

**SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
NODAL EXCHANGE, LLC**

THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (such agreement, as amended from time to time, shall be referred to herein as this “Agreement”) is entered into effective as of October 9, 2012 by *Nodal Exchange, LLC* (the “Company”) and *Nodal Exchange Holdings, LLC* (“Holdings”), a Delaware limited liability company as Member of the Company, and each of those other Members executing this Agreement from time to time in accordance with the terms hereof (together with Holdings, the “Members” and individually, each a “Member”).

RECITALS

WHEREAS, the Company was formed as a limited liability company pursuant to the Delaware LLC Act, as amended, and has operated pursuant to the terms of the Amended and Restated Limited Liability Company Agreement of Nodal Exchange, LLC dated as of March 16, 2009 (“Previous LLC Agreement”); and

WHEREAS, Holdings wishes to amend and restate the Previous LLC Agreement to, among other things, establish a Board of Directors of the Company (“Board”) and otherwise govern the management and operation of the Company and the relationship of the parties in accordance with the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the parties hereby agree as follows:

1. CERTAIN DEFINITIONS; INTERPRETATION; DEFAULT RULES

(a) Unless the context otherwise specifies or requires, capitalized terms used herein shall have the respective meanings assigned to them in Addendum I, attached hereto and incorporated herein by reference, for all purposes of this Agreement.

(b) Unless the context of this Agreement otherwise requires:

(i) any pronoun also includes the corresponding masculine, feminine or neuter forms;

(ii) words using the singular or plural number also include the plural or singular number, respectively;

(iii) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement;

(iv) all references herein to “Sections” or “subsections” are to Sections and subsections of this Agreement;

(v) the term “or” has, except as otherwise indicated, the inclusive meaning represented by the phrase “and/or”; and

(vi) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

(c) The headings and other titles contained herein are inserted only as a matter of convenience and in no way define, limit, extend or interpret the scope of this Agreement or any particular Section or subsection.

(d) Regardless of whether this Agreement specifically refers to a particular Default Rule:

(i) if any provision of this Agreement conflicts with a Default Rule, the provision of this Agreement controls and such Default Rule is hereby modified or negated accordingly; and

(ii) if it is necessary to construe a Default Rule as modified or negated in order to effectuate any provision of this Agreement, such Default Rule is hereby modified or negated accordingly.

2. FORMATION; NAME; PLACE OF BUSINESS

2.1. Formation and Continuation of Company

Each Member hereby:

(a) acknowledges, ratifies and approves the organization of the Company as a limited liability company pursuant to the Delaware LLC Act by virtue of the filing of the Certificate and the execution of the Original Agreement, and agrees to continue the Company as a limited liability company pursuant to the Delaware LLC Act;

(b) confirms and agrees to its status as a Member of the Company;

(c) executes this Agreement for the purpose of amending and restating the Previous LLC Agreement and setting forth the rights and duties of the Members; and

(b) agrees that if the laws of any jurisdiction in which the Company transacts business so require, the Board shall cause to be filed, with the appropriate office in that jurisdiction, any documents necessary for the Company to qualify to transact business under such laws, and agree and obligate themselves to execute, acknowledge and cause to be filed for record, in the place or places and manner prescribed by law, any amendments to the Certificate as may be required by the Delaware LLC Act or by the laws of any jurisdiction in which the Company transacts business, or as may be required by this Agreement, to reflect changes in the information contained therein or otherwise to comply with the requirements of law for the continuation, preservation and operation of the Company as a limited liability company under the Delaware LLC Act.

2.2. Name of Company

The name under which the Company shall conduct its business is “Nodal Exchange, LLC.” The business of the Company may be conducted under any other name permitted by the Delaware LLC Act that is deemed necessary or desirable by the Board. The Board shall cause to be executed, filed and recorded any assumed or fictitious name certificates required by the laws of the State of Delaware or any other state or other jurisdiction in which the Company conducts or may wish to conduct business.

2.3. Place of Business

The location of the principal place of business of the Company is 8065 Leesburg Pike, 3rd Floor, Vienna, Virginia 22182. The Board may hereafter change the principal place of business of the Company and may establish and maintain such other offices and additional places of business of the Company, either within or outside the State of Delaware, as the Board may from time to time determine. Any authorized representative of the Company may execute, deliver and file any certificates (and any amendments or restatements thereof) permitted or required to be filed with the Secretary of State of the State of Delaware (as an “authorized person” of the Company within the meaning of the Delaware LLC Act), or necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

2.4. Registered Office and Registered Agent

The street address of the initial registered office of the Company is c/o Corporate Consulting Ltd., 619 New York Avenue, Claymont, Delaware 19703, and the Company’s registered agent at such address is Corporate Consulting Ltd. The registered office and the registered agent of the Company may be changed by the Board from time to time in accordance with the applicable provisions of the Delaware LLC Act and any other applicable laws.

2.5. Representation and Warranty as to Binding Effect

Each party hereto represents and warrants that, when executed and delivered by such party and assuming due authorization, execution and delivery by each other party hereto, this Agreement constitutes a valid and binding obligation of such party enforceable against such party in accordance with its terms, except as such enforcement is limited by bankruptcy, insolvency and other similar laws affecting the enforcement of creditors’ rights generally and for limitations imposed by general principles of equity.

2.6. Limitation of Liability

The liability of the Members and each employee of the Company to third parties for obligations of the Company shall be limited to the fullest extent provided in the Delaware Limited Liability Act and other applicable law.

3. PURPOSES OF THE COMPANY

The purposes of the Company are to (i) engage, directly or through one or more subsidiaries of the Company authorized by the Members pursuant to **Section 7.4(f)**, in the development, ownership and operation of an exchange (the “**Exchange**”) for the trading of financial instruments for commodities, including a) natural gas at multiple locations in the United States and Canada, b) locational marginal pricing (energy, loss and congestion) or any component of locational marginal pricing of electricity at multiple hubs, zones and nodes in the United States and Canada, and c) commodity, locational and time spreads for the foregoing (the “**Initial Authorized Business**”), (ii) engage in any other lawful business permitted by the Delaware LLC Act or laws of any jurisdiction in which the Company may do business, if and to the extent such other lawful business is approved in accordance with **Section 7.4(f)**, if applicable, and (iii) enter into any lawful transaction and engage in any lawful activities in furtherance of the foregoing purposes and as may be necessary, incidental or convenient to carry out the business of the Company as contemplated by this Agreement.

4. TERM OF COMPANY

The existence of the Company commenced on the date on which the Certificate was initially filed with the Secretary of State of the State of Delaware and shall continue until the Company is terminated upon the cancellation of the Certificate pursuant to **Section 10.3**.

