, rights in and to Company Technology shall be disposed of as determined by the Members at the time of any such dissolution and termination.

3.3.1.1.6 Each Member retains all rights in and to its own technology and all intellectual property and other proprietary rights therein and does not hereby grant any intellectual property and other proprietary rights therein in or to such technology to the Company or any individual Member.

3.3.1.2 Rights In and To Trademarks, Service Marks, Logos and Other Proprietary Marks.

3.3.1.2.1 To the extent that the Company develops any trademarks, service marks, logos and other proprietary marks ("Company Marks"), the Company shall hold all rights in and to any Company Marks.

3.3.1.2.2 To the extent that the Company develops any Company Marks, upon request and Majority Approval, a Member may obtain the right to use the Company Marks for uses consistent with policies to be developed by the Company for Member use of Company Marks.

3.3.1.2.3 Any such Member use rights are transferable, sublicensable or assignable to a Member's Affiliate(s) in accordance with the Company Terms and Conditions.

3.3.1.2.4 Upon the withdrawal or expulsion of a Member from the Company or other termination of a Member's Membership in the Company, any use rights in and to the Company Marks shall terminate automatically.

3.3.1.2.5 Upon the dissolution and termination of the Company pursuant to Section 14.1, rights in and to Company Marks shall be disposed of as determined by the Company Members at the time of any such dissolution and termination.

3.3.1.2.6 Each Member retains all rights in and to its own trademarks, service marks, logos and other proprietary marks and does not hereby grant any right in or to such marks to the Company or any individual Member.

3.3.2 Confidential Information.

3.3.2.1 Rights In and To Confidential Information.

3.3.2.1.1 To the extent that any Company business, financial, trade secrets, data or other technical information shall be deemed Company Confidential Information, each Member shall protect any Company Confidential Information to which it is exposed as a result of Company activities from disclosure to Persons other than Company Members using the same degree of care used to protect the Member's own confidential information. To the extent that any Member business, financial, trade secrets, data or other technical information shall be deemed by that Member to be Member Confidential Information, each Member shall protect any Member Confidential Information to which it is exposed as a result of Company activities from disclosure to a non-Member using the same degree of care used to protect the Member's own Member Confidential Information. A Member may utilize Company Confidential Information and Member Confidential Information of other Members (collectively, "Confidential Information") solely for the purposes of Company activities in furtherance of the Permitted Business set forth in Section 3.2.

3.3.2.1.2 All Confidential Information is the property of the Company or the respective Member, as appropriate. Upon the written request of the Company, in the case of Company Confidential Information, or the owning Member, in the case of Member Confidential Information, at any time, or upon the withdrawal or expulsion of a Member from the Company, a recipient of Confidential Information shall return or destroy, as directed by the owner, all such Confidential Information held in tangible form and no such Confidential Information shall be retained in any form.

3.3.2.1.3 Upon the dissolution and termination of Company pursuant to Section 14.1, rights in and to Company Confidential Information shall be disposed of as determined by the Members at the time of dissolution and termination.

3.3.2.1.4 Each Member retains all rights in and to its own Member Confidential Information, including but not limited to its customer information, and does not hereby grant any right in or to any such Member Confidential Information to the Company or any individual Member.

3.3.2.1.5 The obligations of this Section 3.3.2 shall not apply to any information described in Section 11.6.2.

3.3.3 Notwithstanding anything to the contrary in this Agreement and except as expressly set forth in Section 11.6 concerning Member Confidential Information, no license or right is granted hereunder to the Company, a Vendor, another Member, an Officer or any Person under any Member Confidential Information, patent, copyright, trade secret, trademark, service mark, logo or other intellectual property or proprietary right owned or controlled by a Member, and the Company shall not attempt and is not authorized to grant any such license or right to any Vendor, Member, Officer or Person.

**Section 3.4 TERM OF EXISTENCE.** The Company's existence shall continue in perpetuity until the Company is dissolved in accordance with this Agreement.

## **ARTICLE 4 MEMBERS**

### **Section 4.1 LIMITATIONS ON MEMBERSHIP.**

4.1.1 Membership Qualifications. Subject to the treatment of Affiliates pursuant to Section 4.1.4, a Person is qualified to be a Member of the Company and will be automatically admitted as a Member upon satisfaction of the further requirements of Section 4.2, if and only if such Person either: (a) satisfies the eligibility standards set forth in Section 4.1.2; or (b) is a Qualified Association as set forth in Section 4.1.3.

4.1.2 Eligibility Requirements For Membership. Pursuant to Section 4.1.1, a Person is qualified to become a Member of the Company upon satisfaction of all of the following eligibility standards:

4.1.2.1 Such Person must have a material interest in providing ENUM capabilities or must or will have operational responsibilities for implementing ENUM;

4.1.2.2 Such Person must not currently be prohibited by any authority in an Applicable Country from becoming a Member of the Company; and

4.1.2.3 Such Person must not currently be a vendor to the Company, nor have solicited business to become a vendor to the Company during the twelve (12) months immediately preceding the date of such Person's request for admission as a Member.

4.1.3 Qualified Association. A Qualified Association is a Person which is a trade or industry organization, group or association of which all of the members in good standing of such organization, group or association (i) meet, on an individual basis, the eligibility standards set forth in Section 4.1.2; (ii) are not otherwise a Member or an Affiliate thereof; and (iii) enter into a written agreement in form and substance satisfactory to the Company, to be bound by all the terms and conditions regarding Confidential Information that are applicable to Members, as set forth in Section 3.3 of this Agreement..

4.1.4 Treatment of Affiliates. The following provisions of this Section 4.1.4 govern the treatment of Affiliates.

4.1.4.1 Affiliates Simultaneously Seeking Admission As Members. Notwithstanding anything to the contrary in this Agreement, if two or more Persons who are Affiliates seek admission as Members of the Company, only one such Person may be admitted as a Member. If two or more Persons seeking admission as Members of the Company are Affiliates, they shall designate which of them shall be admitted as the Member; otherwise, none of them shall be admitted as a Member.

4.1.4.2 Merger, Acquisition or Other Combinations Among Members. If a Person who is a Member becomes an Affiliate of another Person who is a Member whether by merger, consolidation, acquisition or otherwise (referred to herein as an "Affiliation Event"), only one such Person may remain or be a Member. In such event, such Members (or their successor(s) in interest) may agree and designate in writing to the Company on or before the thirtieth day following the Affiliation Event which one of them (or their successor(s) in interest) shall be a Member of the Company (referred to herein as the "Designated Member"), and an Event of Withdrawal pursuant to Section 4.7 shall be deemed to have occurred with respect to all other such Members who are Affiliates of the Designated Member on the date of the Company's receipt of such written designation; provided, however, that the Capital Accounts of such other

Members as they are then constituted shall not be forfeited and reallocated and redistributed among all remaining Members as set forth in Section 4.7, but, instead, shall be combined into a single Capital Account with the Capital Account of the Designated Member as if such other Members transferred all but not less than all of their Membership Interests to such Designated Member pursuant to the requirements of Section 4.4.2; provided, further, however, that the conditions precedent specified in such Section 4.4.2 have been satisfied; and provided, further, that although all such Capital Accounts shall be combined into as single Capital Account of the Designated Member, such Designated Member shall nonetheless possess in all other respects a Membership Interest equal to the Membership Interest of each other Member, including having one vote as a single Member. If the Members who become Affiliates as a result of an Affiliation Event fail to designate in writing which one of them or their Affiliates shall be the Designated Member, the other Members shall determine the Designated Member, and an Event of Withdrawal pursuant to Section 4.7 shall be deemed to have occurred with respect to the other such Member or Members who are Affiliated with the Designated Member on the date of the Company's receipt of such written designation; provided, however, that the Capital Accounts of such other Members as they are then constituted shall not be forfeited and reallocated and redistributed among all remaining Members as set forth in Section 4.7, but, instead, shall be combined into a single Capital Account with the Capital Account of the Designated Member as if such other Members transferred all but not less than all of their Membership Interests to such Designated Member pursuant to the requirements of Section 4.4.2; provided, further, however, that the conditions precedent specified in such Section 4.4.2 have been satisfied; and provided, further, that although all such Capital Accounts shall be combined into as single Capital Account of the Designated Member, such Designated Member shall nonetheless possess in all other respects a Membership Interest equal to the Membership Interest of each other Member, including having one vote as a single Member. Notwithstanding the foregoing, if any two Members become Affiliates in a transaction or series of transactions by which one of such Members no longer exists as a separate legal entity (referred to as the "Merged Member") and the other Member continues to exist as a separate legal entity (referred to as the "Surviving Member"), subject to the application of this Section 4.1.4.2 with respect to other Members who are Affiliates of the Surviving Member, an Event of Withdrawal shall not be deemed to have occurred with respect to the Merged Member. Further, in such event, the Capital Accounts of

the Merged Member and the Surviving Member shall be combined into a single Capital Account, but only the Surviving Member shall be entitled to vote (having one vote as a single Member) and to participate in the management and affairs of the Company and to hold Membership Interests in the Company.

**Section 4.2**    **ADMISSION.**

4.2.1    Automatic Admission.    Any Person shall automatically be admitted as a Member of the Company upon the occurrence of the following:

4.2.1.1        A determination by the Company that such Person has met the membership qualifications set forth in either Section 4.1.2 or Section 4.1.3, and subject to the treatment under Section 4.1.4 of a Person who is an Affiliate of any Member or Person seeking admission as a Member; and

4.2.1.2        Either: (a) payment by such Person to the Company of all required Capital Contributions set forth in Article 12; or (b) execution of a binding commitment to make the foregoing Capital Contributions (with full payment of such Capital Contributions to be made within ninety days after execution of such commitment).

4.2.2    Loss of Eligibility.    A Member who meets the membership qualifications set forth in Section 4.1.2 or Section 4.1.3 and is admitted as Member pursuant to Section 4.2.1, and thereafter ceases to meet the Membership qualifications set forth in Section 4.1 or to make any required Capital Contribution or Annual Budgeted Assessment by the Contribution Default Date (as defined in Section 4.5.2.3 below) shall immediately cease to have the right to vote upon such date (the “Ineligibility Date”) and, upon such Ineligibility Date, a Dissociation Event, as set forth in Section 4.5, shall be deemed to have occurred.

4.2.3    Proof of Eligibility.

4.2.3.1        For the purpose of determining whether a Person who seeks to become a Member satisfies the requirements of Section 4.1.2.1 to have a material interest in providing ENUM capabilities, the Company may require the applicant to submit to the Company evidence sufficient to permit the Company to determine that the Person has a material interest in providing ENUM capabilities.

4.2.3.2 For the purpose of determining whether a Person who seeks to become a Member satisfies the requirements of Section 4.1.2.1, the Company may require the applicant to provide evidence sufficient to permit the Company to determine that the Person must or will have operational responsibilities for implementing ENUM.

4.2.3.3 For the purpose of determining whether a Person who seeks to become a Member satisfies the requirements of Section 4.1.3 as a Qualified Association, the Company may require the Person to provide evidence (such as a certificate or certified copy of a resolution of the board of directors or other governing body of the Person and membership and financial records) sufficient to permit the Company to determine that the Person and its constituent members satisfy such requirements.

4.2.3.4 For purposes of determining that a Person is not prohibited from becoming a Member of Company, the Company may require the Person to provide evidence of the approval of all Applicable Country Authorities to admission of the Person as a Member or evidence that written notice has been provided by the Person to all Applicable Country Authorities advising them that the Person is seeking admission as a Member and no Applicable Country Authority or Regulatory Agency has prohibited such Membership.

4.2.3.5 At each meeting of the Company, the Officers will report to the Members regarding the admission of new Members and the rejection of any prospective Members.

**Section 4.3 VOTING MEMBERSHIP INTERESTS.** Except as set forth in the definition of “Membership Interest” in Article I of this Agreement, each Member whose right to vote has not been suspended or lost pursuant to this Agreement and for which a Dissociation Event has not occurred and is outstanding, shall have equal voting rights. No assignee of a Member’s Membership Interest shall be entitled to vote or participate in any meeting of the Members or in the management of the Company, unless such assignee is admitted as a Member in accordance with this Agreement.

**Section 4.4 RESTRICTIONS ON TRANSFERABILITY.**

4.4.1 General Statement. An unauthorized transfer of a Member’s Membership Interest may have adverse effects on the Company and on other Members, including adversely

effecting its capital structure, the administration and operation of the System and the Company's tax structure and treatment of items of income, gain, loss and deduction to its Members. To avoid or reduce the likelihood of such adverse effects, neither record title nor beneficial ownership of any Membership Interests may be transferred except as provided in this Article. The restrictions upon ownership and transfer set forth in this Article are not intended as a penalty, but in recognition of the foregoing adverse effects. Therefore, except as otherwise provided in this Section 4.4, no Member shall sell, give, pledge, encumber, assign, transfer or otherwise dispose of, voluntarily or involuntarily or by operation of law, all or any portion of its Membership Interest or create a security interest thereon or lien thereon (hereinafter referred to as "Transfer"), without prior Majority Approval and the determination that the proposed recipient of the Membership Interest Transferred satisfies the Membership qualifications set forth in Section 4.1. Any attempted or purported Transfer in contravention of any of the provisions of this Agreement shall be void *ab initio* and unenforceable and shall not bind or be recognized by the Company or any of the other Members. If a transferee acquires a Membership Interest in contravention of any of the provisions of this Agreement by Transfer from another Member, the transfer of such Membership Interest shall constitute an Event of Withdrawal, and neither the transferor nor the recipient of such Membership Interest shall be a Member of the Company.

4.4.2 Transfers to Affiliates. A Member may only Transfer all, but not less than all, of its Interest in the Company to an Affiliate of the Member without the consent of any of the Members or the Company; provided, however, that such Affiliate satisfies the eligibility requirements for becoming a Member set forth in Section 4.1. After the consummation of any Transfer of a Membership Interest, the Membership Interest so transferred shall continue to be subject to the terms and conditions of this Agreement, and any further Transfer shall comply with all terms and conditions of this Agreement. After any Transfer permitted hereunder has been consummated as required herein, the transferee shall automatically be admitted as a substitute Member of the Company and the transferor shall no longer be considered a Member of the Company for any purposes, and this Agreement shall be deemed to be amended and restated to reflect such admission, without further action. Notwithstanding the foregoing, any such Transfer permitted hereunder shall be considered to be consummated only upon the satisfaction of the following requirements, which shall constitute conditions precedent to recognizing the

effectiveness and binding nature of any such Transfer and the substitution of a transferee or assignee as a Member with respect to the Membership Interest Transferred as against the Company or otherwise: (1) the transferor must provide all Members with at least thirty days prior written notice of the proposed Transfer; and (2) the proposed transferee, assignee or successor-in-interest must execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the Members (by Majority Approval) may deem necessary or desirable to: (i) constitute such transferee, assignee or successor-in-interest as a substituted Member as such; (ii) confirm that such transferee, assignee or successor-in-interest has accepted, assumed and agreed to be subject to, and bound by, all terms, obligations and conditions of this Agreement; (iii) preserve the Company as a going concern after the transfer under the laws of each jurisdiction in which the Company is qualified, organized or does business; (iv) maintain the status of the Company as an organization not taxable as a corporation under the then applicable provisions of the Code; (v) not cause, either alone or when combined with other transactions, a termination of the Company within the meaning of Code Section 708; and (vi) assure compliance with the Securities Act, applicable state securities laws and all regulations promulgated thereunder.

**Section 4.5 DISSOCIATION EVENTS.** The following events shall constitute Dissociation Events for purposes of this Agreement:

4.5.1 Voluntary Withdrawal. Any Member may, at any time and for any reason withdraw or resign from the Company as a Member upon delivery of written notice to the Company, and a Dissociation Event shall be deemed to occur upon the date of such written notice (such date referred to as the “Voluntary Withdrawal Date”), it being expressly understood that withdrawal or resignation without delivery of such written notice shall nonetheless constitute a Dissociation Event pursuant to Section 4.5.

4.5.2 Other Dissociation Events. A Dissociation Event shall be deemed to exist automatically upon the occurrence of any of the following circumstances, but only with respect to the particular Member:

4.5.2.1 If the Member engages in any Transfer contrary to Section 4.4.

4.5.2.2 If the Member fails to continue to meet the Membership criteria set forth in Section 4.1 of this Agreement, subject to the right to cure such failure within 180 days as set forth in Section 4.6.1.

4.5.2.3 Upon failure of a Member to make any required Capital Contributions within 60 days of the due date specified by the Company for such payment (the last day of the 60 day period is referred to as the “Contribution Default Date”), subject to the right to cure such failure within 30 days of the Contribution Default Date as set forth in Section 4.6.1.

4.5.2.4 Upon the receipt of notice by a Member or the Company from an Applicable Country Regulatory Agency with jurisdiction over such Member stating that such Applicable Country Regulatory Agency prohibits the Member’s continued membership in the Company (referred to as a “Prohibition Notice”) subject to the right to cure such failure within 180 days as set forth in Section 4.6.1.

4.5.2.5 Upon: (a) the dissolution or commencement of a winding up of the Member; or (b) any other event which terminates the continued membership of a Member in a limited liability company under the Act, including withdrawal or resignation not otherwise specifically addressed and without delivery of written notice.