5. CAPITAL CONTRIBUTIONS

Holdings has made all capital contributions to the capital of the Company required to be made by Holdings as of the date hereof. From time to time Members may contribute additional capital or make loans to the Company, at such times and upon such terms as Members shall approve, acting in their sole discretion.

6. PROFIT, LOSS, AND DISTRIBUTIONS

6.1 Allocation of Net Income or Net Loss

The Net Income or Net Loss of the Company, if any, for each Fiscal Year (or portion thereof) shall be allocated by the Company to Interest Holders in proportion to their Percentage Interests.

6.2 Distributions

Cash flow realized from its operations for each taxable year of the Company shall be distributed to Interest Holders at such time as determined by the Board. If the Company is dissolved, the assets of the Company shall be distributed to Interest Holders in proportion to their Percentage Interests.

7. MANAGEMENT OF THE COMPANY

7.1 Management by the Members

Subject to **Section 7.2**, all decisions regarding the Company shall be made by the Members. An act of a Majority-In-Interest of the Members shall be the act of the Members hereunder.

7.2 Delegation of Authority to the Board

The management of the business and affairs of the Company shall be delegated to and vested in a board of managers (the "**Board**") pursuant to Section 18-402 of the Delaware LLC Act. The Board shall have all of the authority of a "manager" under the Delaware LLC Act. Notwithstanding **Section 7.1**, except as otherwise set forth herein, including, but not limited to, **Section 7.4(f)**, the Members shall not have any authority, right or power, by virtue of being Members, directly or indirectly, to bind the Company, or to manage or control, or to participate in the management or control of, the business and affairs of the Company in any manner whatsoever. Any attempted action in contravention of **Sections 7.1-7.4(e)**, shall be null void *ab initio* and not binding upon the Company, unless ratified or authorized by the Board in writing. The Board shall have full and complete authority, power and discretion to manage and control the business and affairs of the Company, to make all decisions with respect thereto and to perform any and all other acts or activities customary or incident to the management of the Company's business and affairs. Subject to the foregoing, the Board (acting on behalf of the Company) shall have the right, power and authority, in the management of the business and affairs of the Company, to do or cause to be done any and all acts, at the expense of the Company, deemed by the Board to be necessary or appropriate to effectuate the purposes of the Company. The Board shall have the power and authority to approve any revision to the Company Exchange Rule Book or the Company Compliance Procedures as in effect on the date of this Agreement or of any procedures in lieu of, or in addition to, the Company Exchange Rule Book or the Company Compliance Procedures.

7.3 Size and Composition of Board

(a) The size and composition of the Board are determined by the sole discretion of the Majority-In-Interest of the Members. Initially, on the date of this Agreement, the Board shall be comprised of three Board members as follows: Paul Cusenza, Andrew Stevens, and Mark Maisto. The Majority-In-Interest of the Members shall expand the Board to at least five Board Members; provided that at all times not less than thirty-five percent (35%) of the Directors, but not fewer than two individuals, shall be "Public Directors", as such term is defined by, and as such Board composition is required by, the Commodity Exchange Act and the regulations promulgated thereunder ("CEA").

(b) Committees. The Board shall have the power and authority to establish committees and appoint Board Members to serve on one or more committees of the Board, subject to any requirements under applicable law, including the CEA. The Board shall authorize and adopt a charter for each committee setting forth the committee's powers, authorities, and responsibilities ("Charter"). Each committee of the Board may determine the

procedural rules for meeting and conducting its business and shall act in accordance therewith, provided, however, that (i) notice of the date, time and place of all meetings and the agenda for such meetings shall be given to all committee members, and waivers of notice may be effected, consistent with the notice provisions for Board meetings set forth in **Section 7.4(a)**; (ii) a majority of the members of any committee shall constitute a quorum for any meeting of such committee; (iii) no committee member subject to a conflict of interest with respect to a matter, as reasonably determined by the Board or such committee, shall be entitled to vote on such matter; (iv) all matters to be decided upon at any meeting of a committee shall be determined by a vote or consent of a majority of the members of such committee then in office and entitled to vote on such matters; (v) action may be taken by any committee without a meeting, without prior notice and without a vote, if all of the members of such committee consent to such action in writing (including by facsimile and electronic mail) and the writing or writings evidencing such consent are filed with the minutes of the proceedings of such committee; (vi) each committee shall keep minutes of its meetings and report its proceedings to the Board as and when required by the Board; and (vii) the Board has the power to call for review, and to affirm, modify, suspend or overrule, any and all decisions and actions of standing committees or special committees of the Board related to the day-to-day business operations of the Exchange.

(c) Nominating Committee. The Board shall appoint a nominating committee ("Nominating Committee"). The Nominating Committee shall have those powers, authorities, and responsibilities delegated to it by the Board in its Charter.

(d) Regulatory Oversight Committee. The Board shall appoint a Regulatory Oversight Committee ("ROC"), which shall be composed of only (100%) Public Directors. The ROC shall have those powers, authorities, and responsibilities delegated to it by the Board in its Charter.

(e) Participant Committee. The Board shall appoint an Exchange participation committee ("Participant Committee"), which shall be composed of at least thirty-five percent (35%) Public Directors. The Participant Committee shall have those powers, authorities, and responsibilities delegated to it by the Board in its Charter.

(f) Reports to the CFTC. In the event that the Board rejects any recommendations or supersedes any action of the ROC or the Participant Committee, the Company shall prepare and submit to the CFTC a report detailing (i) the recommendation or action of the ROC or the Participant Committee, as applicable, (ii) the rationale for such recommendation or action, (iii) the rationale of the Board for rejecting such recommendation or superseding such action, and (iv) the course of action the Board decided to take contrary to such recommendation or action.

7.4 Meetings of the Board

(a) Meetings of the Board shall be held at such places within or outside the State of Delaware and at such dates and times as may be fixed from time to time by the Chairman or, in the event no Board Member is serving as Chairman, by the Chief Executive Officer or any Board Member. Without limiting the generality of the foregoing, meetings of the Board shall be held at least on a quarterly basis. Notice of any meeting of the Board shall

be given in writing by mail, courier, hand delivery, facsimile or electronic mail at least 24 hours prior to the time of commencement of such meeting. No notice of any meeting of the Board need be given to any Board Member if such Board Member, by a writing (including a writing by facsimile or electronic mail) filed with the records of the meeting (and whether executed before or after such meeting), waives such notice, or if such Board Member attends such meeting without protesting prior thereto or at its commencement the lack of notice to such Board Member. Meetings of the Board or any committee thereof may be held by conference telephone or other communications equipment by means of which all participating Board Members can hear and speak to each other during the meeting. The Board may adopt rules and procedures consistent with the terms of this Agreement for meeting and conducting its business. The officers of the Company shall furnish to all Board Members prior to each meeting of the Board and at such other times as any Board Member shall request copies of such books, records, accounts and other information of or relating to the Company and its business and affairs as any Board Member shall require, in the reasonable judgment of such Board Member, to discharge fully its duties and responsibilities as a Board Member, and shall provide all Board Members with written minutes of each meeting of the Board promptly following the conclusion of each such meeting.

(b) Action by Written Consent. Any action that may be taken by the Board under this Agreement may be taken without a meeting, without a vote and without prior notice, if a written consent or consents, including consents by facsimile and electronic mail, setting forth the action so taken are signed by the minimum number of Board Members who would be required to take such action if such action were taken by the Board at a meeting at which all Board Members were present.

(c) Voting Rights; Required Votes. At all meetings of the Board, except as provided for in **Section 7.5(e)(i)**, a majority of the number of Board Members then in office shall constitute a quorum. Each Board Member shall be entitled to cast one vote with respect to any matter coming before the Board, except that no Board Member subject to a conflict of interest (x), as reasonably determined by the Board, or (y) as provided in **Section II** of the Company Exchange Rule Book, shall be entitled to vote on such matter. Any action required or permitted to be taken by the Board must be approved by a majority of all Board Members then in office and entitled to vote on such matters.

(d) Compensation. No Board Members shall be entitled to compensation for any services provided to the Company, except as authorized in writing by the Majority-In-Interest of the Members. The Majority-In-Interest of the Members may authorize the payment to Board Members of a fixed sum and reimbursement of expenses for attendance, if any, at each regular or special meeting of the Board attended by such Board Members.

(e) Terms and Resignation. Board Members shall serve for a term of one year or, if later, until his or her successor is elected. Any Board Member may resign at any time by giving written notice to the Board. Any resignation shall take effect at the time specified therein, or, if no time is specified, upon receipt thereof; and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective. The Board may remove a Board Member, either with or without cause, at any time by the consent of a Majority-In-Interest of the Members.

(f) Required Member Consent. Notwithstanding anything to the contrary contained herein, the Board shall not approve or undertake or authorize any other Person to approve or undertake, and shall not have the power or authority to approve or authorize any other Person to approve or undertake, any of the following actions with respect to the Company without the prior written consent of a Majority-In-Interest of the Members:

- (i) the entry by the Company or any subsidiary thereof into any line of business other than the Initial Authorized Business;
- (ii) the incurrence or issuance by the Company or any subsidiary thereof of indebtedness for borrowed money;
- (iii) the sale, transfer or pledge by the Company or any subsidiary thereof for aggregate consideration greater than \$50,000 of (A) intellectual property or (B) assets or agreements of the Company or any subsidiary thereof;
- (iv) the formation or dissolution of any subsidiary of the Company, and any sale or transfer by the Company of equity interests in any such subsidiary;
- (v) the annual approval of the Company's new business plan and any significant changes to such approved business plan;
- (vi) the annual approval of the new annual budget of the Company and of any subsidiary thereof, if applicable, and any significant changes to such approved annual budget(s);
- (vii) compensation of members of the management of the Company or any subsidiary thereof (including salaries, bonuses and any awards under any Equity Incentive Plan);
- (viii) any transactions between (A) the Company or any subsidiary thereof, on the one hand, and (B) any Person with an equity interest in Holdings or an Affiliate thereof, on the other hand, other than (x) trading transactions conducted on the Exchange, and (y) transactions undertaken in the normal course of the Company's business at a price and on other material terms that are not less favorable to the Company than the price and other material terms generally prevailing with respect to comparable transactions between unrelated parties, as reasonably determined by Holdings;
- (ix) any transactions between (A) the Company or any subsidiary thereof, on the one hand, and (B) any Interest Holder, including Affiliates thereof, of the Company, on the other hand, other than transactions undertaken in the normal course of the Company's business at a price and on other material terms that are not less favorable to the Company than the price and other material terms generally prevailing with respect to comparable transactions between unrelated parties, as reasonably determined by Holdings;
- (x) the appointment of independent certified accountants or tax counsel to the Company and any subsidiary thereof;
- (xi) the entry by the Company or any subsidiary thereof into any joint venture, strategic alliance, exclusive dealing, non-competition or similar

commitment, other than as contemplated by the Company Business Plan and Budget;

(xii) the appointment of any members of the board of any subsidiaries that are subject to board composition requirements pursuant to applicable law;

(xiii) (A) any sale of the Company, or (B) any sale of any equity interest in any subsidiary of the Company;

(xiv) any recapitalization or any reorganization, any other change in organizational form, or any change in jurisdiction of organization of the Company or any subsidiary thereof;

(xv) any sale, transfer or pledge of all or substantially all the Company's assets, or of all or substantially all of the assets of any subsidiary of the Company, within the meaning of Section 271 of the DGCL as if the Company were a corporation organized under the DGCL;

(xvi) any liquidation or dissolution of the Company or any subsidiary thereof;

(xvii) any acquisition by the Company or any subsidiary thereof of another Person or of any equity interests in another Person;

(xviii) any amendment of this Agreement,

(xix) any commencement by the Company or any subsidiary thereof of a voluntary case under any applicable bankruptcy, insolvency or other similar law or procedure, or the consent by the Company or any subsidiary thereof to the entry of an order for relief in an involuntary case under any such law or procedure;

(xx) the authorization, issuance or sale by the Company of Equity Securities, including options and warrants, pursuant to any plan or agreement adopted from and after the date of this Agreement;

(xxi) any merger of the Company or any subsidiary thereof with or into, or any consolidation of the Company or any subsidiary with, any other Person;

(xxii) the adoption of any Equity Incentive Plan by the Company or any subsidiary thereof not in effect on the date hereof;

(xxiii) The appointment of any officers, or the change of responsibility of the officers in the Company; or

(xxiii) the entry by the Company or any subsidiary thereof into any agreement to undertake any of the foregoing.