4.5.2.6 Upon breach by a Member of any provision in this Agreement, subject to the right to cure such breach within 180 days of the date of such Member’s receipt of a notice from the Company describing the breach (the “Breach Notice”).

#### **Section 4.6 EFFECT OF DISSOCIATION EVENTS.**

4.6.1 Limited Right to Cure. If a Dissociation Event occurs with respect to a Member under Section 4.5, such Member shall possess only the following specific rights to cure such defect as set forth below, and immediately upon curing such defect, such Member shall possess all of the rights, privileges, duties, obligations and liabilities of a Member as if such Dissociation Event had not occurred, subject to the Company’s sole right to determine (by Majority Approval) that such breach has been cured.

4.6.1.1 If such Dissociation Event under Section 4.5.1 is caused by a notice of voluntary withdrawal, the Member may cure such defect by delivering to the Company a

written retraction of such notice on or before the 30<sup>th</sup> day following the Voluntary Withdrawal Date.

4.6.1.2 If such Dissociation Event under Section 4.5.2.2 is caused by failure to continue to satisfy the Membership criteria set forth in Section 4.1 of this Agreement, such defect may be cured by satisfying such criteria on or before the 180<sup>th</sup> day after the Ineligibility Date.

4.6.1.3 If such Dissociation Event under Section 4.5.2.3 is caused by failure to make a Capital Contribution, such failure may be cured by actually making such Capital Contribution on or before the 30<sup>th</sup> day after the Contribution Default Date, it being expressly understood that for purposes of this Section 4.6.1.3, payment shall only be considered made if funds are actually received by the Company.

4.6.1.4 If such Dissociation Event under Section 4.5.2.4 is caused by notice to a Member or the Company from an Applicable Country Regulatory Agency with jurisdiction over such Member that such Applicable Country Regulatory Agency prohibits the Member's continued Membership in the Company, such defect may be cured by receiving, on or before the 180<sup>th</sup> day after the date of receipt of the Prohibition Notice, a notice from all Applicable Country Agencies prohibiting such continued Membership that such continued Membership is no longer prohibited.

4.6.1.5 If such Dissociation Event under Section 4.5.2.6 is caused by the breach by a Member of a provision of this Agreement, such breach may be cured within one hundred eighty (180) days of the Member's receipt of the Breach Notice.

4.6.2 Loss of Voting and Participation in Management. Upon the occurrence of a Dissociation Event, whether or not such Dissociation Event is subject to a right to cure as set forth in Section 4.6.1, such Member shall immediately lose the right to vote on any matter or to participate in the management and affairs of the Company, and such right to vote and to participate in the management and affairs of the Company shall be suspended until appropriate action to cure is taken pursuant to Section 4.6.1, if such cure is available with respect to the Dissociation Event, or an Event of Withdrawal is deemed to occur, either upon expiration of the applicable cure period without sufficient cure or immediately if such Dissociation Event is not subject to a right to cure.

4.6.3 Effect of Cure. A Member who takes the appropriate action to satisfy the applicable cure requirement set forth in Section 4.6.1 and does so on or before expiration of the applicable cure period shall again have the right to vote and to participate in the management and affairs of the Company without further action by the Company or the Members. Notwithstanding the foregoing, and subject to the right to arbitrate disputes under this Agreement, if evidence of the satisfaction or failure to satisfy the applicable cure requirement is requested, Majority Approval shall constitute such evidence. No action taken by the Company or voted on by the Members during the period a Dissociation Event has occurred and not been cured shall be subject to legal challenge by the Member with respect to whom the Dissociation Event has occurred.

#### **Section 4.7 EVENTS OF WITHDRAWAL.**

4.7.1 Occurrence of an Event of Withdrawal. An Event of Withdrawal shall be deemed to exist immediately upon the occurrence of the following events:

4.7.1.1 On the 31<sup>st</sup> day following the Voluntary Withdrawal Date which constitutes a Dissociation Event under Section 4.5.1;

4.7.1.2 On the expiration of the applicable cure period for a Dissociation Event described in Sections 4.5.2.2, 4.5.2.3, 4.5.2.4 or 4.5.2.6; or

4.7.1.3 Immediately upon the occurrence of any Dissociation Event other than those described in Sections 4.5.1, 4.5.2.2, 4.5.2.3, 4.5.2.4 or 4.5.2.6.

4.7.2 Effect of an Event of Withdrawal. Upon an Event of Withdrawal for any reason, the Member subject to such Event of Withdrawal or its successor in interest shall immediately and automatically cease to be a Member (including immediately and automatically losing any right to vote and to participate in the management of the Company if such right had not already been lost or suspended) and such former Member shall not be entitled to receive any payments or distributions and shall be considered to have forfeited all amounts then comprising its Capital Account on the date of the Event of Withdrawal, it being the express intention of all parties to this Agreement that such forfeiture shall constitute liquidated damages to compensate the Members and the Company for the consequences of such Event of Withdrawal. Thereafter, all such amounts of any former Member's Capital Account shall be reallocated to and distributed

among the remaining Members in proportion to their relative Membership Interests after the Event of Withdrawal and not including the Membership Interest of the former Member.

**Section 4.8 READMISSION TO MEMBERSHIP.** A Person who was the subject of an Event of Withdrawal may be readmitted as a Member only upon compliance with the provisions of Section 4.2 of this Agreement relating to the admission of new Members; it being expressly understood that no credit of whatever sort shall be allowed to such Person or given to such Person by reason of any amount of such Person's Capital Account which was forfeit pursuant to Section 4.7.2 upon the occurrence of an Event of Withdrawal of such Person as a Member.

**Section 4.9 INDEPENDENT ACTIVITIES.** Except with respect and subject to Section 3.3 regarding Intellectual Property and Confidential Information, Section 11.4.7 regarding Vendor Confidential Information, Section 11.6 regarding Member Confidential Information and Section 11.7 regarding Company Technology, the Members, notwithstanding this Agreement, may engage in whatever activities they choose, whether the same or competitive with the Company or otherwise, without having or incurring any obligation to offer any interest in such activities or the opportunity to do so to the Company or any Member. The Members acknowledge and agree that each Member is and may be a competitor of each other Member and that the Members have and may hereafter develop businesses and interests which do or may compete or conflict with the businesses and interests of each other Member and of the Company. Each Member is and shall remain free to do so without any duty to the Company or to any other Member to disclose or account for such competing businesses and interests. Except as expressly excluded in this Section 4.9, neither this Agreement nor any activity undertaken pursuant hereto shall prevent any Member from engaging in such activities, or require any Member to disclose such activities, or require any Member to permit the Company or any other Member to participate in any such activities, and as a material part of the consideration for the execution of this Agreement by each Member, each Member hereby waives, relinquishes, and renounces any such right to claim of participation. Except as otherwise expressly set forth in this Agreement, no license under any patent, trademark, copyright, or trade secret is granted by any Member or to the Company by virtue of the Member's participation herein. This Section is limited by the provisions of this Agreement relating to the limitations of the rights of a Member to enter into an agreement with a Vendor of the System. Further, it is expressly understood and agreed that no Member shall have any duty to the Company or to any Member by reason of acting as a Member of the Company,

including any duty of loyalty, duty of care or duty to act in good faith for the best interests of the Company or any Members, it being expressly understood and acknowledged that, with respect to the Company, each Member may act solely in its own interest to the fullest extent permitted by applicable law.

## **ARTICLE 5 MEETINGS OF MEMBERS**

### **Section 5.1 REPRESENTATION OF MEMBER.**

5.1.1 Representation. Members shall act through Authorized Representatives, as set forth in this Article 5. Each Member shall select one Primary Representative, who shall be either the first Authorized Representative designated as an Authorized Representative or explicitly designated as the Primary Representative of the Member on a form provided by the Company to the Member, completed by the Member and delivered to the Company (the “Delivered Authorized Representatives Designation Form”). The Primary Representative shall be an individual but shall not be required to be an employee of the Member. In addition, at the option of the Member, the Member may designate not more than three (3) Alternate Representatives, each of whom shall be an individual and none of whom shall be required to be an employee of the Members. Each of the Alternate Representatives may act in the absence of the Primary Representative, as set forth below. Each Member may fill any vacancy resulting from the removal, resignation, or death of any such Authorized Representative by explicit designation on a new Delivered Authorized Representatives Designation Form. The First Alternate Representative shall mean either (a) the individual explicitly designated as the First Alternate Representative, or (b) in the absence of such an explicit designation, either (i) the first individual designated as an Alternate Representative or, (ii) if there is no such designation, the first individual designated after the Primary Representative on the Delivered Authorized Representatives Designation Form. The selection of a Member’s Primary Representative, First Alternate Representative and other Alternate representatives, if any, either originally or in connection with the filling of any vacancy, shall be set forth in the Delivered Authorized Representatives Designation Form and shall not be considered delivered until it is delivered to the Secretary of the Company, or in the absence of a Secretary of the Company, to the Chair of the Company. The Member’s Authorized Representatives shall have authority to act

on behalf of the Member with respect to matters presented to the Members and shall exercise all voting rights of the Member in all meetings of Members and in acting on matters submitted to the Members for action by the Members without a meeting. The Company and each other Member may rely upon the authority of the Authorized Representatives, without further investigation or due diligence, subject to the priority for acting set forth in the next sentence. A Primary Representative shall have the authority to act on behalf of a Member first, and then in the absence of the Primary Representative, the First Alternate Representative, if any, shall have the authority to act on behalf of a Member, and, in the absence of both the Primary Representative and the First Alternate Representative, each other Alternate Representative, if any, shall have the authority to act on behalf of a Member, in the order of priority in which each such individual's name is listed on the Delivered Authorized Representatives Designation Form.

5.1.2 Removal. An individual acting as a Member's Authorized Representative may be removed at any time, with or without cause, by the Member for whom such Authorized Representative acts. The removing Member shall give written notice of such removal to the Secretary of the Company or, in the absence of a Secretary of the Company, to the Chair of the Company, and such removal shall take effect upon the receipt of such notice by the Secretary or Chair of the Company or at such later time as may be specified in the notice. The Company shall be entitled to rely upon any notice given under this Section 5.1.2 without further inquiry, either as to authenticity or as to the authority of Person executing such notice on behalf of the Member. The removing Member may thereafter in accordance with Section 5.1.1 designate an Authorized Representative to replace each such removed individual.

5.1.3 Resignation. Any individual acting as a Member's Authorized Representative may resign at any time by giving written notice to the Member that designated such Authorized Representative, which Member shall give written notice to the Secretary of the Company or, in the absence of a Secretary of the Company, to the Chair of the Company. The resignation of any Authorized Representative shall take effect upon receipt of that notice by the Secretary or Chair of the Company or at such later time as shall be specified in the notice. Unless otherwise specified in the notice, acceptance of the resignation shall not be necessary to make it effective, and the Company shall be entitled to rely upon any notice given under this Section 5.1.3 without

further inquiry, either as to authenticity of the notice or as to the authority of Person executing such notice on behalf of the Member. The Member for whom the resigning Authorized Representative acted may thereafter in accordance with Section 5.1.1 designate an Authorized Representative to replace each such resigning individual.

## **Section 5.2 QUORUM.**

5.2.1 Quorum Requirement. Meetings of the Members may be convened and action taken by the Members only at meetings at which a quorum of the Members is present, subject to the right of the Members to take action without a meeting in accordance with Section 5.12. Subject to provisions of Section 5.2.2 of this Agreement, Members having Membership Interests in excess of 50% of the Membership Interests of all Members entitled to vote on a particular matter, represented in person or by proxy, shall constitute a quorum at any meeting of the Members. Once a quorum has been attained for a meeting on any matter, a quorum shall be considered to have been attained for the remainder of the meeting and for any adjournment of that meeting. Any other matter, for which a notice satisfying the requirements of Section 7.5 was properly delivered to all Members in accordance with Section 17.2, which is presented at that meeting, may properly be considered and approved by the Members in attendance at that meeting, whether by proxy or in person. Notwithstanding any other provision of this Agreement, including Section 5.2.2 below regarding the exclusion of certain Members from the computation of a quorum as a result of such Members' failure to attend at least two consecutive meetings of the Members, in no event shall a quorum be constituted if fewer than 50% of the Members who currently possess the right to vote and to participate in the management of the business and affairs of the Company are represented at such meeting, whether in person or by proxy. The requirement that a quorum may not be constituted if fewer than 50% of the Members who currently possess the right to vote and to participate in the management of the business and affairs of the Company are represented at a meeting may be changed upon Supermajority Approval.

5.2.2 Effect of Nonattendance on Inclusion in Quorum. Solely for purposes of computing a quorum under Section 5.2.1 for a particular meeting of the Members, a Member shall not be considered entitled to vote on any matter if such Member is not present at such meeting, represented either in person or by proxy, and was not present, in person or by proxy, at

the two immediately preceding meetings of the Members for which notices were properly given pursuant to Section 5.9. Any Member which was previously considered not to be entitled to vote for purposes of computing a quorum under this Section 5.2.2 shall be considered to regain the right to vote and shall be included as a Member entitled to vote for purposes of computing a quorum immediately upon attendance at any meeting of the Members, including attendance in person or by proxy.

**Section 5.3 PROCEDURAL RULES AT MEETINGS.** The procedural reference authority for the Company with respect to the conduct of meetings of the Members is designated as the latest edition of Robert's Rules of Order, Newly Revised. The meetings of the Members may be conducted with informality whenever appropriate; provided, however, that this informality shall not apply to procedural requirements required in the Certificate of Formation, this Agreement, or the Limited Liability Company Act. Upon the request of any Member, any meeting or a portion of a meeting will be conducted according to generally understood principles of parliamentary procedure as stated in the Certificate of Formation, this Agreement, or the designated procedural reference authority.

**Section 5.4 MEETINGS, WHERE AND WHEN HELD.** Meetings of the Members of the Company, whether a regular meeting, an annual meeting, or a special meeting, shall be held either at one of the offices of legal counsel for the Company or at another location as the Members may select by Majority Approval, and identified in a proper notice to the Members as set forth in this Agreement.

**Section 5.5 PRESENCE OR ATTENDANCE AT MEETINGS.** For purposes of this Agreement, a Member shall be considered to be present at a meeting or in attendance at a meeting if an Authorized Representative of the Member is present either in person at such meeting or by a proxy satisfying the requirements of Section 7.2 of this Agreement. It is expressly understood and agreed that meetings of Members may be conducted by one or more Members participating by means of conference telephone or similar communications equipment by means of which all individual Member representatives participating in the meeting may hear each other and communicate with one another, and such participation shall be deemed to constitute presence in person at such meeting. For each meeting, the Company shall make a good faith attempt to provide access by conference telephone or similar communications equipment by means of

which all individual Member representatives participating in the meeting may hear each other and communicate with one another. Notwithstanding the foregoing, the legality of a meeting shall not be affected by the Company's inability to provide such access, provided a quorum for the meeting is otherwise present.

**Section 5.6 ANNUAL MEETING.** There shall be an annual meeting of the Members, which may also be held as a regular meeting of the Members, for the purposes of electing Company Officers and acting on such other matters as may properly come before the meeting. Unless otherwise changed by Majority Approval, the annual meeting of the Members shall be held on the second Wednesday of November at 10:00 A.M. Mountain Time in one of the offices of the counsel for the Company. Failure to hold an annual meeting at the time determined pursuant to this Section 5.6 or within a twelve month period after the immediately preceding annual meeting shall not affect the validity of any Company action or work a forfeiture or dissolution of the Company.

**Section 5.7 REGULAR MEETINGS.** The Members may from time to time adopt by Majority Approval a schedule of regular meetings of Members, including the location of such meetings and the time for convening such meetings. Failure to hold a regular meeting at the time determined pursuant to this Section 5.7 shall not affect the validity of any Company action or work a forfeiture or dissolution of the Company.

**Section 5.8 CALL OF SPECIAL MEETINGS.** A special meeting of the Members, for any purpose or purposes whatsoever, may be called at any time by the Chair of the Company or upon written demand of Members holding Membership Interests equal to or greater than twenty-five percent (25%) of the Membership Interests of all Members entitled to vote, and in either such event, a notice of such meeting shall be delivered in accordance with the requirements of this Agreement. Any such written demand of the Members for a meeting must state the purposes of the requested special meeting. The record date for determining Members entitled to demand a special meeting of the Members shall be the day before receipt by the Company of the first such written demand.

**Section 5.9 TIME PERIODS FOR NOTICE OF MEETINGS.** Notice of the annual and any regular meetings shall be given to the Members on behalf of the Company by the Chair of the Company at least ten calendar days in advance of such meeting, but not more than thirty days in advance of

such meeting. Notice of any special meeting, whether called by the Company or upon written demand of the Members in accordance with Section 5.8, shall be given by the Chair of the Company at least four calendar days in advance of the called meeting, but not greater than sixty days in advance of such called meeting. The content of any such Notice shall be pursuant to Section 7.5 and the means of giving Notice of any meeting shall be in accordance with Section 17.2. Unless changed by Majority Approval, the record date for determining Members entitled to be given notice of an annual, regular or special meeting of the Members shall be the day before the first notice given to Members; it being expressly understood and agreed that Persons who are Members on such record date shall be entitled to receive such notice, whether or not any such Member then has the right to vote on all or any matter which is the subject of such meeting or is then subject to a Dissociation Event which is then continuing and not cured. Notwithstanding anything to the contrary in this Agreement, the time periods set forth in this Section 5.9 shall also apply to actions of the Members taken without a meeting pursuant to Section 5.12, in accordance with Section 7.5.