7.5 Officers and Disciplinary Panels

7.5.1 Officers. The Majority-in-interest of the Members shall have the power and authority to appoint from time to time one or more individuals to serve as officers and agents of the Company and/or any subsidiary of the Company, with such titles, duties and authority as the Majority-in-interest of the Members shall approve, to carry out the business of the Company and any such subsidiary upon such terms and conditions as the Majority-in-interest of the Members shall determine. The officers of the Company as of the date of this Agreement shall continue to act in such capacity and are as follows: (i) a Chairman who initially shall be Paul Cusenza, (ii) a Chief Executive Officer and President who initially shall be Paul Cusenza and Ann Sacra respectively, (iii) a Treasurer who initially shall be James Smist and (iv) a Secretary who initially shall be Anita Herrera, and may at the discretion of the Board include a Vice Chairman, one or more Vice Presidents and other officers. Any number of offices may be held by the same Person. Unless otherwise specified by the Board or this Agreement or required by the Delaware LLC Act, the duties and authority of an officer of the Company to act on behalf of the Company shall include the same duties and authority as an officer of a Delaware corporation (other than fiduciary duties) with the same title would have to act on behalf of a Delaware corporation in the absence of a specific delegation of authority. Any such officer or agent shall hold office until the death, disability, retirement, resignation or removal of such officer or agent. Unless otherwise specified by the Board, the officers identified below shall have the duties and responsibilities set forth in this **Section 7.5** subject to the oversight of the Board.

(a) Chairman. The Chairman shall convene, and when present shall preside at, all meetings of the Board and shall perform such other duties and have such other powers as may be vested in the Chairman by the Board. Pursuant to guidelines and policies approved by the Board, subject to **Section 7.4(f)**, the Chairman may execute agreements and contracts on behalf of the Company.

(b) Chief Executive Officer and President. The Chief Executive Officer shall have overall responsibility and authority for the Company's business and financial affairs, subject to the oversight of the Board, and when duly elected by the Board, shall serve as the CEO and as a Board Member. The President shall have responsibility and authority for the Company's business operations and shall report directly to the Chief Executive Officer. If no President is appointed, the Chief Executive Officer shall have responsibility and authority for the Company's business operations. All other officers other than the Chairman and all employees and agents shall report directly or indirectly to the Chief Executive Officer or the President. Pursuant to guidelines and policies approved by the Board, subject to **Section 7.4(f)**, the Chief Executive Officer and the President may execute agreements and contracts on behalf of the Company.

(c) Treasurer. The Treasurer shall have charge of the funds of the Company, shall keep full and accurate accounts of all receipts and disbursements of the Company in books belonging to the Company, and shall deposit all monies and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Company as may be directed by the Board, and shall render to the Board, whenever it may require, an account of all transactions as Treasurer and an account of the business and financial position of the Company.

(d) Secretary. The Secretary shall prepare and distribute promptly to each Board Member written minutes of all meetings of the Board. If requested by the Chairman, the Chief Executive Officer or other Board Member calling for a meeting in accordance with this Agreement, the Secretary also shall prepare and distribute to the Board Members an agenda for such meeting in advance of such meeting. The Secretary shall also be responsible for preparing and distributing to the Board Members any notices received by the Company or otherwise called for by this Agreement to be given by the Company.

(e) Vice Presidents and Other Officers. The Chief Executive Officer may appoint or promote one or more Vice Presidents and such other officers and agents of the Company as the Chief Executive Officer shall deem necessary or appropriate to carry out the business of the Company upon such terms and conditions as the Chief Executive Officer may determine, subject to the approval of the Majority-In-Interest of the Members. Any such officer shall hold his or her respective office for the term specified by the Chief Executive Officer unless earlier removed by the Majority-In-Interest of the Members. Pursuant to guidelines and policies approved by the Board, subject to Section 7.4(f), such Vice Presidents and other officers and agents of the Company may execute agreements and contracts on behalf of the Company if such authority is approved by the Majority-In-Interest of the Members. All Officers with signing authority for Holdings may also execute agreements and contracts on behalf of the Company.

(f) Resignation. Any officer or agent of the Company may resign at any time by giving written notice to the Board. Any such resignation shall take effect at the time specified therein or, if no time is specified, upon receipt thereof, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

(g) Removal; Vacancies; Transfer of Duties. Any officer of the Company may be removed from office, with or without cause, by vote of the Board. The power and duties of any officer may be transferred in whole or in part by vote of the Board to any other officer or other individual, notwithstanding the other provisions of this Agreement.

(h) Compensation. The officers of the Company shall be entitled to such salary or other compensation, including salaries, bonuses, and any awards under an Equity Incentive Plan subject to Section 7.4(f)(vii) in accordance with this Section 7.5.1(h). Subject to Section 7.4(f)(vii), Section 7.4(f)(xx) and Section 7.4(f)(xxii), the Majority-In-Interest of the Members shall determine employee compensation matters including salaries, bonuses and any awards under an Equity Incentive Plan.

(i) Third Party Reliance. Third parties dealing with the Company shall be entitled to rely conclusively upon the power and authority of the officers of the Company as set forth herein.

7.5.2 Disciplinary Panels. The Board may, in its sole discretion, but subject to any requirements under applicable law, including the CEA, establish one or more disciplinary panels (each a "Disciplinary Panel"), each of which generally shall be responsible for conducting hearings, rendering decisions, imposing sanctions, and reviewing appeals with respect to disciplinary matters as determined by the Board. Except as the Board may otherwise determine from time-to-time, each Disciplinary Panel shall be comprised of three individuals, at least one of whom would qualify as a Public Director, and such person will chair the Disciplinary Panel. The number of individuals serving on any Disciplinary Panel (each a "Disciplinary Panel Member") may, subject to any requirements under

applicable law, be increased or decreased from time to time by the Board. The Disciplinary Panel Members shall be appointed by the Board and may be removed from such position, either with or without cause, at any time by the Board.

7.6 Indemnification; Exculpation

(a) **Indemnification.** The Company shall, to the fullest extent permitted by law, indemnify and advance expenses to each Board Member, director, manager, officer, employee, agent or controlling Person of the Company or any subsidiary thereof from and against any and all liability suffered and expenses (including reasonable attorneys' fees), actually and reasonably incurred by any such Person in such capacity, or arising out of such Person's status as such, as provided in this **Section 7.6**. The indemnification and advancement provided for in this **Section 7.6** shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of security holders or disinterested managers or managers or otherwise, and shall continue as to a Person who has ceased to be a Board Member, director, manager, officer, employee, agent or controlling Person of the Company or any subsidiary thereof and shall inure to the benefit of the heirs, executors and administrators of such a Person.

(b) **Actions Other Than by or in the Right of the Company.** The Company shall, to the fullest extent permitted by law, indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action, suit or proceeding (or part thereof) commenced by such Person, unless such commencement was authorized in the specific case by the Board), by reason of the fact that such Person is or was a Board Member, director, manager, officer, employee, agent or controlling Person of the Company or any subsidiary thereof, from and against any and all liability suffered and expenses (including reasonable attorneys' fees) actually and reasonably incurred by any such Person in such capacity, or arising out of such Person's status as such, in connection with such action, suit or proceeding so long as such Person acted in good faith and in a manner such Person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceedings, had no reasonable cause to believe such Person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that such Person did not act in good faith and in a manner such Person reasonably believed to be in or not opposed to the best interests of the Company, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such Person's conduct was unlawful.

(c) **Actions by or in the Right of the Company.** The Company shall, to the fullest extent permitted by law, indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by or in the right of the Company to procure a judgment in its favor (other than an action, suit or proceeding (or part thereof) commenced by such Person unless such commencement was authorized in the specific case by the Board) by reason of the fact that such Person is or was a Board Member, director, manager, officer, employee, agent or controlling Person of the Company or any subsidiary thereof from and against any and all liability suffered and expenses (including reasonable attorneys' fees) actually and reasonably incurred by any such Person in such capacity, or arising out of such Person's status as such,

in connection with the defense or settlement of such action or suit so long as such Person acted in good faith and in a manner such Person reasonably believed to be in or not opposed to the best interests of the Company and except that no indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable to the Company, unless and only to the extent that the court in which such action, suit or proceeding was brought shall finally judicially determine upon application and not subject to further appeal that, despite the adjudication of liability, and in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(d) Success on the Merits. To the extent that any Person referred to in **Section 7.6(b)** or **Section 7.6(c)** has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in such Sections, or in defense of any claim, issue or matter therein, such Person shall be indemnified to the fullest extent permitted by law against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection therewith.

(e) Specific Authorization. Any indemnification under **Section 7.6(b)** or **Section 7.6(c)** (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of any Person described in such Sections is proper in the circumstances because such Person has met the applicable standard of conduct required by such Sections. Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of Board Members who were not parties to such action, suit or proceeding, even if less than a quorum; or (ii) if there are no such Board Members, or if such Board Members so direct, by independent legal counsel in a written opinion.

(f) Advance Payment. Expenses (including reasonable attorney's fees) incurred by any Person referred to in **Section 7.6(b)** or **Section 7.6(c)** in defending any civil, criminal, administrative or investigative action, suit or proceeding referred to in such Sections shall be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Person to repay such amount if it shall ultimately be determined that such Person is not entitled to indemnification by the Company as authorized in this **Section 7.6**.

(g) Insurance. The Majority-In-Interest of the Members is authorized to cause the Company to purchase and maintain insurance on behalf of any Person who is or was a Board Member, officer, employee, controlling Person or agent of the Company, or is or was serving at the request of the Company as a Board Member, director, manager, officer, employee, agent or controlling Person of the Company or any subsidiary thereof from and against any and all liability suffered and expenses (including reasonable attorneys' fees) actually and reasonably incurred by any such Person in such capacity, or arising out of such Person's status as such, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of this **Section 7.6**.

(h) Intent of Section. The intent of this **Section 7.6** is to provide for indemnification and advancement of expenses to the same extent (except as specifically altered herein) as that which would apply under Section 145 of the DGCL as if the Company were a Delaware corporation, and it is the intent of the parties hereto that this **Section 7.6** be construed in such a manner. To the extent that Section 145 of the DGCL or any successor

section thereto may be amended or supplemented from time to time after the date of this Agreement, this **Section 7.6** shall be deemed amended automatically and construed so as to permit indemnification and advancement of expenses to the fullest extent from time to time permitted by Section 145 of the DGCL or such successor section thereto, so long as such amendment is permitted under the Delaware LLC Act; provided, however, that no such amendment shall alter any provision of this **Section 7.6** that limits indemnification or advancement of expenses based on who commences the applicable action, suit or proceeding. Unless required by law, any amendment or supplement to Section 145 of the DGCL or Section 18-108 of the Delaware LLC Act or any successor section thereto or to this **Section 7.6** shall not adversely affect any right or protection of any Person entitled to indemnification or advancement under this **Section 7.6** with respect to acts or omissions of such Person occurring prior to such amendment or supplement.

(i) Exculpation of Board Members. To the fullest extent permitted by law, no Board Member shall be personally liable to the Company, Holdings, or any other Person bound by this Agreement for monetary damages for breach of fiduciary duty as a Board Member. No amendment, modification or repeal of this **Section 7.6** shall apply to or have any effect on the liability or alleged liability of any Board Member for or with respect to any acts or omissions of such Board Member occurring prior to such amendment, modification or repeal.

(j) Indemnification Agreements. The Company may enter into indemnification agreements with its Board Members providing for the indemnification described in **Section 7.6(b)** and **Section 7.6(c)**.

7.7 Exculpation and Indemnity of Members

To the fullest extent permitted by law, Members shall not be liable or accountable in damages or otherwise to the Company or any other Person bound by this Agreement for any act or omission done or omitted by it in good faith, unless such act or omission constitutes gross negligence, willful misconduct or a breach of this Agreement on the part of Members. The Company shall, to the fullest extent permitted by law, indemnify Members and their Affiliates, and its and their respective board members, directors, managers, officers, employees, agents and controlling Persons from and against any and all liability suffered and expenses (including reasonable attorneys' fees) actually and reasonably incurred by any such Person in such capacity, or arising out of such Person's status as such, other than in connection with any action, suit or proceeding brought by any Member against the Company, arising out of any act or omission of such Member in connection with the Company, unless such act or omission constitutes gross negligence, willful misconduct or a breach of this Agreement on the part of the Member.

7.8 Fiduciary Duty; Corporate Opportunity

(a) Fiduciary Duty.

The parties hereto acknowledge that Board Members may be designees of Holdings and that the Board Members have no duties (including fiduciary duties) to the Company, and that any duties (including fiduciary duties) or implied duties of a Board Member to the Company that would otherwise apply at law, in equity or otherwise are hereby eliminated to the fullest extent permitted under the Delaware LLC Act and any other

applicable law, and the Company and each other Person bound by this Agreement hereby waives all rights to, and releases each Board Member from, any such duties; provided, however, that the foregoing (i) shall not eliminate any obligation of the Board Members to act in compliance with the express terms of this Agreement or for any Board Member to act in accordance with any express duty specified in this Agreement and (ii) shall not be deemed to eliminate any implied contractual covenant of good faith and fair dealing of the Board Members under applicable law. Notwithstanding anything to the contrary contained in this Agreement, the parties acknowledge that each Board Member, in determining whether or not to vote or consent in support of or against any particular decision for which Board approval is required, may act in and consider the best interest of Holdings or its members that elected such Board Member and shall not be required to act in or consider the interests of the Company or the other Persons bound hereby. Notwithstanding the foregoing, the parties hereto acknowledge that Public Directors serving as Board Members are elected as independent members of the Board and have no duties (including fiduciary duties) to any parties except the Company in accordance with applicable law, and that any duties (including fiduciary duties) or implied duties of a Public Director to other Board Members or parties that would otherwise apply at law, in equity or otherwise are hereby eliminated to the fullest extent permitted under the Delaware LLC Act and any other applicable law. Each Member, the Company, and each other Person bound by this Agreement hereby waives all rights to, and releases each Public Director serving as a Board Member from any such duties.