**Section 5.10 WAIVER OF NOTICE AND EFFECT OF ATTENDANCE.** Notice of any annual, regular or special meeting of the Members may be waived by the Member entitled to such notice. By attending a meeting (whether in person or by proxy), a Member waives objection to the lack of notice or defective notice for all purposes of the meeting, unless the Member, at the beginning of the meeting, objects to the Chair to the holding of the meeting or to the transacting of business at the meeting. A Member who attends a meeting also waives objection to consideration at such meeting of a particular matter not within the purpose described in the notice unless the Member objects to considering the matter when it is presented.

**Section 5.11 PRESIDING CHAIR AND SECRETARY.** At every meeting of Members, the Chair shall preside, or if the Chair is not present in person (including by telephone satisfying the requirements of Section 5.5), then the Vice Chair shall preside. If neither the Chair nor the Vice Chair are present in person (including by telephone satisfying the requirements of Section 5.5), the Members may appoint by Majority Approval, an Authorized Representative of any Member who is present to preside and to exercise all powers of the Chair at such meeting. If the Members fail to so designate an Authorized Representative to preside, then by Majority Approval the Members may designate counsel for the Company, if present, to preside and to exercise all powers of the Chair at such meeting. If neither an Authorized Representative nor

counsel is so designated to preside at the meeting, then the meeting may not continue and no action may be taken, and such meeting shall be considered to have constituted a meeting at which a quorum was not present. The Secretary will record the minutes and take custody of all papers related to the meeting (subject to the provisions of this Section 5.11 and to delivery of such papers to those Persons required to maintain custody under Section 5.14), or if the Secretary is not present or there is no Secretary acting at the time of such meeting, counsel shall record the minutes and take custody of all papers related to the meeting, for delivery as soon as practicable to the Secretary of the Company or the Chair if there is no Secretary acting at the time of such meeting. Notwithstanding the foregoing, upon Majority Approval, the Members may designate the Project Executive to record the minutes of meetings and to take custody of all papers related to the meeting (subject to delivery such papers to those Persons required to maintain custody under Section 5.14). Notwithstanding the duties of the Chair, the Chair, as an Authorized Representative of a Member, may nonetheless vote on behalf of such Member in the same manner and with the same effect as the Authorized Representative of any other Member.

**Section 5.12 ACTION WITHOUT A MEETING.** Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if the action is evidenced by one or more written consents or by one or more electronic transmissions, describing with particularity the action taken and prepared and delivered in compliance with this Section 5.12.

5.12.1 Supermajority Requirements. If such action requires Supermajority Approval, such action may be taken either (a) upon written consent if such written consent is or, if by counterparts, such written consents are, signed by Authorized Representatives of those Members who on the record date are entitled to vote on such action and who hold Membership Interests of at least 75% of the Membership Interests of all the Members entitled to vote; or (b) upon electronically transmitted consents (referred to as “e-mail consents”) if such e-mail consents, whether combined or in counterparts, are from Authorized Representatives of those Members who on the record date are entitled to vote on such action and who hold Membership Interests of at least 75% of the Membership Interests of all the Members entitled to vote and all such e-mail consents evidence transmission from electronic mail addresses corresponding to the electronic mail addresses maintained in the Company’s records in accordance with Section 17.2 of any of the Authorized Representatives of each Member allegedly joining in such consent. All consents, whether obtained electronically or otherwise, must be reported at, and recorded in, the minutes of

the next meeting of the Members. Consents obtained electronically must be transmitted to the electronic mail addresses of the Authorized Representatives of all the Members.

5.12.2 Majority Requirements. If such action requires Majority Approval, such action may be taken either (a) upon written consent if such written consent is or, if by counterparts, such written consents are, signed by Authorized Representatives of those Members who on the record date are entitled to vote on such action and who hold Membership Interests in excess of 50% of the Membership Interests of all the Members entitled to vote; or (b) upon e-mail consents if such e-mail consents, whether combined or in counterparts, are from Authorized Representatives of those Members who on the record date are entitled to vote on such action and who hold Membership Interests in excess of 50% of the Membership Interests of all the Members entitled to vote and all such e-mail consents evidence transmission from electronic mail addresses maintained in the Company's records in accordance with Section 17.2 of any of the Authorized Representatives of each Member allegedly joining in such consent. All consents, whether obtained electronically or otherwise, must be reported at, and recorded in, the minutes of the next meeting of the Members. Consents obtained electronically must be transmitted to the electronic mail addresses of the Authorized Representatives of all the Members.

5.12.3 Effective Date of Consent. Action taken under this Section 5.12 shall be effective, assuming satisfaction of the applicable requirements of Sections 5.12.1 and 5.12.2, (a) in the case of a written consent, on the date the first Authorized Representative of the a Member has signed the consent, or (b) in the case of an e-mail consent, on the date of delivery of the first e-mail consent from an Authorized Representative of a Member, unless the consent specifies a different effective date. Further, because action without a meeting does not require the determination of a quorum, the provisions of Section 5.2 regarding the computation of a quorum shall not apply.

5.12.4 Reliance by the Company. The Company shall be entitled to rely upon the validity and authenticity of a written consent and an e-mail consent pursuant to this Section 5.12 without further investigation or inquiry, provided: (a) in the case of a written consent, such consent recites execution by the applicable Member's Primary Representative, or if such written consent recites that no such Primary Representative is then acting, at least one of such Member's Alternate Representatives, corresponding to such Member's Representatives maintained in the

Company's records pursuant to Section 17.2.4; and (b) in the case of an e-mail consent, the electronic mail address of the transmitting party corresponds to the electronic mail address of the applicable Member maintained in the Company records pursuant to Section 17.2.4.

**Section 5.13 MEETINGS OPEN TO PUBLIC.** All meetings of the Members shall be open for observation by the public and non-Members, subject to the rights of the Company to close any meeting or portion thereof to observation by the public and non-Members for the purpose of protecting Confidential Information, Vendor Confidential Information or information which the Company considers protected by applicable privileges against disclosure, including but not limited to, attorney-client privileged information or attorney work product. Furthermore, any Member may request that any meeting or portion thereof should not be open to observation by the public or non-Members, and such meeting or portion thereof shall thereafter be closed to observation by the public and non-Members upon Majority Approval. Non-Members and members of the public shall have no voting rights during a meeting, nor any right to participate in such meeting, nor any right to notice of time and place of any meeting of the Members. Upon specific written request from a non-Member or a member of the public, non-Members and members of the public may be provided with advance notice of the place and time of such meetings, but any telephonic numbers or bridge numbers will not be provided to such Persons without prior Majority Approval; it being expressly understood and agreed that such restriction on disclosure of telephonic numbers and bridge numbers with respect to a meeting of the Members is necessary to ensure the security and confidence of those portions of any meeting of the Members which is not open to participation by the public or non-Members in accordance with this Section 5.13. Furthermore, to ensure the requisite security and confidence, for purposes of the preceding sentence, a non-Member and a member of the public must make a separate written request for each meeting and may not request notice for more than one meeting in any one request. Meeting notices shall specify which, if any, portions of a meeting may be open to the public.

**Section 5.14 MINUTES OF MEETINGS.**

5.14.1 Taking of Minutes. Minutes shall be taken and maintained for each meeting of the Members by that individual specified in Section 5.11.

5.14.2 Publication of Minutes. Minutes of meetings of the Members shall not be published, released to or accessible for inspection by the public or non-Members; however, upon receipt of a written request stating with particularity the purpose of such request, the Members shall consider a request for release to or inspection by the public or non-Members of specific minutes and upon Majority Approval shall grant such release or inspection, subject to limitations or prohibitions release or inspection of such minutes or portions thereof based upon applicable attorney-client privileges, attorney work product privileges and restrictions regarding Confidential Information or Vendor Confidential Information .

5.14.3 Contents of Minutes. All minutes shall include, at a minimum, the following items: (a) the date, time and location of the meeting; (b) a list of all attendees of the meeting; (c) a list of agenda topics for such meeting; and (d) the results of votes taken at such meeting, including all abstentions from such votes. The minutes shall be distributed to the Members and Company's legal counsel on or before the date the notice of the next succeeding meeting is delivered to the Members.

5.14.4 Custody of Minutes and Company Documents. Absent a determination by the Members upon Majority Approval, the following Persons shall maintain custody for the following documents and records:

5.14.4.1 Company Counsel. The Company's legal counsel shall have custody of (a) all original minutes of meetings, consents of the Members, designations regarding Member representatives, notices, waivers, Company correspondence, Company organizational documents, including Certificate of Formation and Agreement and amendments thereto, contracts with Vendors (including Statements of Work), other agreements or stipulations to which the Company is a party, and (b) copies of Company tax returns as filed and other filings made by the Company with the FCC, an Applicable State Regulatory Agency or other private or public agency or body.

5.14.4.2 Treasurer. The Company's Treasurer shall have custody of all original financial documents and account statements, including budget statements, ledger books, books of account, and check and deposit books. The Treasurer shall also maintain copies of the Company's tax returns as filed and related correspondence and filings.

5.14.4.3 Chair. The Chair shall maintain copies of all documents for which the Company counsel has custody.

5.14.5 Transfer of Minutes and Company Documents. Within thirty (30) days after a change in legal counsel or in the Chair's or Treasurer's position, the former legal counsel, Chair or Treasurer, as the case may be, shall transfer all Company minutes and documents in his or her possession to the successor legal counsel, Chair or Treasurer, as the case may be, or to such other individual as the Company may designate by notice in writing to the former legal counsel, Chair or Treasurer.

## **ARTICLE 6 COMMITTEES**

**Section 6.1 FINANCIAL COMMITTEE.** The Members may from time to time by Supermajority Approval establish and/or dissolve a Financial Committee. The Financial Committee, if established, shall oversee the financial affairs of the Company at the direction of the Members. In particular, the Financial Committee shall prepare and recommend a working budget for submission to the Members and an Annual Budgeted Assessment for submission to the Members. This Financial Committee shall also produce periodic reports to the Members on the financial condition of the Company, invoice and collect Capital Contributions to the Company from the Members and review all bills and requests for payment by the Company, including requests for invoices for payment of liability insurance premiums and legal and accounting services. A majority of the members of the Finance Committee shall constitute a quorum. All matters shall be determined by the affirmative vote of a majority of the Finance Committee members at a meeting of the Finance Committee at which a quorum is present. The Finance Committee must take or maintain minutes of its meetings; however such meetings or minutes shall not be open or available to the public or to non-Members. Any action appropriately approved by the Finance Committee shall be recorded in the Finance Committee's minutes, which shall then be presented to the Members at the next meeting of the Members. If established, such committee shall consist of a Treasurer and two other Members selected by Majority Approval.

**Section 6.2 ADVISORY COMMITTEES.** The Members may from time to time by Majority Approval establish one or more "Advisory Committees," of such size and composition,

consisting of less than all of the Members and of non-Members, and having such powers and responsibilities as shall be determined by a Majority Approval; provided, however, that the decisions of each such Advisory Committee shall be subject to the approval of the Members pursuant to the relevant consent or voting requirements of this Agreement. Each Advisory Committee may delegate responsibility for any matter within the scope of such Advisory Committee's authority to any subcommittee or individual designated by the Advisory Committee. The Members may at any time by Majority Approval dissolve any Advisory Committee or alter or modify its composition, responsibilities or operation. Unless otherwise provided by Majority Approval, the action of each Advisory Committee shall require the consent of greater than 50% of the Persons serving on such committee; provided, however, that except for this provision, the Persons serving on such Advisory Committees shall adopt resolutions to govern their activities and the manner in which they perform their duties. Unless the Members by Majority Approval so require, there is no requirement that such Advisory Committees take or maintain minutes of their meetings nor that such meetings or minutes shall be open to the public or to non-Members. Any action appropriately approved by such Advisory Committee shall then be presented as a recommendation for appropriate action by the Members. Unless expressly authorized in writing, no such Advisory Committee shall be vested with the right or authority to manage any business or affairs of the Company.

## **ARTICLE 7 VOTING**

### **Section 7.1 VOTING RIGHTS.**

7.1.1 Equal, Per Capita Voting. Except as set forth in the definition of "Membership Interest" in Article I of this Agreement, each Member who has not lost the right to vote pursuant to Section 4.6.2 and 7.1.2, and for which a Dissociation Event has not occurred and is continuing as set forth in Section 4.5, shall have equal voting rights.

7.1.2 Suspension of Voting Rights. The rights of a Member to vote shall automatically be suspended upon the occurrence of a Dissociation Event as set forth in Section 4.6.2.

**Section 7.2 PROXIES.** A Member may exercise the Member’s vote and participate in the management of the business and affairs of the Company by appointing a proxy to vote or otherwise act for the Member. A Member (referred to as the “Appointing Member”) may appoint a proxy (referred to as the “Proxy Member”) by signing an appointment form or by transmitting a facsimile or electronic mail transmission providing a written statement of the appointment to the Proxy Member designated in the proxy appointment and setting forth any limitation on the appointment of the proxy. Any such proxy appointment shall set forth written evidence from which it can be determined that the Appointing Member delivered or transmitted the proxy appointment or authorized its delivery or transmission to the Proxy Member. The Company shall be entitled to rely on the validity and authenticity of a proxy appointment without further investigation or inquiry based upon representations from the Appointing Member or the Proxy Member that: (a) in the case of a written proxy appointment (whether the original, a copy thereof or a facsimile transmission thereof), such proxy appointment recites execution by the Appointing Member’s Primary Representative, or if no such Primary Representative is then acting, such Appointing Member’s Alternate Representative, corresponding to such Member’s Authorized Representatives maintained in the Company’s records pursuant to Section 17.2.4; and (b) in the case of an electronically transmitted proxy appointment, the electronic mail address of the transmitting party corresponds to the electronic mail address of the Appointing Member maintained in the Company records pursuant to Section 17.2.4. Notwithstanding the foregoing, to be valid and properly exercisable, the Proxy Member must represent to the Company that the original, executed proxy appointment has been delivered to the Proxy Member to whom such proxy is given or such proxy appointment has been delivered to such Member by facsimile or electronic mail transmission and such proxy appointment must be in the possession of the Proxy Member designated in such proxy appointment at the time such proxy is exercised. Merely for purposes of maintaining proxy appointments in the Company’s records, the original, executed proxy appointment or, if such proxy appointment was made by electronic mail transmission, a copy of the electronic mail transmission, must be delivered by either the Appointing Member or the Proxy Member to the Secretary of the Company within fourteen business days following the expiration or revocation of such proxy; provided, however, that the validity of any proxy appointment, its effectiveness and the propriety, validity and enforceability of any votes of the Members in which such proxy participated, shall not be dependent upon or in

any way affected by the subsequent failure to deliver the original, executed proxy appointment or copy of the electronic mail transmission of the proxy appointment as set forth above or upon the subsequent determination that such proxy appointment was not authentic or genuine. Unless otherwise provided in the proxy appointment, the proxy appointment shall be revocable, but shall be valid until revoked or until expiration in accordance with the terms set forth in the proxy appointment.

**Section 7.3 DEFAULT REQUIREMENT FOR APPROVAL OF ACTION BY THE MEMBERS.**

7.3.1 General Default Rule. Except as otherwise provided expressly in this Agreement or in the Limited Liability Company Act, action by the Members on a matter submitted or required to be submitted for the vote of the Members shall be taken only upon Majority Approval.

7.3.2 Specific Listing of Actions Requiring Supermajority Approval. The following matters require Supermajority Approval:

7.3.2.1 Consent to jurisdiction for the governance of the Company under Section 2.6;

7.3.2.2 Authorize the Company to engage in any business unrelated to the establishment and operation of the System or otherwise not included in the business of the Company set forth in Section 3.2;

7.3.2.3 Authorize the Company to engage in other activities as are permitted under applicable law and not prohibited by federal statute or by a regulation, order or directive of any Applicable Country Regulatory Agency possessing jurisdiction over the Company or by final order of a court of competent jurisdiction;

7.3.2.4 Determine the Company Terms and Conditions for use of Company Technology;

7.3.2.5 Modify the requirement that a quorum may not be constituted if fewer than 50% of the Members who currently possess the right to vote and to participate in management are represented at a meeting under Section 5.2.1;

7.3.2.6 Establish or dissolve the Financial Committee;

7.3.2.7 Approve requests for proposals for System Vendors and/or authorize the issuance of invitations to bid or requests for proposals for System vendors;

7.3.2.8 Waive certain conflicts involving relationships between the Vendor and a Member or the Member's Affiliates under Section 11.3;

7.3.2.9 Authorize the Company to enter into a contract with a Vendor for the establishment and operation of the System at variance with the minimum terms set forth in this Agreement under Sections 11.4 and 11.5;

7.3.2.10 Authorize modifications to the System except under the circumstances set forth in Section 11.5;

7.3.2.11 Authorize distributions to Members under Section 12.8;

7.3.2.12 Determine whether a Member reasonably believed that its incurrence of any debt or liability on behalf of the Company was authorized under Section 13.3;

7.3.2.13 Waive or modify the requirement that the Company maintain insurance for certain purposes under Section 13.4;

7.3.2.14 Dissolve the Company under Section 14.1;

7.3.2.15 Select an arbitration agency other than JAMS under Section 15.2.1;

7.3.2.16 Amend this Agreement under Section 17.5;

7.3.2.17 Approve: (i) the merger or consolidation of the Company with or into another Person for any reason and for whatever business; (ii) the sale, exchange, assignment or other disposition of all, or substantially all of the Company's assets which is to occur as part of a transaction or plan or series of transactions or plans for whatever reason; or (iii) the reorganization of the Company pursuant to an event of bankruptcy;

7.3.2.18 Form or acquire subsidiaries and enter into partnerships, limited liability company agreements, corporations and joint ventures;

7.3.2.19 Authorize the Company to engage in additional limited businesses unrelated to the establishment and operation of the System;

7.3.2.20 Incur any indebtedness (other than trade payables incurred in the ordinary course of business) or enter into any lease, guaranty, indemnification or suretyship obligations.