(b) Corporate Opportunity. Any Board Member or any Affiliate of any Board Member may engage in or possess an interest in other profit-seeking or business ventures of any kind, nature or description, independently or with others, similar or dissimilar to the business of the Company, whether now existing or hereafter acquired or initiated, whether or not such ventures are or may be competitive with the activities of the Company, and the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to any such Person. No Board Member or Affiliate of any Board Member who acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Company shall have any duty to communicate or offer such opportunity to the Company, and any such Person shall not be liable to the Company or to any Board Member of Affiliate thereof for breach of any fiduciary or other duty existing at law, in equity or otherwise by reason of the fact that such Board Member or Affiliate pursues or retains such opportunity or directs such opportunity to another Person or does not communicate such opportunity or information to the Company. None of the Company or any Affiliate thereof or any Board Member or any Affiliate thereof shall have any rights or obligations by virtue of this Agreement or the relationship created hereby in or to such independent ventures or the income or profits or losses derived therefrom, and the pursuit of such ventures, even if competitive with the activities of the Company, shall not be deemed wrongful, improper or the breach of any duty to the Company or any Board Member existing at law, in equity or otherwise. Notwithstanding the foregoing, no Public Directors serving as Board Members may engage in any activities that disqualify their status as Public Directors in accordance with applicable law.

7.9 Certain Expenses

All reasonable and necessary expenses incurred by the Board Members, officers and other employees of the Company in connection with the Company's business

shall be paid by the Company or reimbursed to the Board Members and such officers and other employees by the Company.

7.10 Certain Transactions

The Company is expressly permitted in the normal course of its business to enter into transactions with Members if (a) the price and other material terms of such transactions are not less favorable to the Company than those generally prevailing with respect to comparable transactions between unrelated parties, as reasonably determined by the Board, or (b) the terms of such transactions are approved by the Board.

8. BANK ACCOUNTS; BOOKS AND RECORDS; STATEMENTS; FISCAL YEAR

8.1 Bank Accounts

All funds of the Company shall be deposited in its name in such checking and savings accounts, time deposits or certificates of deposit, or other accounts at such banks as shall be designated by the Board from time to time.

8.2 Books and Records

The Company shall keep, or cause to be kept, accurate, full and complete books and accounts showing the assets, liabilities, income, operations, transactions and financial condition of the Company. Holdings shall have reasonable access to the books and records of the Company at any reasonable time during regular business hours without charge (and shall have the right to copy such books and records at its own expense).

8.3 Reports and Information

The Company shall provide to Members such reports and information concerning the business and affairs of the Company as it deems appropriate and as may be required by the Delaware LLC Act or by any other law or regulation of any regulatory body applicable to the Company.

8.4 Accounting Decisions

All decisions as to the Company's accounting matters, except as specifically provided to the contrary herein, shall be made by the Board.

8.5 Where Maintained

The books, accounts and records of the Company at all times shall be maintained at the Company's principal office.

8.6 Tax Returns

The Board shall, at the expense of the Company, cause to be prepared in a timely fashion after the end of each Fiscal Year, all federal and state income tax return information for the Company for such Fiscal Year, and delivered to Holdings, which shall be deemed the "tax matters partner" (as defined in the Internal Revenue Code). Holdings is

hereby authorized and required to represent the Company (at the Company's expense) in connection with all examinations and audits of the affairs of the Company by any federal, state or local tax authorities and in any resulting administrative and judicial proceedings, and to expend funds of the Company for professional services and costs associated therewith.

8.7 Fiscal Year

The fiscal year of the Company for financial, accounting, federal, state and local income tax purposes shall initially be the calendar year (the "Fiscal Year").

8.8 Confidentiality of Information

(a) Confidential Information. Members and each Board Member agrees not to use Confidential Information of the Company for its own use or for any purpose except in connection with such Board Member's interest in the Member, if applicable. Members and each Board Member shall undertake to treat such Confidential Information in a manner consistent with the treatment of its own information of such proprietary nature and agrees that it shall protect the confidentiality of and use reasonable best efforts to prevent disclosure of the Confidential Information to prevent it from falling into the public domain or the possession of unauthorized Persons. For purposes of this **Section 8.8**, "Confidential Information" means any information, technical data or know-how, including the Company's research, client lists, products, services, business plans, budgets, inventions, processes, designs, drawings, engineering, marketing plans or finances, that is disclosed by the Company, whether in writing or orally, and that is identified by the Company or otherwise should be reasonably understood by the recipient thereof at the time of its disclosure to be proprietary or confidential, except as provided in **Section 8.8(b)**.

8.8(b) Exceptions. Confidential Information does not include information, technical data or know-how disclosed to Members or a Board Member which: (i) is in the Members' or such Board Member's possession at the time of disclosure thereof as shown by such Members' or such Board Member's applicable files and records immediately prior to the time of such disclosure; (ii) before or after it has been disclosed to such Members or such Board Member, is or becomes public knowledge other than as a result of any action or inaction of such Member or such Board Member in violation of **Section 8.8(a)**; (iii) is disclosed to a Member or a Board Member on a non-confidential basis by a third party having no legal obligation to the Company to protect the confidentiality thereof; (iv) is independently developed by such Member or such Board Member, as properly documented by such Member or such Board Member, whichever is applicable; or (v) is approved for release by such Member or such Board Member by written authorization of the Company. The provisions of **Section 8.8(a)** shall not apply to the disclosure of Confidential Information (A) by a Member or a Board Member pursuant to any law, statute, rule or regulation or any order, direction, request or requirement (whether or not having the force of law) of any legal or regulatory authority, court, stock exchange, self-regulating organization or any governmental, fiscal, monetary or other authority; (B) by a Member or a Board Member to their respective Affiliates, or its or their respective employees, counsel, accountants or other professional advisers, in each case with a need to know such Confidential Information in connection with such Members' or such Board Member's interest in such Member; or (C) by a Member or a Board Member if disclosure of such Confidential Information is required for the protection of such Member or such Board Member's respective rights or interest against the Company or the Member, whether under this Agreement or otherwise. Notwithstanding

anything herein to the contrary, the disclosure of any Confidential Information by the Company shall be subject to such limitations as the Company determines in good faith to be appropriate to ensure compliance with any applicable laws, privileges (including the attorney-client privilege) and contractual confidentiality obligations, and the Company may limit or prohibit access to any Confidential Information if the Board, in good faith, determines that providing such access or information could be detrimental to the business of the Company or any of the Company's subsidiaries.