7.3.3 No Modification Intended. The listing set forth in Section 7.3.2 is intended for convenience and such listing is not intended to modify any requirement of this Agreement for Supermajority Approval which is not listed above.

**Section 7.4 ACTIONS WHICH MAY BE TAKEN UPON MAJORITY MEMBER APPROVAL.**

7.4.1 Specific, Non-inclusive Listing of Actions Requiring Majority Approval. The following actions may be taken upon Majority Approval:

7.4.1.1 Undertake, at the request of a Vendor, to keep information confidential as provided in the definition of Vendor Confidential Information in Article 1;

7.4.1.2 Adopt trade names and trade styles under Section 2.2;

7.4.1.3 Designate or change the principal place of business under Section 2.3;

7.4.1.4 Designate or change the registered agent or registered office under Section 2.4;

7.4.1.5 Consent to a Transfer of a Membership Interest under Section 4.4.1;

7.4.1.6 Determine the additional acts that Transferees of Membership Interests must perform in order to be admitted as a Member under Section 4.4.2;

7.4.1.7 Determine whether evidence is satisfactory that a Member has cured a Dissociation Event under Section 4.6.3;

7.4.1.8 Determine an alternate location for meetings under Section 5.4;

7.4.1.9 Determine an alternate time and date of annual meetings under Section 5.6;

7.4.1.10 Adopt a schedule of regular meetings of the Members under Section 5.7;

- 7.4.1.11 Determine the record date for determining Members of entitled to be given notice of an annual or special meeting under Section 5.9;
- 7.4.1.12 Appoint an Authorized Representative of a Member to preside over meetings in the absence of the Chair or a Secretary under Section 5.11;
- 7.4.1.13 Designate the Project Executive to record minutes of the meetings and to take custody of all papers relating thereto under Section 5.11;
- 7.4.1.14 Determine persons to maintain custody of the minutes and other documents of the Company under Section 5.14.4;
- 7.4.1.15 Create advisory committees under Section 6.2;
- 7.4.1.16 Select two members of the Financial Committee under Section 6.1;
- 7.4.1.17 Determine the Officers of the Company under Section 8.1;
- 7.4.1.18 Elect Officers of the Company under Section 8.2;
- 7.4.1.19 Approve certain disbursements under Section 8.5;
- 7.4.1.20 Authorize compensation of Officers under Section 8.6;
- 7.4.1.21 Delegate routine administrative matters to Officers under Section 8.7;
- 7.4.1.22 Remove and replace Officers or agents of the Company under Section 8.10;
- 7.4.1.23 Determine the duties of the Project Executive under Section 9.1;
- 7.4.1.24 Adopt a budget under Section 12.2;
- 7.4.1.25 Authorize loans from a Member to the Company under Section 12.5.6;
- 7.4.1.26 Determine the books and records to be maintained by the Company under Section 12.9.1;
- 7.4.1.27 Engage an accountant or other non-Member to prepare tax returns and financial documents under Section 12.9.2;

- 7.4.1.28 Determine the fiscal year of the Company under Section 12.10;
- 7.4.1.29 Authorize and make any necessary tax elections under Section 12.11;
- 7.4.1.30 Designate a Tax Matters Partner under Section 12.12;
- 7.4.1.31 Authorize the procurement of liability insurance for actions of certain Persons, Officers and employees under Section 13.2;
- 7.4.1.32 Determine deductibles of insurance procured by the Company under Section 13.4.1.1;
- 7.4.1.33 Determine an adequate amount of errors and omissions insurance under Section 13.4.1.2;
- 7.4.1.34 Authorize the procurement of additional insurance for the Company under Section 13.4.2;
- 7.4.1.35 Authorize or designate certain decisions in the event that the Company is liquidated and wound up under Section 14.2;
- 7.4.1.36 Engage outside accountants, legal counsel and other professionals; and
- 7.4.1.37 Accomplish any other action for which the voting percentage is not expressly stated in this Agreement.

7.4.2 No Modification Intended. The listing set forth in Section 7.4.1 is intended for convenience and such listing is not intended to modify any requirement of this Agreement for Majority Approval which is not listed above.

## **Section 7.5 CONTENTS OF NOTICE FOR MAJORITY AND SUPERMAJORITY APPROVAL.**

7.5.1 Supermajority Approval Actions. Notice that a matter requiring Supermajority Approval will be submitted to the Members for action shall be given in writing to each Member in accordance with the time period for notice set forth in Section 5.9, the delivery requirements set forth in Section 17.2 and the content requirements set forth in this Section 7.5.1. Accordingly, such notice for any action requiring Supermajority Approval must contain the following:

7.5.1.1 A description of the matter that will be submitted to the Members for Supermajority Approval; provided, however, that such notice shall not require such matter to be set forth in motion form, and further provided that if a motion with respect to such matter is included in the notice, such motion shall not otherwise prohibit the consideration and approval of the matter pursuant to a motion different than that which was set forth in the notice; and

7.5.1.2 Statement that the matter described in the notice is a matter that requires Supermajority Approval.

7.5.2 Majority Approval Actions. Notice that a matter requiring Majority Approval will be submitted to the Members for action shall be given in writing to each Member in accordance with the time period for notice set forth in Section 5.9, the delivery requirements set forth in Section 17.2 and the content requirements set forth in this Section 7.5.2. Accordingly, such notice for an action requiring Majority Approval need only describe the matter generally, without any specification on what approval is necessary; provided, however, that the failure to identify or describe in the notice a matter which requires Majority Approval shall not preclude the consideration and approval of such a matter at a meeting at which a quorum is present, and such matter may be raised and approved at such a meeting even if not identified or otherwise included in the notice of the meeting.

## **ARTICLE 8 OFFICERS**

**Section 8.1 OFFICER POSITIONS.** The Company shall have the following Officer positions: a Chair, a Vice Chair, a Treasurer, and such other Officer positions as may be approved from time to time by Majority Approval. The Company may have a Secretary. The Company may also have one or more Project Executives, whose responsibilities and duties are set forth in Article 9.

**Section 8.2 SELECTION.** The Officers shall be elected by Majority Approval at the first meeting of the Members and subsequently at each annual meeting of the Members, and every Officer must be an Authorized Representative of a Member at the time of the election; provided however, that the Chair and Vice Chair may not be Authorized Representatives for the same Member.

**Section 8.3 CONTINUED STATUS AS REPRESENTATIVE.** An Authorized Representative of a Member selected to serve in an Officer position may continue to be an Authorized Representative of a Member and shall to be entitled to vote as a Member's Authorized Representative (as otherwise set forth in Section 5.1.1, based upon the designation of the Authorized Representative on the Delivered Authorized Representative Designation Form) on all matters on which the Member for which the Authorized Representative serves is entitled to vote, regardless of whether the other Members present and voting are deadlocked.

**Section 8.4 DUTIES.**

8.4.1 Chair. The Chair shall preside at all meetings of the Members and shall perform such other executive functions as may be assigned to them from time to time by the Members by Majority Approval. In addition, the Chair shall be the Chief Executive Officer of the Company and shall, subject to the supervision and control of the Members, have general supervision, direction and control of the business, operation and Officers of the Company. The Chair shall have the general powers and duties of management usually vested in the offices of President and Chief Executive Officer of a corporation, as may be prescribed, expanded or limited by the Members by Majority Approval. In particular, the duties of the Chair shall, include but are not limited to the following:

8.4.1.1 Presiding at meetings of the Members;

8.4.1.2 Executing on behalf of the Company all agreements or other instruments and documents which the Members authorize to be executed in the name of and on behalf of the Company;

8.4.1.3 Exercising such other authority and performing such other duties as the Members shall delegate to that office; and

8.4.1.4 Keeping copies of all documents specified in Section 5.14.4.3, serving as the initial point of contact for all inquiries regarding the documents in the possession of the Chair and providing copies of such documents, as appropriate, in response to such inquiries.

8.4.2 Vice Chair. The Vice Chair shall assume the duties of the Chair in the Chair's absence, unwillingness to serve, resignation or removal and shall exercise such other authority and perform such other duties as the Members shall delegate to that office.

8.4.3 Secretary. The Secretary shall have the general powers and duties usually vested in the office of a secretary of a corporation, as may be prescribed, expanded or limited by the Members by Majority Approval. In particular, the duties of the Secretary shall include, but are not limited to, the following:

8.4.3.1 Taking and distributing minutes of all meetings of the Members as set forth in Section 5.14, except that the Secretary may delegate this function to the Project Executive appointed and acting in accordance with Section 9.1;

8.4.3.2 Maintaining those documents of the Company as set forth in Section 5.14;

8.4.3.3 Attending all meetings of the Members and recording all votes and the minutes of all proceedings;

8.4.3.4 Keeping, or cause to be kept, a register showing the names of the Members and their respective Membership Interests; and

8.4.3.5 Exercising such other authority and performing such other duties as the Members shall delegate to that office.

8.4.4 Treasurer. The Treasurer shall have the general powers and duties usually vested in the office of a treasurer of a corporation, as may be prescribed, expanded or limited by the Members by Majority Approval. In particular, the duties of the shall include, but are not limited to, the following:

8.4.4.1 Receiving, depositing and disbursing funds of the Company as directed by the Members and sending out invoices for payment of Capital Contributions by Members;

8.4.4.2 Keeping and maintaining, or to cause to be kept and maintained, adequate and correct accounting records of the Company;

8.4.4.3 Exercising such other authority and performing such other duties as the Members shall delegate to that office;

8.4.4.4 Representing the Member for whom such Treasurer is a Authorized Representative as the Tax Matters Partner for the Company under Section 12.12 and ensuring that all tax returns are timely filed;

8.4.4.5 Organizing and leading the Financial Committee if it is established and operating; and

8.4.4.6 Preparing the Annual Budget for the Members' approval pursuant to Section 12.2, if there is no Finance Committee established and operating.

**Section 8.5 DISBURSEMENT OF COMPANY FUNDS.** No funds of the Company shall be disbursed or withdrawn from any account in which such funds are deposited except upon the signature of either: (i) the Treasurer; or (ii) the Chair if the Chair obtains Majority Approval. Notwithstanding the foregoing, the signatures of the Treasurer and any other Officer are required for amounts in excess of \$500 or such other amount as the Members may agree upon from time to time by Majority Approval. Notwithstanding the Treasurer's authority hereunder to disburse or withdraw funds from any such account, the Treasurer may not make any disbursement without obtaining Majority Approval with respect to an expense which is listed as a line item on the Annual Budget, if such disbursement is in excess of the Cumulative Quarterly Budgeted Amount for such expense when such disbursement is added to prior disbursements for such line item expense during the applicable quarter. The "Cumulative Quarterly Budgeted Amount" shall mean the year-to-date line item amount listed for such expense on the Annual Budget's year-to-date quarterly budget report or year-to-date quarterly budget breakdown for the quarter within which the applicable distribution is made; provided that if no year-to-date quarterly budget report or year-to-date quarterly budget breakdown has been made, then the line item amount for each quarter shall be one-fourth of the line item amount listed for such expense on the Annual Budget.

**Section 8.6 COMPENSATION AND EXPENSES.** Unless the Members shall otherwise authorize by Majority Approval in the Members' sole and absolute discretion, no Officer or member of a Committee of the Company shall be entitled to compensation for serving in such position. Members, Officers, members of Committees and other designated agents, employees or contractors of the Company shall be entitled to reimbursement of expenses incurred incident to

the performance of their duties either in amounts explicitly authorized in the Company's budget as approved by the Members, or if not explicitly authorized in such budget, upon Majority Approval.

**Section 8.7 DELEGATION FOR ROUTINE ADMINISTRATION MATTERS.** By Majority Approval, the Members may by resolution delegate to the Officers, either to a designated Officer position or to the Officers collectively, authority to act on behalf of and in the name of the Company on such matters falling within the routine, day-to-day administrative affairs of the Company as may be defined by the resolution so adopted. The Officer or Officers with such delegated authority shall provide to the Members full and timely reports of the Officer's or Officers' activities in accordance with the resolution.

**Section 8.8 INDEPENDENT ACTIVITIES OF OFFICERS; NO FIDUCIARY OR OTHER DUTIES.** The Officers, notwithstanding this Agreement, may engage in whatever activities they choose in their capacities as employees, contractors, representatives or agents of a Member, whether the same are competitive with the Company or any other Member, without having or incurring any obligation to disclose or to offer any interest in such activities or the opportunity to do so to the Company or any other Member. The Company and the Members each acknowledge and agree that each Officer is and may be, in the Officer's capacity as an employee, contractor or agent of a Member, a competitor of each other Member or the Company and that the Officer in the course of and incident to such employment or affiliation may have and may hereafter develop businesses and interests which do or may compete or conflict with the businesses and interests of each other Member and of the Company. Each Officer is and shall remain free to do so without any duty of loyalty to the Company or to any Member or to disclose or account for such competing business and interests other than the duty which the Officer may have to the Member by which the Officer is employed or affiliated. Neither this Agreement nor any activity undertaken pursuant hereto shall prevent any Officer, or the Member by which the Officer is employed or with which the Officer is acting as a contractor or agent, from engaging in such activities, or require any Officer or such Member to disclose such activities to the Company or to any other Member, or require the Officer or such Member to permit the Company or any other Member to participate in any such activities, and as a material part of the consideration for the execution of this Agreement by each Member, the Company and each Member hereby waives, relinquishes, and renounces any such right to claim such participation or accounting. Further, it

is expressly understood and agreed that no Officer shall have any duty to the Company or to any Member by reason of acting as an Officer, including any duty of loyalty, duty of care or duty to act in good faith for the best interests of the Company or any Members, it being expressly understood and acknowledged that each Officer may act solely in the interest of the Member for whom the Officer is an employee, contractor, representative or agent to fullest extent permitted by applicable law. Notwithstanding the forgoing sentence, each Officer shall provide to the Members full and timely reports of such Officer's activities on behalf of the Company and shall not take any unauthorized action on behalf of the Company.

**Section 8.9 OFFICER TERMS.** The Officers of the Company shall be elected in the following manner: In years ending in even numbers, the Chair and Vice Chair shall be elected at the annual meeting of the Members for such year. In years ending in odd numbers, the Secretary and Treasurer shall be elected at the annual meeting of the Members for such year. Each Officer shall serve until his or her successor is duly elected and qualified, or until his or her earlier resignation or removal. Accordingly, a complete term for each Officer position is two years. Each Officer shall be eligible to be elected to any additional terms (consecutively or non-consecutively), or offices, without limitation.

**Section 8.10 OFFICER RESIGNATION, REMOVAL AND VACANCY.** Any Officer or agent may be removed, with or without cause, at any time by Majority Approval. Any Officer may resign at any time by giving written notice to the Secretary of the Company or to all other Members of the Company for which the Officer is not an Authorized Representative. Any such resignation shall take effect on the first date of receipt of such notice by the Secretary or by the other Members of the Company, unless a later time is specified in such notice of resignation; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office because of the expiration of an Officer's term, death, resignation, removal, disqualification or any other cause shall be filled by Majority Approval; otherwise, the vacancy shall remain unfilled. In addition, if at any time an Officer no longer is an Authorized Representative of a Member, such Officer shall be deemed to be disqualified from acting as an Officer and shall be considered to have resigned as an Officer automatically, without notice or further action, when such Officer is no longer an Authorized Representative of a Member.

**ARTICLE 9**  
**PROJECT EXECUTIVE POSITION**

**Section 9.1 GENERAL DESCRIPTION.** The Company may designate one or more individuals to be project executives (the “Project Executive”) for the Company. A Project Executive shall serve as an Officer of the Company and shall be the primary contact between the Company and the Vendor(s). The Project Executive shall be responsible for various duties set forth in the contract between the Company and the Vendor(s), or as otherwise determined by Majority Approval. The Project Executive may be compensated by the Company at a rate determined by Majority Approval, but in the absence of such Majority Approval, the services of each Project Executive may be provided voluntarily by one or more of the Members of the Company who may compensate each such Project Executive, without consultation with or notice to the Company as to the details of such compensation. The Company shall reimburse each Project Executive for certain expenses upon Majority Approval (either separately with respect to certain expenses or as part of the Company’s annual budget), and unless otherwise determined by a Majority Approval, the Project Executive shall be considered an independent contractor, and shall not be considered an employee of the Company. Unless waived by Majority Approval, the Company shall require each Project Executive to enter into a confidentiality agreement with the Company.