8.9 Publicity

(a) **Public Announcements.** Except for any disclosure required by applicable law, which shall not be subject to the obligations set forth in this sentence, and except as provided in **Section 8.9(b)**, none of the Company, the Members, the Board Members or any of their respective Affiliates shall issue any press release or public announcement concerning this Agreement or make any other public disclosure containing the terms of this Agreement, without obtaining the prior written approval of the Company, the Members, and each Board Member that is referred to, or whose Affiliate is referred to, in such press release or public announcement. If, in the reasonable judgment of the Company, the Members, Board Members or Affiliates, following consultation with its respective counsel, public disclosure by such party of this Agreement is required by applicable law, such party shall use its commercially reasonable efforts, to the extent permitted by applicable law, to consult with the Company, each Member, and each Board Member that is proposed to be referred to, or whose Affiliate is proposed to be referred to, in such public disclosure, with respect to the proposed contents of any such public disclosure before such party makes such public disclosure.

(b) **Information About Board Members.** Notwithstanding anything in **Section 8.9(a)** to the contrary, the Company, without the prior approval of Members or Board Members may (i) disclose the identity of the Board Members in the Company's marketing materials in accordance with the Company's marketing plan, (ii) issue press releases or make public announcements regarding the identity of the Board Members and (iii) disclose the identities of Members, or the members of Holdings as beneficial owners of the Company.

9. TRANSFERS OF INTERESTS; SALE OF THE COMPANY

9.1 Transfer of Membership Interests

(a) The term "transfer", when used in this **Section 9** with respect to an Interest, shall include any sale, assignment, gift, pledge, hypothecation, mortgage, exchange, or other disposition, except that such term shall not include any pledge, mortgage, or hypothecation of or granting of a security interest in an Interest in connection with any financing obtained on behalf of the Company.

(b) No Interest shall be transferred, in whole or in part, except in accordance with the terms and conditions set forth in this **Section 9**. Any transfer or purported transfer of any Interest not made in accordance with this **Section 9** shall be void ab initio.

9.2 Restrictions on Transfers

(a) No Member may transfer all or any portion of its Interest without the express written consent of the Majority-In-Interest of the Members. Notwithstanding the foregoing, any Member may transfer such Member's economic interest in such Member's Interest (but not any rights to vote, consent, approve, or otherwise participate in the management of the Company, which rights shall remain vested in the transferor Member) to a transferee that is an Affiliate of the transferring Member, to the Member's estate, or to one or more members of the Member's immediate family (spouse, ancestors, and descendants) or a trust for their benefit, for estate planning purposes; *provided, however*, that any such transfer shall give the transferee only the right to receive distributions and the income, gain and loss allocable to such Member's Interest to which such Member would otherwise be entitled, and the transferor, each transferee, and the economic interest so transferred shall remain subject to this Agreement.

(b) Any transferee of an Interest who is not already a Member shall become a substituted Member only upon executing a signature page or Joinder Agreement to this Agreement, as determined by the Majority-In-Interest of the Members. Upon such execution, the transferee of an Interest shall become a substituted Member. Unless and until a transferee is admitted as a substituted Member, at the discretion of the Majority-In-Interest of the Members, the transferee shall have no right to exercise any of the powers, rights, and privileges of a Member hereunder. A Member who has transferred its entire Interest in accordance with **Section 9.2** to a transferee hereunder shall cease to be a Member upon the effective date of such transfer and thereafter shall have no further powers, rights, and privileges as a Member hereunder.

9.3 Sale of the Company

If the Majority-In-Interest of the Members approves a Sale Transaction in accordance with **Section 7.4(f)** (an "Approved Sale"), each Member shall vote for, and each Member shall consent to and raise no objections against, such Approved Sale. If the Approved Sale is structured (i) as a merger or consolidation, each Member shall waive any dissenters' rights, appraisal rights or similar rights in connection with such merger or consolidation or (ii) as a sale of Interests, each Member agrees to sell all of his, her or its Interests and any rights to acquire Interests on the terms and conditions approved by the Majority-In-Interest of the Members. Each Member shall take all necessary or desirable actions in connection with the consummation of the Approved Sale as requested by the Company.

10. DISSOLUTION AND LIQUIDATION

10.1 Events Causing Dissolution

Subject to the provisions of **Section 10.2**, the Company shall be dissolved and its affairs wound up upon the occurrence of any of the following events:

(a) determination by the Board Members and the Members to dissolve and wind up the affairs of the Company;

(b) the entry of a decree of judicial dissolution of the Company under Section 18-802 of the Delaware LLC Act; or

(c) the occurrence of any other event that, under the Delaware LLC Act, (i) would cause the dissolution of the Company, unless the Company is continued without dissolution in accordance with this Agreement or the Delaware LLC Act, or (ii) would make it unlawful for the business of the Company to be continued.

10.2 Right to Continue Business of Company

Upon the occurrence of an event described in **Section 10.1(c)**, the Company shall be dissolved and liquidated unless, within 90 days after the occurrence of such event, Members or the members of Members, either severally, jointly, or in any combination upon which they may agree, such Members or members of Members agree in writing to continue the Company, effective as of the occurrence of the event that terminated the Company. If such an election to continue the Company is made, the Company shall continue until another event causing dissolution in accordance with this **Section 9** shall occur.

10.3 Cancellation of Certificate

Upon the dissolution and completion of winding up of the Company, the Certificate shall be canceled in accordance with the provisions of Section 18-203 of the Delaware LLC Act.

10.4 Distributions Upon Dissolution

Upon the dissolution of the Company, the Board (or any Person appointed by the Board to be responsible for winding up the affairs of the Company) shall proceed without any unnecessary delay (a) to pay or make due provision for the payment of all debts, liabilities and obligations of the Company, including all amounts owing to Members thereof under any agreement entered into between the Company and Members or any Affiliates thereof to the extent permitted by law, including the payment of expenses of liquidation of the Company and the establishment of any reasonable reserve in an amount estimated by the Board or any such appointed Person to be sufficient to pay any liabilities reasonably anticipated to be required to be paid by the Company, and then (b) to distribute any remaining Company Assets to Members in accordance with **Section 6.2**.

10.5 Reasonable Time for Winding Up

A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the distribution of its assets pursuant to **Section 10.4** in order to minimize any losses otherwise attendant upon such a winding up.