**Section 9.2 GENERAL DUTIES.** The Project Executive, as an Officer of the Company, shall be responsible for the duties set forth in the contract between the Company and the Vendor(s) and for those additional duties determined by Majority Approval. In addition to the foregoing, the Members hereby agree that the Project Executive shall:

9.2.1 Attend all Company meetings and conference calls;

9.2.2 Create written reports regarding meetings required to be attended by the Project Executive (other than meeting of the Members of the Company, which are governed by Section 5.11), including but not limited to meetings of the ENUM Forum and Project Executive meetings. All such written reports shall include, at a minimum, a list of the attendees at such meetings, agenda topics brought before such meeting, a list of key points discussed at such meetings, proposed agreements reached at such meetings, timelines established for reaching

resolutions of issues and actions discussed at such meetings, and a list of who has the responsibility for reaching a resolution on issues and actions discussed at such meetings;

9.2.3 Distribute the written reports set forth in Section 9.2.2 to the Members within five business days following attendance at such meetings;

9.2.4 Provide a monthly report to the Company regarding the Vendor(s)' performance under the contracts between the Company and the Vendor(s), based upon the terms set forth in such contracts;

9.2.5 Take and distribute written minutes for all regular, annual and special Company meetings and conference calls if directed by Majority Approval pursuant to Section 5.11;

9.2.6 Track resolution of all open issues concerning the System and document such resolutions; and

9.2.7 Prepare a project management report for the coming year, which outlines project releases, timelines and activities concerning the System.

## **ARTICLE 10 MANAGEMENT**

**Section 10.1 GENERAL PROVISION.** Except as is set forth in Article 8 relating to Officers of the Company and except to the extent such right or authority is otherwise conferred by the Members on the Officers, the business and affairs of the Company shall be managed by the Members, and the management and conduct of the business of the Company is vested in the Members. The Members shall direct, manage and control the business of the Company and shall have full and complete authority, power and discretion to make any and all decisions and to do any and all things which the Members deem to be reasonably required in light of the Company's business and objectives.

**Section 10.2 ACTIONS BY MEMBERS; NO INDIVIDUAL AUTHORITY.** Only the actions of the Members acting in accordance with this Agreement shall be the act of the Members and of the Company. No Member acting alone, unless expressly authorized, empowered or conferred delegated authority by proper approval of the Members or by this Agreement, shall have any authority to act for, to sign for, to bind or to assume or undertake any obligation, debt, liability,

duty or responsibility on behalf of any other Member or the Company or pledge any Member's or the Company's credit or property.

## **ARTICLE 11 OPERATIONAL MATTERS**

**Section 11.1 ADMINISTRATION AND GENERAL OPERATING PRINCIPLES.** Unless the Members determine otherwise by Supermajority Approval, the System shall be established and operated by one or more Vendors under a contract between the Vendors and the Company. The Members recognize the importance of the following general operating principles in guiding them in the implementation of ENUM within the countries under Country Code 1. These principles have strong roots in proven telecommunications and technology policies and are intended to maximize opportunities for industry, while protecting the security and privacy of consumers:

11.1.1 Preserve national sovereignty: Any participation by any country within CC1 in a coordinated, global approach must preserve that nation's national sovereignty. That is, every participating nation should have the right to determine whether and in what manner ENUM or any alternative is implemented domestically within each of the countries that make up the NANP.

11.1.2 Support competition: Within each country, domestic implementation of ENUM must also allow for competition among providers and operators on as many levels as feasible.

11.1.3 Promote innovation: Adoption of ENUM or ENUM alternatives must encourage innovation and promote advanced voice and data services through new products, services, and vendors.

11.1.4 Protect users' security and privacy: Within each country, domestic implementation of ENUM must be done in a manner that maximizes the privacy and security of user data entered in the ENUM DNS domain and adheres to national, state, and/or industry requirements. For example, ENUM providers should develop systems to ensure the authentication and authorization of users who choose to enter and update their personal information.

11.1.5 Minimize regulation: Governance of ENUM on the international and national level must be accomplished through the least regulatory means possible. For example, a

coordinated, global approach to ENUM should not give rise to a new regulatory apparatus to govern international and domestic implementation.

11.1.6 Preserve opportunity for alternative deployments: The implementation of ENUM within any country of CC1 must not preclude alternative deployments of ENUM or other solutions that may provide competitive alternatives to ENUM.

11.1.7 Allow for interoperability: In order to support competition and the emergence of alternative technologies and networks, the implementation of ENUM within CC1 should accommodate alternative deployments' interconnection with the ENUM tree.

11.1.8 Preserve stability and security: Any implementation of ENUM must not diminish the stability and security of the Internet or telecommunications systems within CC1.

**Section 11.2 REQUEST FOR PROPOSALS.** No invitation to bid which invites bids to the Company and no request for proposal which soliciting proposals to the Company shall be issued by the Company either: (i) with respect to the selection of a Vendor for the establishment and operation of a System; or (ii) with respect to the development of any modification to a System unless such invitation to bid or request for proposal has been approved by Supermajority Approval, but approval of any such contract, modification, extension or revision with respect to the foregoing shall require Supermajority Approval.

**Section 11.3 NEUTRALITY REQUIREMENTS FOR VENDORS AND MEMBERS.** A Vendor shall not be a Member or an Affiliate of a Member.

**Section 11.4 REQUIREMENTS APPLICABLE TO VENDOR CONTRACT.** Subject to the rights of the Members to waive any particular requirement or requirements by Supermajority Approval, the Company shall not enter into a contract with a Vendor for the establishment or operation of the System, or otherwise amend, revise, extend or alter such contract, unless the contract (including after such amendment, revision, extension or alteration) substantially satisfies the requirements specified in this Section 11.4.

11.4.1 Limitation of Company Liability. The contract shall provide: (A) that the Company shall have no liability under the contract or otherwise (i) for the Vendor's costs or expenses or for any compensation to the Vendor for the establishment or operation of the System or (ii) for services provided by the Vendor incident to the provision of System services to any

Person authorized to purchase such services; (B) that the Vendor shall look solely to revenues generated by the Vendor from the sale by the Vendor of the services of the System in the course of the Vendor's operation of the System for the recovery of any costs or expenses of the Vendor or of any compensation to the Vendor for the establishment and operation of the System; (C) that the Vendor shall look solely to a Person purchasing goods or services provided by the Vendor for the payment for such goods or services and the Company shall have no liability therefor; (D) that neither the Company nor the Members of the Company have any obligation to purchase goods or services from the Vendor and that neither the Company nor any Member of the Company promises any level of such purchases; and (E) that the Company's rights under the contract with the Vendor shall not be impaired or subject to any defense or offset on account of the breach by any Member or any other Person of any obligation owing to the Vendor arising out of the purchase of any goods and services.

11.4.2 Ownership of Certain Property. The contract shall provide that the Company shall have ownership in, or an exclusive or a nonexclusive license to use all intellectual property produced by the Vendor incident to the establishment or operation of the System, whether produced at the instance of the Company or by the Vendor on the Vendor's own initiative, including the ownership or license rights to any software, data (excluding data proprietary to a Member or other Person purchasing goods or services from the Vendor not essential to the operation of the System), and any matter which is or may be subject to any patent, copyright, or mark registration. The contract shall also provide that the Company shall own and hold for the benefit of the Members of the Company, all right, title, and interest, including all copyright, patent and other intellectual property rights pertaining thereto, in and to the ENUM Tier 1 Registry compiled in connection with the establishment or operation or use of the System; provided, however, that it is expressly understood and agreed that ownership of the ENUM Tier 1 Registry shall not, nor shall it be deemed to, bestow upon the Company, any of its Members or any Vendor any right, title or interest in and to any user data or to grant any license or other right, whether revocable or irrevocable, or whether exclusive or non-exclusive, with respect to such user data, it being expressly understood and agreed by the Company and the Members that all such rights with respect to the user data shall be governed by and set forth in any user agreements. The Company shall grant to the Vendor a non-exclusive license to use the ENUM Tier 1 Registry for the purpose of the Vendor fulfilling its contract obligations to the Company

during the term of such contract between the Vendor and the Company. The contract shall provide that upon the termination, cancellation, or expiration of the contract between the Vendor and the Company, or at any time upon the request of the Company or a Member, the Vendor shall deliver a complete copy of the ENUM Tier 1 Registry to the Company and all of the rights and licenses granted by Company to the Vendor shall terminate. The contract shall provide that the Vendor shall provide to the Company all technical information and know-how and such software necessary to enable the Company, Members, or their respective designees, upon the termination, cancellation, or expiration of the contract between the Vendor and the Company, to operate the ENUM Tier 1 Registry either through the System or through a System provided to the Company through a successor Vendor, and a license to use all such necessary technical information and know-how and such software and hardware as is necessary to manipulate, use, and operate the ENUM Tier 1 Registry for such time as may be reasonably necessary to convert the ENUM Tier 1 Registry to and manipulate, operate and use in a format useable under a different configuration of software and hardware, but this requirement shall not permit the Company to operate the ENUM Tier 1 Registry either through the System or through a System provided to the Company through a successor Vendor except upon the termination, cancellation, or expiration of the contract between the Vendor and the Company and thereafter.

11.4.3 No Discrimination. The contract shall provide that the goods and services provided by the Vendor incident to the operation of the System shall be provided to any Person authorized to purchase such goods and services on the same uniform terms and conditions on which such goods or services are provided to any other Person, without discrimination.

11.4.4 No Modifications Without Company Approval. The contract shall provide that the Vendor shall not undertake to make any modifications to the System at the instance of any Member or of any other Person or by the Vendor on the Vendor's own initiative without the prior approval of the Company as set forth in Section 11.5.

11.4.5 Benefit of Modifications. The contract shall provide that the benefits of any modifications to the System made by the Vendor on the Vendor's own initiative, at the direction or request of or upon the approval of the Company, or at the instance of any other Person shall be made available to each Member or other Person authorized to purchase goods and services from

the Vendor on the same, uniform terms and conditions on which the benefits of such modifications are made available to any other Member or other Person, without discrimination.

11.4.6 Limitation on Contracts with Members and Affiliates in Connection with the System. The contract shall provide that the Vendor shall not enter into a contract with any Member or an Affiliate of a Member for the purchase by the Vendor of goods or services to be provided by the Member or an Affiliate of a Member incident to the establishment or operation of the System except in accordance with the requirements of this Section 11.4.6. The Vendor may enter into such an agreement with a Member or an Affiliate of a Member only if the contract or proposed contract between the Vendor and the Member or an Affiliate of the Member does not represent assignment or subcontracting all or substantially all of the rights or obligations of the Vendor under its contract with the Company for the establishment or operation of a System, the determination of which shall be made solely by Majority Approval of the Members.

11.4.7 Vendor Confidential Information. The contract shall provide that to the extent the Vendor discloses Vendor Confidential Information to the Company or to a Member, or the Company or a Member derives such Vendor Confidential Information incident to the Vendor's establishment or operation of the System, the Company and the Members shall have the right to use such Vendor Confidential Information and to disclose such Vendor Confidential Information to the Members and to the Company's and the Members' employees, agents, contractors, consultants and Affiliates to the extent necessary to permit the Company to carry out the Company's and the Member's rights and responsibilities under, and to accomplish the purposes of, the contract. The Vendor shall disclose to the Company and the Members such Vendor Confidential Information as may be necessary to permit the Company and the Members to carry out their responsibilities under, and to accomplish the purposes of the contract. The Company and the Members shall not use such Vendor Confidential Information for any other purpose. No Member or Affiliate of a Member who obtains access to such Vendor Confidential Information of the Vendor may use such information for any other purpose, including use in any competitive activities of such Member. The Company and the Members (and their Affiliates) shall use no less than a reasonable degree of care to protect the Vendor's Confidential Information. The Company and each Member agrees to establish and to maintain appropriate internal mechanisms to ensure that its representatives, Affiliates, employees, agents, contractors and consultants shall not disclose Vendor Confidential Information disclosed to the Company except for such

purposes. Subject to the obligations set forth herein, it is expressly agreed that Members may disclose Vendor Confidential Information to their Affiliates.

11.4.8 No Gratuities. The contract shall provide that the Vendor shall not accept gratuities from any Member or other purchaser of System goods and services except that this prohibition shall not apply to payment by a Member or other purchaser of the cost of meals of Vendor staff incident to business meetings between Vendor staff and such Member or other purchaser, holiday gifts, and similar *de minimis* items if: (i) the Vendor establishes internal procedures to account for such expenditures for the Vendor which procedures shall be approved by the Company and in good faith complies with such procedures; (ii) the aggregate of such expenditures by any single Member or other purchaser in a calendar year reported to the Vendor in accordance with the procedures established by the Vendor does not exceed \$1,000.00; and (iii) upon request by the Company, the Vendor makes a report of such expenditures to the Company.

#### **Section 11.5 SYSTEM MODIFICATIONS.**

11.5.1 No Modifications Without Company Approval. No modification shall be made to the System without the prior request, direction, or authorization of the Company. The Company may request or direct a Vendor to make modifications to the System or authorize a Vendor to make modifications recommended by the Vendor or by any Member or other Person. However, except as set forth in Section 11.5.2.1 and Section 11.5.2.2, the Company shall not request or direct a Vendor to make modifications to the System or authorize the Vendor to make modifications recommended by the Vendor or any Member or other Person except upon Supermajority Approval.

11.5.2 Majority Approval. The Company upon Majority Approval may authorize modification to the System at the instance of a Member or other Person if either:

11.5.2.1 (i) the making of such modification does not delay the commencement or completion of modifications to the System authorized by a Supermajority Approval, (ii) such modification does not render the System less useful to any Member, and (iii) the benefits of such modification shall be made available to all Members or other purchasers of the goods and services from the Vendor on the same, uniform terms and conditions on which the benefits of such modifications are made available to the requesting Member or any other Member or other Person, without discrimination; or

11.5.2.2 (i) the cost of such modification is funded entirely by the Member or Members or other Persons seeking such modification in accordance with the funding and funding recovery methods established with the Majority Approval of the Members and such Member, Members, or other Persons seeking such modification, and, if the System is being operated by a Vendor, the Vendor agrees in writing with the Company that such cost shall not be recovered from any Member or Person other than the Member, Members, or other Persons seeking the modification, (ii) the making of such modification does not increase any cost to those purchasing goods and services made available by the System, (iii) the making of such modification does not delay the commencement or completion of modifications to the System authorized by Supermajority Approval, (iv) such modification does not render the System less useful to any Member, and (v) the benefits of such modification shall be made available to all Members or other purchasers of the goods and services from the Vendor on the same, uniform terms and conditions on which the benefits of such modifications are made available to the requesting Member and to any other Member or other Person, without discrimination.

11.5.3 Conditional Authorization. The Company may otherwise condition its modification to the System at the instance of a Member or other Person in accordance with Section 11.5.2 on such reasonable terms and conditions as the Company may determine appropriate to achieve the purposes of this Agreement, including, without limitation: (1) a requirement that the modification be made within a schedule which does not interrupt the continuing utility of the System to all Members; and (2) a requirement that the modification be made within a schedule which does not delay the completion of modifications previously authorized by the Company.

## **Section 11.6 MEMBER CONFIDENTIAL INFORMATION.**

11.6.1 Consent to Disclosure of Member Confidential Information. To the extent any Member discloses Member Confidential Information to the Company, the Member may consent to the disclosure by the Company to its Members and use of such Member Confidential Information by the Company and its Members when and to the extent necessary to permit the Company to carry out the purposes of this Agreement and the Company's rights and responsibilities under the Company's contract with a Vendor. Any such consent must be obtained by the Company from the disclosing Member in writing. When, such disclosure and

use by Company and its Members is permitted by such prior written consent from the disclosing Member, the Member Confidential Information shall be used by the Company and its Members to whom the Member Confidential Information is disclosed by the Company only for the purposes of permitting the Company or any Member to carry out the purposes of this Agreement and the Company's rights and responsibilities under the Company's contract with a Vendor. The Company or any other Member may not use such Member Confidential Information for any other purpose, and no Member who obtains access to such Member Confidential Information of another Member may use such information for any other purpose, including use in any competitive activities of such Member. The Company and each Member who acquires access to Member Confidential Information shall use the same degree of care used to protect the Company's or the Member's own Member Confidential Information, but in any case using no less than a reasonable degree of care. Disclosure to the Company or any Member of Member Confidential Information does not permit the Company to disclose the information except to the Company's employees, agents, contractors and consultants or Affiliates and to its Members solely for the purpose consented to in writing by the disclosing Member of permitting the Company and the Members to exercise rights and responsibilities under this Agreement and the Company's rights and responsibilities under the Company's contract with a Vendor. The Company and each Member agrees to establish and to maintain appropriate internal mechanisms to ensure that its representatives, employees, agents, contractors, consultants and Affiliates shall not disclose Member Confidential Information of another Member disclosed except for such purposes.

11.6.2 Limited Protection of Member Confidential Information. The Company or a Member ("Recipient Member") has no obligation to protect any portion of information which may otherwise be Member Confidential Information of another Member ("Disclosing Member") if:

11.6.2.1 The information is made publicly available by the Disclosing Member or lawfully disclosed by a Person who is not a Member or a Person acting for the Member;

11.6.2.2 The information is lawfully obtained by the Recipient Member from any source other than a Person to whom disclosure was made pursuant to this Agreement;

11.6.2.3 The information was previously acquired by the Recipient Member without an obligation to keep the information confidential;

11.6.2.4 The information is required to be disclosed by the Recipient Member to any governmental agency or court of competent jurisdiction by written order, subpoena, decree, or other compulsory process; provided, however, that, unless such action is prohibited by law, the Recipient Member provides written notice of the Recipient Member's receipt of such compulsory process and notice that the Recipient Member intends to comply therewith unless the Disclosing Member takes such action as may be necessary to stay such disclosure or excuse the Recipient Member from such disclosure; or

11.6.2.5 The information is developed independently without use of the Disclosing Member's Member Confidential Information.

**Section 11.7 ACCESS TO SYSTEM.** Nothing in this Agreement or in the contract between the Company and a Vendor shall require Membership in the Company by any Person as a condition to the purchase by such Person of goods and services from a Vendor.

**Section 11.8 APPLICABILITY TO SUCCESSOR VENDORS.** Subject to Section 11.1, the provisions of this Article 11 apply to the issuance of invitations to bid or request for proposal and the selection of and contract between the Company and a third party as a Vendor following the expiration or termination of the contract between the Company and the initial and any subsequent Vendor.

## **ARTICLE 12 FINANCE**

### **Section 12.1 INITIAL CAPITAL CONTRIBUTIONS.**

12.1.1 Members. For those Persons that become Members of the Company after the filing of the Certificate of Formation, the amount of that Person's initial contribution to the capital of the Company to be admitted as a Member of the Company upon satisfaction of the criteria set forth in Section 4.1 shall be the sum of (i) \$10,000 plus (ii) the Person's Pro Rata Share of the Remaining Annual Budgeted Assessment, such sum referred to in this Section 12.2 as such Person's "Initial Capital Contribution"; provided, however, that no Founding Member's Initial Capital Contribution shall exceed \$35,000 and that no other Member's Initial Capital

Contribution shall exceed \$75,000. For purposes of the preceding sentence the following definitions shall apply: (1) “Pro Rata Share” shall mean the fraction, the numerator of which is one and the denominator of which is the number of Members that existed at the time of the approval by the Members of the Annual Budgeted Assessment for the current fiscal year as defined in Article 1; and (2) “Remaining Annual Budgeted Assessment” shall mean the product of (A) the Annual Budgeted Assessment for the current fiscal year, times (B) that fraction whose numerator is the number of calendar months (including the current calendar month) remaining in the current fiscal year for which the Annual Budgeted Assessment relates and whose denominator is twelve; provided, however, any Member’s Remaining Annual Budget Assessment shall be limited to such amount that would not require a Founding Member’s Initial Capital Contribution to exceed \$35,000 or any other Member’s Initial Capital Contribution to exceed \$75,000. The Treasurer is authorized to issue an invoice, and the Company shall use its best efforts to provide an invoice, to each Person seeking admission as a Member requesting payment of the Initial Capital Contribution; however, failure to receive such an invoice will not excuse or otherwise provide a defense for a Person’s failure to pay the full amount of the Initial Capital Contribution within the time period set forth in Section 4.2.1.2.

12.1.2 Time of Admission. A Person shall be admitted as a Member of the Company upon satisfaction of the criteria and conditions set forth in Sections 4.1 and 4.2.1.

**Section 12.2 ADDITIONAL CONTRIBUTIONS.** Except as set forth in Section 12.1 and this Section 12.2, no Additional Capital Contributions to the Company shall be required. At the first meeting of the Members and at any subsequent annual meeting of the Members, or, if the Members fail to act at the annual meeting, as soon thereafter as may be practical under the circumstances either at a later meeting of the Members or by action of the Members without a meeting as permitted under Section 5.12, the Members by Majority Approval shall adopt a budget for the operation of the Company for the fiscal year in which such annual meeting occurs or the following fiscal year, as the Members may elect by Majority Approval (the “Annual Budget”). Each Member shall be assessed and shall be liable to the Company for an Additional Capital Contribution equal to its Pro Rata Share of the Annual Budgeted Assessment; provided, however that no Member’s Pro Rata Share of the Annual Budgeted Assessment for any calendar year shall exceed \$75,000. The Treasurer is authorized, and the Company will use its best efforts, to deliver an invoice to each Member requesting payment of the Additional Capital

Contribution on or prior to September 30<sup>th</sup> of each year; however, the failure to receive such an invoice will not excuse or otherwise provide a defense for a Person's failure to pay the full amount of the Additional Capital Contribution as set forth in the Agreement. Further, at any time before the next annual meeting, if the budget adopted is determined by Majority Approval to be insufficient to satisfy the costs and expenses of the operation of the Company, then upon further Majority Approval, a revised budget for the current fiscal year and a revised Annual Budgeted Assessment based upon the revised budget shall be established, and each Member shall be assessed and shall be liable to the Company for a further Additional Capital Contribution equal to its Pro Rata Share of the additional amount required pursuant to such revised budget; provided, however, that for purposes of computing such Pro Rata Share under this sentence, the denominator shall equal the number of Members that exist at the time of the approval of this revised budget; provided, however that no Member's Pro Rata Share of the revised Annual Budget Assessment for any calendar year shall exceed \$75,000. The Treasurer is authorized, and the Company will use its best efforts, to deliver an invoice to each Member requesting payment of the further Additional Capital Contribution; however, the failure to receive such an invoice will not excuse or otherwise provide a defense for a Person's failure to pay the full amount of the further Additional Capital Contribution as set forth in the Agreement.

**Section 12.3 SUSPENSION OF VOTING RIGHTS.** If a Member fails to pay to the Company the full amount of any Additional Capital Contribution by the Contribution Default Date (which is 60 days after the due date specified by the Company for such payment), a Dissociation Event under Section 4.5.2.3 shall be deemed to occur, and such Member's voting rights and rights to participate in the management of the business of the Company shall automatically be suspended pursuant to Section 4.6.2 and 4.7.2. Such failure to pay may be cured by actually paying the entire amount of such Additional Capital Contribution on or before the 30<sup>th</sup> day after the Contribution Default Date, it being expressly understood that payment shall only be considered made if actually received by the Company. If a Member fails to pay the Additional Capital Contribution under this Section 12.3 on or before the 30<sup>th</sup> day after the Contribution Default Date, an Event of Withdrawal as set forth in Section 4.7 shall be deemed to have occurred immediately and without further action or notice by the Company. If the Company is required to collect the amount due through an attorney-at-law, the Company shall, in addition to the principal and interest due, be entitled to recover all costs and expenses of such action, including

reasonable attorneys' fees actually incurred by the Company. The remedies set forth in this Section 12.3 represent the sole and exclusive remedies that may be sought by the Company for failure by a Member to make a Capital Contribution.

**Section 12.4 NO THIRD PARTY BENEFIT.** The provisions of this Article 12 relating to Additional Capital Contributions are for the exclusive benefit of the Company and not for the benefit of any creditor of the Company or other third party. In no event shall any creditor, any trustee in bankruptcy or receiver of the Company, or any other Person have any right to call for any such Additional Capital Contributions or to require any Member to pay any obligation of the Company.

**Section 12.5 CAPITAL ACCOUNTS.**

12.5.1 General. An individual capital account (the "Capital Account") shall be maintained for each Member. The Capital Account of a Member shall be determined, maintained and adjusted in accordance with Section 704(b) of the Internal Revenue Code, the Treasury Regulations promulgated thereunder and as specifically set forth in this Section 12.6.

12.5.2 Increases to Capital Accounts. The Capital Account of each Member shall be increased by (1) the fair market value of such Member's Initial Capital Contribution and any Additional Capital Contributions (decreased by any liabilities secured by the contributed property if the liabilities are assumed by the Company and increased by the Member's share of such assumed liabilities), (2) such Member's distributive or allocated share of Company Net Profits, (3) the amount of any Company liabilities that are assumed by such Member, and (4) any upward adjustment provided for under Section 12.5.8 (relating to distributions of appreciated or depreciated property) or under Section 12.6 (relating to special basis adjustment). Each Member's share of such liabilities shall be determined in the same manner as each Member's share of Company Net Profits is determined, or otherwise in accordance with the Code and applicable Regulations.

12.5.3 Decreases in Capital Accounts. The Capital Account of each Member shall be decreased by (1) the amount of cash distributed to such Member pursuant to any provision of this Agreement, (2) the fair market value of any property distributed to such Member pursuant to any provision of this Agreement (decreased by any liabilities secured by the distributed property if the liabilities are assumed by the Member and increased by the Member's share of such assumed

liabilities), (3) such Member's distributive or allocated share of Company Net Losses, (4) the amount of any liabilities of such Member that are assumed by the Company, (5) any downward adjustment provided for under Section 12.5.8 (relating to distributions of appreciated or depreciated property) or under Section 12.6 (relating to special basis adjustment), and (6) the Member's share of all expenses characterized as non-deductible, non-amortizable syndication expenses under Regulation Section 1.709-2(b). Each Member's share of such liabilities and such expenses shall be determined in the same manner as each Member's share of Company Net Losses is determined, or otherwise, in accordance with the Code and applicable Regulations.

12.5.4 Transfers. In the event any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

12.5.5 No Interest on or Return of Capital Account. No Member shall be entitled to any interest on such Member's Capital Account. No Member shall have the right to demand or to receive all or any part of such Member's Capital Account except as specifically provided in this Agreement.

12.5.6 Loans to the Company. In the event the Company has insufficient funds to meet its obligations as they come due and to carry out its routine, day-to-day affairs, then upon obtaining the Majority Approval of the Members, and in lieu of obtaining required funds from third parties or selling its assets in order to provide required funds, the Company may, but shall not be required to, borrow necessary funds from one or more of the Members who offer to loan such funds to the Company; provided, however, that the terms of such borrowing must be commercially reasonable and the Company may not pledge its assets to secure such borrowing. In the event any Member pays a Company debt or obligation, such payment may be treated as a loan by the Member to the Company, which loan shall be payable on demand of the Member and shall bear interest at a commercially reasonable rate. Loans and repayments on loans made between a Member and the Company shall not affect the Capital Account of any Member, except to the extent the parties to the loan transaction agree to treat a portion of the outstanding loan as a contribution from or distribution to the Member in partial or complete satisfaction of the loan.

12.5.7 Allocations with Respect to Contributed Property. If, on the formation of the Company or if at any time during the term of the Company, any Member contributes to the

Company property with an adjusted basis to the contributing Member which is more or less than the agreed fair market value and which is accepted by the Company at the time of its contribution, the taxable income, gain, loss, deductions and credits with respect to such contributed property for tax purposes only (but not for purposes of calculating the Members' respective Capital Accounts) shall be shared among the Members so as to take account of the variation between the basis of the property to the Company and its agreed fair market value at the time of contribution, pursuant to Section 704(c) of the Code.

12.5.8 Adjustments for Distributions of Property. If the Company distributes property to one or more Members, whether or not in liquidation of the Company, the Capital Accounts of the Members shall first be adjusted to reflect the manner in which the unrealized gain or loss inherent in the distributed asset (which has not previously been reflected in such Capital Accounts) would be allocated among the Members if there were a taxable disposition of such asset for its fair market value on the date of distribution. The fair market value of such asset shall be that value agreed upon by the Company (acting through the non-distributee Members) and the distributee Member. If such agreement cannot be reached within fifteen days after either such party has notified the other party in writing, then such value shall be determined by a qualified appraiser selected by the Company.

12.5.9 Intent. The provisions of this Agreement relating to the maintenance of the Capital Accounts are intended to comply with Regulation Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with those Regulations. To the extent such provisions are inconsistent with those Regulations, the Capital Accounts shall be maintained in accordance with those Regulations in a manner determined by Majority Approval, in a manner which most closely reflects the provisions of this Agreement.

## **Section 12.6 SPECIAL TAX RULES.**

12.6.1 Code Section 704(c) Allocations. Despite any other provision of this Agreement, for tax purposes and not for book or Capital Account purposes, allocations shall be made under Code Section 704(c) and the Regulations promulgated thereunder. Code Section 704(c) generally relates to allocating the difference between the value and the basis of contributed property to the contributing Member.

12.6.2 Minimum Gain Chargeback. Notwithstanding any other provision of this Agreement and except as provided in Section 1.704-2(f) of the Regulations, if there is a net decrease in the Company's minimum gain as determined under Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations during a taxable year of the Company, then the Capital Accounts of each Member shall be allocated items of income (including gross income) and gain for such year (and, if necessary, for subsequent years) in an amount equal to the total net decrease in the Company's minimum gain multiplied by the Members' percentage share of the Company's minimum gain at the end of the preceding taxable year determined in accordance with Section 1.704-2(g) of the Regulations. The foregoing sentence is intended to comply with the minimum gain chargeback requirement of Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. In any taxable year that the Company has a net decrease in the Company's minimum gain, if the minimum gain chargeback requirement would cause a distortion in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion, the Members may in their discretion (and shall, if requested to do so by a Member) seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Regulation Section 1.704-2(f)(4).

12.6.3 Limitation. No allocations of loss, deduction and/or expenditures described in Section 705(a)(2)(B) of the Code shall be charged to the Capital Accounts of any Member if such allocation would cause such Member to have or to increase a Deficit Capital Account. The amount of the loss, deduction and/or Code Section 705(a)(2)(B) expenditure which would have caused a Member to have a Deficit Capital Account shall instead be charged to the Capital Account of any Members which would not have a Deficit Capital Account as a result of the allocation, in proportion to their respective Capital Account balances, or, if no such Members exist, then to the Members in accordance with their Membership Interests.

12.6.4 Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Regulations, which create or increase a Deficit Capital Account of such Member, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years)

shall be specially allocated and credited to the Capital Account of such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Deficit Capital Account so created as quickly as possible. It is the intent that this Section 12.6.4 be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Regulations.

12.6.5 Section 754 Election. In the event of the transfer of a Member's Membership Interest or upon the death of an individual Member, or in the event of the distribution of Company assets to any Member, the Company may file an election, in accordance with applicable Regulations, to cause the basis of the Company's assets to be adjusted for federal income tax purposes as provided by Code Sections 734 and 743. Adjustments to the basis of the Company property resulting from such elections shall be entered in the books of the Company and shall be credited to or charged against the Capital Accounts of the Member or Members whose transactions gave rise to such adjustment or otherwise in the manner provided in Regulation section 1.704-1(b)(2)(iv)(m).

## **Section 12.7 ALLOCATION OF PROFITS AND LOSSES.**

12.7.1 Net Profits. After giving effect to the special allocations set forth in Section 12.7, Net Profits for any taxable year of the Company shall be allocated as follows:

12.7.1.1 First, to those Members in proportion to and to the extent of the excess, if any, of (i) the cumulative Net Losses allocated to such Members pursuant to Section 12.8.2 for all prior taxable years, over (ii) the cumulative Net Profits allocated to such Members pursuant to this Section 12.7.1 for all prior taxable years; and

12.7.1.2 The balance, if any, to the Members in proportion to their respective Membership Interests.

12.7.2 Net Losses. After giving effect to the special allocations set forth in Section 12.7, Net Losses for any taxable year shall be allocated as follows:

12.7.2.1 First, to the Members in proportion to their respective Interests; provided, however, that Net Losses shall not be allocated pursuant to this Section 12.7.2 to the extent such allocation would cause any Member to have or to increase a Deficit Capital Account at the end of such taxable year; and

12.7.2.2 The balance, if any, to those Members without Deficit Capital Accounts at the end of such taxable year, pro rata in accordance with their positive Capital Account balances, or if no such Members exist, then to the Members in accordance with their respective Membership Interests.

12.7.3 Change in Member's Interest; Recapture. If there is a change in any Member's Membership Interest in the Company during a taxable year, each Member's distributive share of Net Profits or Net Losses or any item thereof for such taxable year shall be determined by any method prescribed by Code Section 706(d) and the Regulations promulgated thereunder and that takes into account the varying Membership Interests of the Members of the Company during such taxable year. Upon the sale or other transfer of any asset of the Company, any recapture of depreciation deductions or other deductions previously taken shall be allocated to the Members to whom such deductions were originally allocated, and any recapture of investment tax credit shall be allocated to the Member to whom such credit was originally allocated.

## **Section 12.8 DISTRIBUTIONS PRIOR TO DISSOLUTION AND TERMINATION.**

12.8.1 Distributions of Capital Contributions. Prior to the dissolution and termination of the Company pursuant to Section 14.1, no distributions shall be made by the Company to the Members without Supermajority Approval. Any distributions under this Section 12.8 shall be made to the Members in proportion to each Member's cumulative Capital Contributions, which are actually received by the Company.

**Section 12.9 BOOKS, RECORDS AND REPORTS.**

12.9.1 Maintenance of Books and Records. The books and records of the Company shall be maintained in accordance with this Agreement by the Officers designated in Article 8 or by such other Person, designated by the Majority Approval of the Members, on behalf of the Company and shall be available for examination and copying by any Member or its duly-authorized representatives, during regular business hours. Such books and records shall include the records required under the Limited Liability Company Act and such other books and records as the Members, by Majority Approval of the Members, may direct be kept and maintained. The costs of preparing and maintaining such books and records shall be an expense of the Company. The costs of copying records shall be an expense of the Member requesting a copy.

12.9.2 Duty to Provide Tax Documents. The Treasurer shall cause the Company to furnish to the Members within ninety days of the end of each fiscal year: (i) a complete accounting of the affairs of the Company, including a copy of the Company's tax return for such fiscal year; and (ii) appropriate reports, schedules, and information to be used by the Members for reporting their respective shares of the profits and losses of the Company for income tax purposes. Upon Majority Approval of the Members, the Company may engage an accountant or other non-Member to prepare tax returns and related tax and financial documents, and the cost of preparing such tax returns and tax and financial documents shall be an expense of the Company.

**Section 12.10 FISCAL YEAR; METHODS OF ACCOUNTING.** The fiscal year of the Company and the method of accounting to be used in keeping the books of the Company shall be determined by Majority Approval.

**Section 12.11 TAX ELECTIONS.** All tax elections required or permitted to be made by the Company shall be made by the Majority Approval.

**Section 12.12 TAX MATTERS PARTNER.** Unless the Members by Majority Approval otherwise designate another Member to serve such function, the Member whose Authorized Representative serves as Treasurer of the Company shall serve as the "Tax Matters Partner" under the Internal Revenue Code and the Regulations adopted thereunder and in any similar capacity for the purposes of compliance with any state or local law.

**ARTICLE 13**  
**LIMITATION OF LIABILITY; INDEMNITY; AND INSURANCE**

**Section 13.1 LIMITATION OF LIABILITY.**

13.1.1 Limitation of a Member's Liability. A Member shall not be liable, solely by reason of being a Member, to any Person under a judgment, decree, order of any court or any administrative or arbitral body, or in any other manner, for a debt, obligation, or liability of the Company, whether arising in contract, tort, or otherwise, or for the acts or omissions of any other Member, Officer, agent, or employee of the Company, whether arising in contract, tort or otherwise. Except as expressly set forth in this Agreement in Article 12 and in this Article 13, no Member shall be liable to the Company or to any other Member for any debt, obligation, or liability of the Company or any other Member, Officer, agent, or employee of the Company, whether arising in contract, tort, or otherwise. A Member shall be liable to the Company for the obligation to make the initial Capital Contribution required under Article 4 and Article 12 or other Additional Contributions required to be made under Article 12 of this Agreement and shall be liable to the Company, each other Member, Member representatives, and Managers to the extent provided in this Article 13, relating to indemnification.

13.1.2 Limitation of an Officer's Liability. An Officer shall not be liable, solely by reason of being an Officer, under a judgment, decree, order of any court or any administrative or arbitral body, or in any other manner, for a debt, obligation, or liability of the Company, whether arising in contract, tort, or otherwise, or for the acts or omissions of any Member, other Officer, agent, or employee of the Company, whether arising in contract, tort or otherwise. No Officer shall be liable to the Company or to any Member for any debt, obligation, or liability of the Company or any Member, other Officer, agent, or employee of the Company, whether arising in contract, tort, or otherwise.

13.1.3 All Member Confidential Information that may be provided to the Company, Member(s) or Vendor(s) is provided "AS-IS", without any express or implied warranties, representations or guarantees, including the warranties of title and non-infringement, and without any duties to indemnify or hold harmless any Person against any claims suits, judgments, allegations or the like arising from or based upon such Member Confidential Information.

**Section 13.2 INDEMNITY OF PERSONS ACTING FOR COMPANY.** A Member, Officer, employee, Advisory Committee member or agent of the Company shall be entitled to be indemnified by the Company to the fullest extent permitted in the Act, as amended from time to time, and shall be entitled to the advance of expenses, including attorneys' fees, in the defense or prosecution of a claim against him or her in the capacity of Member, Officer, employee, Advisory Committee member or agent. The Company may purchase and maintain insurance on behalf of a Person who is or was a Member, Officer, employee, Advisory Committee member or agent of the Company against any liability asserted against or incurred by such Person in any such capacity or arising out of such Person's status as such, upon the Majority Approval.

**Section 13.3 INDEMNITY OF COMPANY FOR MEMBER'S UNAUTHORIZED ACTS.** Unless the Members shall by Supermajority Approval ratify the debt or liability so incurred, each Member who causes the Company to incur any debt or liability in violation of Article 10 shall indemnify the Company for any liability and for the reasonable costs and expenses of defending any claim of liability to the extent that it arises out of that Member's violation of Article 10 unless the Members determine by Supermajority Approval that the Member reasonably believed that the incurring of such debt or liability was authorized by action of the Members having the requisite Majority Approval or Supermajority Approval, as the instance would otherwise require.

**Section 13.4 INSURANCE.**

13.4.1 Required Insurance. Unless the Members by action having Supermajority Approval determine otherwise, the Company shall procure and maintain at Company expense:

13.4.1.1 For the benefit of the Company and for the benefit of the Members, Member representatives and Officers, commercial general liability, with contractual liability coverage, and business automobile liability insurance coverage with limits of not less than \$1,000,000 per person/\$5,000,000 per occurrence/general aggregate per policy period, protecting against liability incurred in connection with the operations of the Company, with such deductibles as the Members by action having Majority Approval determine appropriate.

13.4.1.2 For the benefit of the Members, Member Authorized Representatives and Officers, directors and officers liability insurance in an adequate amount as determined by Majority Approval of the Members, protecting such representatives and Officers

from claims of errors and omissions in the performance of their duties and actions taken by them in such capacity.

13.4.2 Optional Insurance. The Company may, with the prior Majority Approval, procure additional insurance in such a form as to provide such additional insurance coverage.

**Section 13.5 NO THIRD PARTY BENEFIT.** The provisions of Section 13.2 and 13.3 of this Article 13 are for the sole and exclusive benefit of the described beneficiaries of the indemnification obligations set forth and not for the benefit of any creditor of such beneficiaries or other third party. In no event shall any creditor, any trustee in bankruptcy or receiver, or any other Person have any right to the benefit of such indemnity.

**Section 13.6 HOLD HARMLESS.** Each Member waives and releases the Company and each other Member from any claim which the Member may otherwise have arising out of: (i) the Company's or another Member's errors and omissions in the design or approval of any design by others of the System or any component thereof, in the development or approval of the requirements imposed by the Company on a Vendor for the design of the System or any component thereof, provided that the Company or such Member was acting in good faith; or (ii) a Vendor's design, establishment, or operation of the System. Notwithstanding anything contained in this Agreement to the contrary, the provisions of this Section 13.6 shall not apply to any claim which a former Member or the Company may have arising out (i) or (ii) above, if such claim arose after the date the former Member ceased being a Member of the Company.

## **ARTICLE 14 DISSOLUTION AND TERMINATION**

**Section 14.1 DISSOLUTION.** The Company shall be dissolved only by Supermajority Approval. An Event of Withdrawal of any Members shall not cause dissolution of the Company.

**Section 14.2 WINDING UP, LIQUIDATION, AND DISTRIBUTION OF ASSETS.** Upon dissolution, an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities, and operations, from the date of the last previous accounting, if any, until the date of dissolution. The Members shall immediately proceed to wind up the affairs of the Company. If the Company is dissolved and its affairs are to

be wound up, the Members, directly or through such Officers as the Members may by their Majority Approval designate, shall:

14.2.1 Distribute to or hold and operate for the benefit of the Members the Company's right, title, and interest in or to the System, the Company's contract or contracts with the Vendor, the technical information and know-how and such other intellectual property as may be necessary to permit the Members to continue to establish and operate such a System, subject to the rights, if any, of the Vendor and others in such matters; provided, however, that the Members shall decide by Supermajority Approval which means or techniques to utilize to accomplish the foregoing, including, but not limited to, use of one or more liquidating trusts, liquidating agents or other agency or contractual arrangements or providing each Member with an undivided interest in the foregoing, it being the intention of the Members that unless the Members by Supermajority Approval determine otherwise, the purpose of any action pursuant to this Section 14.2.1 shall be to permit the Members to continue to operate such a System.

14.2.2 Sell or otherwise liquidate all or substantially all of the Company's other assets as promptly as practicable (except to the extent the Members or designated Officers may determine to distribute such other assets to the Members in kind);

14.2.3 Allocate any Net Profits or Net Losses resulting from such sales to the Members' Capital Accounts in accordance with this Agreement;

14.2.4 Discharge all liabilities of the Company, including liabilities to Members who are creditors, to the extent otherwise permitted by law, other than liabilities to Members for distributions, and establish such reserves as may be reasonably necessary to provide for contingencies or liabilities of the Company (for purposes of determining the Capital Accounts of the Members, the amounts of such reserves shall be deemed to be an expense of the Company);

14.2.5 Distribute the remaining assets as follows.

14.2.5.1 If any assets of the Company are to be distributed in kind, the net fair market value of those assets as of the date of dissolution shall be determined by independent appraisal or by agreement of the Members. Those assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members shall be adjusted pursuant to the provisions of this Agreement to reflect such deemed sale.

14.2.5.2 Distributions shall be made to the Members according to the positive balances (if any) of the Members' Capital Accounts (as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs), either in cash or in kind, as determined by the Members or designated Officers, with any assets distributed in kind being valued for this purpose at their fair market value as determined pursuant to Section 14.2.5.1.

14.2.6 Notwithstanding anything to the contrary in this Agreement, upon the dissolution and termination of the Company, a Member shall not have the obligation to the Company or to the other Members to make an Additional Contribution to restore a negative balance in the Member's Capital Account.

14.2.7 Upon completion of the winding up, liquidation, and distribution of the assets, the Company shall be deemed terminated for tax purposes.

14.2.8 The Members shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

**Section 14.3 ARTICLES OF CANCELLATION.** When all debts, liabilities, and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Members, Articles of Cancellation shall be executed, which shall set forth the information required by the Limited Liability Company Act. Upon the filing of the Articles of Cancellation, the existence of the Company shall cease, except for the purpose of suits, other proceedings, and appropriate action as provided in the Limited Liability Company Act. The Officers shall have authority to distribute any Company property discovered after dissolution, convey real estate, and take such other action as may be necessary on behalf of and in the name of the Company.

**Section 14.4 RETURN OF CONTRIBUTION NONRECOURSE TO OTHER MEMBERS.** Except as provided by law or as otherwise expressly provided in this Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution or Capital Account. Except as provided by law or as otherwise expressly provided in this Agreement, if the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return the Capital Contribution or Capital Account of one or more Members, the Members shall have no recourse against any other Member.

## **ARTICLE 15 DISPUTE RESOLUTION**

**Section 15.1 GENERAL PROVISIONS.** In the event of a Member Dispute (as defined in Section 15.2), the Members and parties shall submit the dispute to arbitration as provided in Section 15.2.

**Section 15.2 ARBITRATION.**

15.2.1 Agreement to Arbitrate Member Disputes. Except as set forth in Section 15.1 above, the Members agree that in the event of any dispute or disagreement solely between or among any of them or any of their Affiliates arising out of, relating to or in connection with this Agreement or the Company or its organization, formation, business, or management (“Member Dispute”), such Member Dispute shall be resolved exclusively by arbitration in accordance with the rules of Judicial Arbitration and Mediation Service/Endispute (“JAMS”), or other arbitration agency selected by Supermajority Approval. The Members waive their rights to a jury trial in any Member Dispute.

15.2.2 Venue of Arbitration. Any arbitration of a Member Dispute shall only be conducted in Washington, D.C..

15.2.3 Arbitration Award or Decision. The Members agree that arbitration of a Member Dispute shall be conducted by a retired judge who is experienced in dispute resolution, and that the award or decision of the arbitrator in the Member Dispute (“Award”) shall be in writing. The Members agree that the Award shall not include factual findings or conclusions of law, and no punitive damages shall be awarded. The Members also agree that the arbitrator’s

authority to grant relief shall be subject to the provisions of this Agreement and that the arbitrator's conduct shall be consistent with the American Arbitration Association's Code of Ethics for Arbitrators in Commercial Disputes. Any award or decision rendered by the arbitrator in the Member Dispute shall be final and binding, except as provided in this Agreement.

15.2.4 Discovery. Discovery shall not be permitted in such arbitration except as allowed by the rules of JAMS or such other arbitration agency selected by the Members pursuant to Section 15.2.1, or as otherwise agreed to by all Members which are parties to the Member Dispute.

15.2.5 Application of Law. The arbitrator shall apply the laws of Delaware without regard to Delaware's conflicts of law principles in adjudicating the Member Dispute and in rendering the Award.

15.2.6 Appeals of Arbitrator's Award or Decision. Any action or proceeding subsequent to any Award rendered by the arbitrator in the Member Dispute, including, but not limited to, any action to confirm, vacate, modify, challenge or enforce the arbitrator's decision or award shall be filed in a court of competent jurisdiction in the same county where the arbitration of the Member Dispute was conducted, and Delaware law shall apply in any such subsequent action or proceeding.

## **ARTICLE 16 INVESTMENT REPRESENTATIONS**

**Section 16.1 INVESTMENT REPRESENTATIONS.** Each Member hereby represents and warrants to, and agrees with, the other Members and the Company with respect to such Member and the Membership Interest that such Member is acquiring or hereafter acquires, as follows in the remaining provisions of this Article 16.

**Section 16.2 NO ADVERTISING.** The offer to acquire the Membership Interest and become a Member of the Company was directly communicated to the Member by the Company in a manner that the Member was able to ask questions of and receive answers from the Company concerning the terms and conditions of this transaction. At no time was the Member presented with or solicited by any leaflet, public promotional material, newspaper, magazine, radio or television article or advertisement, or any other form of advertising or general solicitation.

**Section 16.3 INVESTMENT INTENT.** The Membership Interest is being acquired and purchased by the Member and not by any other Person, with the Member's own funds and not with the funds of any other Person, and for the account of the Member, not as a nominee or agent and not for the account of any other Person. No other person will have any interest, beneficial or otherwise, in the Membership Interest. The Member is purchasing the Membership Interest for investment for an indefinite period, not with a view to the sale or distribution of any part or all thereof by public or private sale or other disposition. The Member has no intention of selling, granting any participation in or otherwise distributing or disposing of any Membership Interest. The Member does not intend to subdivide the Member's purchase of the Membership Interest with any Person.

**Section 16.4 ACCREDITED INVESTOR.** The Member is an "accredited investor" as defined in Rule 501 promulgated by the Securities and Exchange Commission under the Securities Act.

**Section 16.5 ECONOMIC RISK.** Understanding that an investment in Membership Interests is highly speculative, the Member is able to bear the economic risk of such investment, including the total loss thereof, for an indefinite period.

**Section 16.6 NO REGISTRATION OF MEMBERSHIP INTERESTS.** The Member understands that Membership Interests have not been registered under the Securities Act or registered or qualified under any other securities laws. The Member understands that the Company is relying in part on the Member's representations as set forth herein for purposes of claiming such exemptions from registration or qualification and that the basis for such exemptions may not be present if, notwithstanding the Member's representations, the Member has in mind merely acquiring the Membership Interest for resale on the occurrence or nonoccurrence of some predetermined event. The Member has no such intention.

**Section 16.7 MEMBERSHIP INTERESTS ARE RESTRICTED SECURITIES.** The Member understands that the Membership Interests may be "restricted securities" under the Securities Act and, accordingly, that the Membership Interests may have to be subsequently registered under the Securities Act or registered under any other applicable securities laws or qualified for exemptions from such registration. The Member understands that the Company is under no obligation to register or qualify the Membership Interest, under the Securities Act or any other securities laws, or to comply with any exemptions under the Securities Act or any other law.

The Member understands that Rule 144 may not be available for any sale of the Membership Interest and may not be available at least for several years.

**Section 16.8 COMPANY MAY REFUSE TO TRANSFER.** If, in the opinion of counsel for the Company, the Member at any time hereafter acts in a manner inconsistent with such Member's representations, warranties and agreements in this Agreement, the Company may, without limiting any other remedy or relief available to the Company, refuse to Transfer the Member's Membership Interest until such time as counsel for the Company is of the opinion that such Transfer will not require registration of any Membership Interest under the Securities Act or registration or qualification of any Membership Interest under any other securities laws. The Member understands and agrees that the Company may refuse to acknowledge or permit any disposition that is not in all respects in compliance with this Agreement and that the Company intends to make an appropriate notation in its records to that effect.

**Section 16.9 NO DISPOSITION IN VIOLATION OF LAW.** Without limiting the representations set forth herein, and without limiting the operation of Section 4.4, the Member shall not Transfer any Membership Interest or any Membership Interest therein, or receive any consideration therefor, unless and until, prior to any proposed Transfer, the Member shall comply with all requirements and conditions in this Agreement and: (a) the Member shall have furnished the Company with a detailed explanation of the proposed disposition; (b) unless the Company shall have waived this condition, the Member shall have furnished the Company with an opinion of the Member's counsel in form and substance satisfactory to the Company to the effect that the proposed Transfer (i) complies with applicable provisions of the Securities Act and any other securities laws and will not require registration of the Member's Membership Interest or any part thereof under the Securities Act or registration or qualification thereof under any other securities laws, (ii) will not violate or cause the Company to violate any applicable rule, regulation, order, report, directive or policy of a Regulatory Agency including the Federal Communications Commission, and (iii) will not result in the termination of the Company for federal income tax purposes; and (c) counsel for the Company shall have concurred in such opinion and the Company shall have advised the Member of such concurrence.

**Section 16.10 LEGENDS.** The Member understands and agrees that any instrument or certificate representing or relating to the Membership Interest may bear such legends as the Company may

consider necessary or advisable to facilitate compliance with the Securities Act and any other securities laws, including, without limitation, legends stating the Membership Interest has not been registered under the Securities Act or qualified under any other securities laws and setting forth the limitations on dispositions imposed by this Agreement.

**Section 16.11 INVESTMENT EXPERIENCE.** The Member, either alone or with the Member's professional advisers who are unaffiliated with, have no equity interest in and are not compensated by the Company or any Affiliate or selling agent of the Company, directly or indirectly, has such knowledge and experience in financial and business matters that the Member is capable of evaluating the merits and risks of an investment in the Membership Interest and has the capacity to protect the Member's own Membership Interests in connection with the Member's investment in the Membership Interest.

**Section 16.12 INFORMATION REVIEWED.** The Member has received and reviewed all information the Member considers necessary or appropriate for deciding whether to acquire the Membership Interest. The Member has carefully reviewed all such information and is thoroughly familiar with the proposed business, operations, properties and financial condition of the Company and has discussed with the Company any questions the Member may have had with respect thereto. The Member understands:

16.12.1 The risks involved in this offering, including the speculative nature of the investment;

16.12.2 The financial hazards involved in this offering, including the risk of losing the Member's entire investment;

16.12.3 The lack of liquidity and restrictions on Transfers of the Membership Interest; and

16.12.4 The tax consequences of this investment.

The Member has consulted with the Member's own legal, accounting, tax, investment and other advisers with respect to the tax treatment of an investment by the Member in the Membership Interest and the merits and risks of an investment in the Membership Interest.

**Section 16.13 NO REPRESENTATIONS.** No agent or employee of the Company or of any Member, and no other Person has at any time expressly or implicitly represented, guaranteed or

warranted to such Member that such Member may freely Transfer the Membership Interest, that a percentage of profit or amount or type of consideration will be realized as a result of an investment in the Membership Interest, that past performance or experience on the part of the Member or the Member's Affiliates or any other Person in any way indicates the predictable results of the ownership of the Membership Interest or of the overall Company business, that any cash distributions from the Company will be made to the Members by any specific date or will be made at all or that any tax benefits will accrue as a result of an investment in the Company.

**Section 16.14 AUTHORITY.** This Agreement constitutes a legal, valid and binding agreement of the Member, enforceable against the Member in accordance with its terms. The Member is empowered and duly authorized to enter into this Agreement under every applicable governing document, partnership agreement, trust instrument, pension plan, charter, certificate of incorporation, bylaw provision or the like. The Person, if any, signing this Agreement on behalf of the Member is empowered and duly authorized to do so by the governing document or trust instrument, pension plan, charter, certificate of incorporation, bylaw provision, board of directors or stockholder resolution or the like.

**Section 16.15 INDEMNIFICATION REGARDING REPRESENTATIONS.** The Member hereby agrees to indemnify and defend the Company, the Members and each of their respective employees, agents, partners, members, shareholders, officers and directors and hold them harmless from and against any and all claims, liabilities, damages, cost and expenses (including, without limitation, court costs and attorneys' fees and expenses) to the extent suffered or incurred on account of or arising out of:

16.15.1 Any breach of or inaccuracy in the Member's representations, warranties or agreements herein, including, without limitation, the defense of any claim based on any allegation of fact inconsistent with any of such representations, warranties or agreements;

16.15.2 Any Transfer of Membership Interest contrary to any of such representations, warranties or agreements; or

16.15.3 Any action, suit or proceeding based on: (i) a claim that any of such representations, warranties or agreements were inaccurate or misleading or otherwise cause for obtaining damages or redress under the Securities Act or any other securities laws; or (ii) any Transfer of any part or all of the Membership Interest.

**ARTICLE 17**  
**MISCELLANEOUS PROVISIONS**

**Section 17.1 FURTHER ASSURANCES.** At any time and from time to time after the date of this Agreement, each Member will, upon the reasonable request of another Member, perform, execute, acknowledge and deliver all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required to effect or evidence the transactions contemplated hereby or to comply with any laws, rules or regulations.

**Section 17.2 NOTICES.**

17.2.1 Primary Media for Notice. All notices required to be given under the Agreement shall be given as follows:

17.2.1.1 Other Than Meeting Notices. Subject to Section 17.2.1, all notices required to be given under this Agreement to the Company, Officers of the Company or Members, other than notices for meetings of the Members as set forth in Section 17.2.1.2 below, shall be given by electronic mail to the electronic mail address and/or by voice mail to the voice mail box maintained in the books and records of the Company as follows:

a. To the Company. In the case of notices, demands and requests to the Company, unless otherwise expressly provided in this Agreement, such notices, demands and requests shall be given to the Chair by electronic mail to the electronic mail address and/or at the voice mail box number of the Chair maintained by the Company pursuant to Section 17.2.4 as an Authorized Representative of a Member in the Member's Contact Information Record.

b. To Officers. In the case of notices, demands and requests to a specified Officer of the Company, such notices, demands and requests shall be given to the Officer by electronic mail to the electronic mail address and/or at the voice mail box number of such Officer maintained by the Company pursuant to Section 17.2.4 as an Authorized Representative of a Member in the Member's Contact Information Record.

c. Members. In the case of notices, demands and requests to a Member, unless otherwise expressly provided in this Agreement, such notices, demands and requests shall be given to the Primary Representative of such Member by electronic

mail to the electronic mail address and/or at the voice mail box number of such Primary Representative maintained by the Company pursuant to Section 17.2.4 in the Member's Contact Information Record.

d. Legal Counsel. In the case of notices, demands and requests to the Company's legal counsel, unless otherwise expressly provided in this Agreement, such notices, demands and requests shall be given to the legal counsel at the by electronic mail to the electronic mail address and/or voice mail box number of such legal counsel maintained by the Company pursuant to Section 17.2.4 in the legal counsel's Contact Information Record.

17.2.1.2 Meeting Notices. Subject to Section 17.2.2, all notices of meetings shall be given as follows:

a. Scheduled Meetings. Notice of a Scheduled Meeting shall be given by electronic mail delivery to the electronic mail address maintained on the books and records of the Company of each Member's Primary Representative and First Alternate Representative and to all Project Executives maintained by the Company pursuant to Section 17.2.4 in the Member's Contact Information Record (with respect to the Primary Representative and the First Alternate Representative) and the Project Executives' Contact Information Record (with respect to the Project Executives).

b. Unscheduled Meetings. Notice of an Unscheduled Meeting shall be given to all Project Executives and to each Member's Primary Representative and First Alternate Representative by electronic mail delivery to the electronic mail addresses maintained on the books and records of the Company for each such individual pursuant to Section 17.2.4 in the Member's Contact Information Record (with respect to the Primary Representative and the First Alternate Representative) and the Project Executives' Contact Information Record (with respect to the Project Executives), and such electronic mail delivery shall be accompanied by a voice mail notification to the voice mail box of each Member's Primary Representative maintained on the books and records of the Company pursuant to Section 17.2.4 in the Member's Contact Information Record. Such voice mail notification shall set forth (1) the fact that notice of the Unscheduled Meeting has been delivered by electronic mail, (2) the date of the meeting

and (3) the time of the meeting. Further, notwithstanding anything to the contrary in this Agreement, provided a good faith attempt has been made to deliver notice, the failure to receive notice of an Unscheduled Meeting to a Member's First Alternate Representative by electronic mail to the electronic mail address maintained on the books and records of the Company for such First Alternate Representative shall not constitute a failure to give notice to such First Alternate Representative and in no way cause such Unscheduled Meeting to be considered to be improperly called or any action conducted at such Unscheduled Meeting to be invalid. In order for the notice of an Unscheduled Meeting to be valid and effective, there shall be no requirement for retrieval of such transmissions by either electronic mail or voice mail.

c. Scheduled Meeting Definition. A "Scheduled Meeting" shall mean any meeting (whether regular, annual or special) for which the time, date and general location is determined at a regular meeting of the Members.

d. Unscheduled Meeting Definition. An "Unscheduled Meeting" shall mean any meeting other than an Scheduled Meeting.

17.2.2 Alternate Media for Notice. Notwithstanding Section 17.2.1, only if a Member properly notifies the Company as set forth below of the failure of the actual delivery of notice properly given pursuant to any of the methods set forth in Section 17.2.1 above, the Company may thereafter provide notice by any one of the following alternate methods in lieu of the methods set forth in Section 17.2.1 which such Member asserted did not result in actual delivery; provided, however, that such use of any of the following alternate methods shall not affect the validity or effectiveness of the prior notice given by any one of the methods set forth in Section 17.2.1:

17.2.2.1 By personal delivery to the Authorized Representative of the Member to whom the same is directed, at such address maintained on the Company's records pursuant to Section 17.2.4 in the Member's Contact Information Record;

17.2.2.2 By registered or certified mail, postage and charges prepaid, or by a recognized overnight delivery service, addressed to the Authorized Representative of the Member to whom the same is directed, at such address maintained on the Company's records pursuant to Section 17.2.4 in the Member's Contact Information Record; or

17.2.2.3 By successful facsimile transmission to the facsimile number of the Authorized Representative of the Company to the same is directed, as maintained in the Company's records pursuant to Section 17.2.4 in the Member's Contact Information Record.

17.2.3 Determination of Delivery. Any notice under this Agreement shall be deemed to be given and delivered for purposes of this Agreement as follows.

17.2.3.1 For notice pursuant to Section 17.2.1, notice shall be deemed to be validly given and delivered when both voicemail and electronic mail messages are left by the foregoing methods to the current voicemail box and electronic address maintained by the Company pursuant to Section 17.2.4 in the respective Contact Information Record, regardless of whether or not actually retrieved by the intended recipient.

17.2.3.2 For notice by personal delivery pursuant to Section 17.2.2.1 upon delivery (even without signed receipt) to the address of the respective recipient maintained by the Company pursuant to Section 17.2.4 in the respective Contact Information Record.

17.2.3.3 For notice by either United States mail or overnight delivery service pursuant to Section 17.2.2.2, on two business days after deposit into the custody of the United States Postal Service postage pre-paid and addressed to the address of the respective recipient maintained by the Company pursuant to Section 17.2.4 in the respective Contact Information Record or one business day after delivery by the overnight delivery service to the address of the respective recipient maintained by the Company pursuant to Section 17.2.4 in the respective Contact Information Record, regardless of whether or not actually received by such recipient.

17.2.3.4 For notice by facsimile pursuant to Section 17.2.2.3, upon (a) completion of the facsimile transmission to the facsimile number maintained by the Company pursuant to Section 17.2.4 in the Contact Information Record for such recipient and (b) print out of the log verifying transmission to such facsimile number, regardless of whether or not actually received by such recipient.

17.2.4 Contact Information Records. Each Member shall provide to and maintain with the Company the following current information for the Primary Representative, First Alternate Representative and any other Alternate Representatives (such information referred to as the Member's "Contact Information Record"): (a) voice mail box number for each such Authorized

Representative; (b) electronic mail address for each such Authorized Representative; (c) address for each such Authorized Representative which is sufficient for registered or certified mail deliveries and deliveries by overnight delivery services; (d) facsimile number for each such Authorized Representative; and (e) telephone number for each such Authorized Representative during regular business hours. At any time, by notice actually received by the Secretary of the Company and acknowledged by notice from the Secretary, any Authorized Representative of a Member may change or amend any of the information in such Member's Contact Information Record, and upon receipt of notice of such change or amendment, the Secretary shall confirm such change or amendment by any of the methods of notice set forth above, and shall thereafter maintain such information in the books and records of the Company as such Member's Contact Information Record; provided, however, that if there are no Authorized Representatives then acting for such Member, the Member may designate an Authorized Representative as set forth in this Agreement, and thereafter, such Authorized Representative may provide notice of such change or amendment to such Member's Contact Information Record. Likewise, each Project Executive and legal counsel for the Company shall provide to and maintain with the Company as such Project Executive's and legal counsel's Contact Information Record the following current information: (a) voice mail box; (b) electronic mail address; (c) address which is sufficient for registered or certified mail deliveries and deliveries by overnight delivery services; (d) facsimile number; and (e) telephone number during regular business hours. At any time, by notice actually received by the Secretary of the Company and acknowledged by notice from the Secretary, a Project Executive or legal counsel for the Company may change or amend any of the information in such Project Executive's or legal counsel's Contact Information Record, and upon receipt of notice of such change or amendment, the Secretary shall confirm such change or amendment by any of the methods of notice set forth above, and shall thereafter maintain such information in the books and records of the Company as such Project Executive's or legal counsel's Contact Information Record.

**Section 17.3 APPLICATION OF LAW.** This Agreement, and the application and interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Delaware and specifically the Limited Liability Company Act. Notwithstanding any other provision of this Agreement to the contrary, any applicable federal or state statute, regulation, order or directive of

any applicable regulatory body shall control over any inconsistent provision contained in this Agreement.

**Section 17.4 ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the Members relating to the subject matter hereof and supersedes all prior contracts or agreements, whether oral or written, relating to the subject matter hereof. There are no representations, agreements, arrangements or understandings, oral or written, between or among the Members relating to the subject matter of this Agreement that are not fully expressed in this Agreement.

**Section 17.5 AMENDMENT.**

17.5.1 Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented or modified orally, except by an instrument in writing which has the requisite approval set forth in this Section 17.5 and which has been signed by all Members giving such requisite approval or appended to a resolution of the Company evidencing the requisite approval or otherwise such requisite approval is evidenced, as set forth in Section 17.5.2.

17.5.2 Except as otherwise expressly provided with respect to actions requiring only Majority Approval, this Agreement may be amended, supplemented or modified only by an instrument in writing having Supermajority Approval and signed by all Members giving such Supermajority Approval. Notwithstanding the foregoing, the failure of any Member to sign such a written instrument shall not affect the validity of such action, as long as there is adequate evidence of Supermajority Approval, including but not limited to a Certificate from the Secretary or the Chair regarding such action or resolution.

**Section 17.6 EFFECT OF WAIVER OF CONSENT.** No waiver or consent, express or implied, by the Company or any Member to or of any breach or default by the Company or any Member in the performance by the Company or such Member of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by the Company or such Member of the same or any other obligations of the Company or such Member hereunder. No single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce any right or power, shall preclude any other or further exercise thereof or the exercise of any other right or power. Failure on the part of the Company or a Member to complain of any act of the Company or any Member or to declare the Company or

any Member in default, irrespective of how long such failure continues, shall not constitute a waiver by the Company or such Member of its rights hereunder until the applicable statute of limitation period has run.

**Section 17.7 FACSIMILES.** For purposes of this Agreement, any copy, facsimile telecommunication or other reliable reproduction of a writing, transmission or signature may be substituted or used in lieu of the original writing, transmission or signature for any and all purposes for which the original writing, transmission or signature could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing, transmission or signature, as the case may be.

**Section 17.8 LIMITATION ON RIGHTS OF OTHERS.** Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Members hereto and their respective Authorized Representatives, representatives, permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein, as a third party beneficiary or otherwise. Without limiting the generality of the foregoing, none of the provisions of this Agreement shall be for the benefit of, or enforceable by, any creditors of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or other third party shall have any rights under this Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or Additional Contribution or otherwise. Notwithstanding the foregoing, a Member's Authorized Representatives and all Officers shall be third party beneficiaries of the provisions of Article 13 providing for the indemnification and insuring of such individuals, but the Members may, in accordance with Section 17.5 of this Agreement, modify the provisions of Article 13 without the consent of any such Authorized Representative or Officer.

**Section 17.9 RIGHTS AND REMEDIES CUMULATIVE.** The rights and remedies provided by this Agreement are cumulative and use of any one right or remedy by any Member shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Members may have by law, statute, ordinance, or otherwise.

**Section 17.10 SUCCESSORS AND ASSIGNS.** Each and all of the covenants, terms, provisions, and agreements contained in this Agreement shall be binding upon and inure to the benefit of the

Members hereto and, to the extent permitted by this Agreement, their respective successors and assigns.

**Section 17.11 SEVERABILITY.** If any provision of this Agreement or the application thereof in any circumstances shall be illegal, invalid or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law. Furthermore, a new provision shall automatically be deemed added to this Agreement in lieu of such illegal, invalid or unenforceable provision, which new provision shall be as similar in terms to such illegal, invalid and unenforceable provision as is possible with the new provision still being legal, valid and enforceable.

**Section 17.12 COUNTERPARTS.** This Agreement may be executed by one or more parties to this Agreement on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument binding on and inuring to the benefit of each party so executing this Agreement with the same effect as if all such parties had signed the same instrument at the same time and place.

**IN WITNESS WHEREOF,** the undersigned have executed this Limited Liability Company Operating Agreement as of the date indicated.

**COUNTRY CODE 1 ENUM LLC  
SIGNATURE PAGE**

**By executing this Signature Page, each Member acknowledges and agrees that  
it has entered into a binding commitment to make an Initial Capital  
Contribution to the Company pursuant to Section 12.1.1 of this Limited  
Liability Company Operating Agreement.**

Dated: \_\_\_\_\_, 200\_\_

**CORPORATIONS AND OTHER ENTITY MEMBERS: PLEASE SIGN AND  
COMPLETE:**

\_\_\_\_\_  
Name of Entity (Please Print)

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

**INDIVIDUAL MEMBERS: PLEASE SIGN AND COMPLETE:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

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