11. MISCELLANEOUS PROVISIONS

11.1 Compliance with Delaware LLC Act

The Company and Holdings agree not to take any action (or fail to take any action) in contravention of this Agreement that, considered alone or in the aggregate with

other actions or events, would result in the termination of the Company under the Delaware LLC Act.

11.2 Notices

All notices, demands, requests or other communications which may be or are required to be given, served or sent pursuant to this Agreement shall be in writing and shall be (a) hand delivered (including delivery by courier), (b) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or (c) transmitted by facsimile transmission, and addressed, if to the Company, to the attention of its Chief Executive Officer at its principal place of business and if to Holdings, at its principal place of business on record with the Company. Holdings may designate by notice to the Company in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request or communication which shall be delivered, mailed or transmitted in the manner described above shall be deemed sufficiently given, served, sent or received for all purposes at such time as it is delivered to the addressee or at such time as delivery is refused by the addressee upon presentation in accordance with this Section 11.2.

11.3 Severability

The invalidity of any one or more provisions hereof or of any other agreement or instrument given pursuant to or in connection with this Agreement shall not affect the remaining portions of this Agreement or any such other agreement or instrument or any part thereof. In the event that one or more of the provisions contained herein or therein should be invalid, or should operate to render this Agreement or any such other agreement or instrument invalid, this Agreement and such other agreements and instruments shall be construed as if such invalid provisions had not formed part of this Agreement.

11.4 Survival

It is the express intention and agreement of the parties that all covenants, agreements, statements, representations, warranties and indemnities made in this Agreement shall survive the execution and delivery of this Agreement.

11.5 Waivers

No failure of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right, remedy or privilege hereunder, shall be construed as a waiver of any such provisions, rights, remedies or privileges hereunder, nor shall any waiver by the parties of a breach of or a default under any of the provisions of this Agreement be construed as a waiver of any subsequent breach or default of a similar or other nature.

11.6 Exercise of Rights

No failure or delay on the part of the parties in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or

the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any other rights or remedies which the parties would otherwise have at law or in equity or otherwise.

11.7 Binding Effect

Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of Holdings and its members, respective heirs, devisees, executors, administrators, legal representatives, successors and assigns.

11.8 Limitation on Benefits of this Agreement

No Person other than the Members and the Company (and the Persons entitled to indemnity from the Company or exculpated from liability pursuant to **Section 7.6** or **Section 7.7**, but with regard to such **Section 7.6** and **Section 7.7** only) is or shall be entitled to bring any action to enforce any provision of this Agreement, and the covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the Majority-In-Interest of the Members (or its respective successors and assigns as permitted hereunder) and the Company (and by the Persons entitled to indemnity from the Company or exculpated from liability pursuant to **Section 7.6** or **Section 7.7**, but with regard to such **Section 7.6** and **Section 7.7** only).

11.9 Amendment

Any amendment of this Agreement may be made only in writing duly executed between the Majority-In-Interest of the Members and the Company.

11.10 Entire Agreement

This Agreement contains the entire agreement between Holdings and the Company with respect to the matters contemplated herein and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein and therein.

11.11 Pronouns

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the Person or entity may require.

11.12 Headings

Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

11.13 Governing Law

This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of Delaware without regard to principles of conflict of laws.

11.14 Specific Performance

Without limiting or waiving in any respect any rights or remedies of the parties under this Agreement now or hereinafter existing at law or in equity or by statute, each of the parties hereto shall be entitled to seek specific performance of the obligations to be performed by the other in accordance with the provisions of this Agreement.

11.15 Exclusive Jurisdiction; Venue

Each of the parties hereto hereby irrevocably submits in any suit, action or proceeding by the parties hereto arising out of or relating to this Agreement to the exclusive jurisdiction and venue of the federal and state courts of the State of Delaware and irrevocably waives any and all objections to exclusive jurisdiction and review of venue that any such party may have under the laws of the State of Delaware or the United States. Any process against any Member not organized under the laws of the State of Delaware in connection with any suit, action or proceeding arising out of or relating to this Agreement, may be served personally or by certified mail pursuant to the notice provision set forth herein with the same effect as though served on it personally.

11.16 Waiver of Jury Trial

Each of parties hereto hereby waives any right it may have to a trial by jury in respect of any action, proceeding or litigation directly or indirectly arising out of, under or in connection with this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Second Amended and Restated Limited Liability Company Agreement as of the day and year first hereinabove set forth.

NODAL EXCHANGE HOLDINGS, LLC

By: *Paul J. Cusenza*

Paul J. Cusenza
Name

Chief Executive Officer
Title

ADDENDUM I

DEFINITIONS

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such Person; and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” means this Amended and Restated Limited Liability Company Agreement, as it may be amended or supplemented from time to time.

“Board Member” means an individual serving on the Board.

“Certificate” means the Certificate of Formation of the Company, and any and all amendments thereto, filed on behalf of the Company with the Secretary of State of the State of Delaware as required under the Delaware LLC Act.

“Company Assets” means all assets and property, whether tangible or intangible and whether real, personal, or mixed, at any time owned by or held for the benefit of the Company.

“Default Rule” means a provision of the Delaware LLC Act that would apply to the Company unless otherwise provided in, or modified by, this Agreement.

“Delaware LLC Act” means the Delaware Limited Liability Company Act, as amended as of the date of this Agreement and as further amended from time to time hereafter.

“DGCL” means The General Corporation Law of the State of Delaware.

“Equity Incentive Plan” means any compensatory incentive plan, including the Company Option Plan, providing for the issuance of Equity Securities in the Company, including any Affiliates, to employees, officers, consultants or other Persons with a strategic relationship with the Company, including any Affiliates, which is in effect from time to time.

“Equity Securities” means any of the following: (a) any Interest; (b) any security convertible into or exercisable or exchangeable for, with or without consideration, any Interest (including any option to purchase such convertible security); (c) any security carrying any warrant or right to subscribe to or purchase any Interest or other security; (d) any such warrant or right; or (e) any security issued in exchange for, upon conversion of or with respect to any of the foregoing securities, including by way of dividend, distribution or split.

“Interest” means a membership interest in the Company entitling the holder thereof to receive a share of the Net Income or Net Loss of the Company.

“Interest Holder” means any Person who holds an Interest, whether as a Member or as an unadmitted assignee of a Member.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended and in effect from time to time, and, unless the context otherwise requires, applicable regulations thereunder. Any reference herein to a specific section or sections of the Internal Revenue Code shall be deemed to include a reference to any corresponding provision of future law.

“Majority-In-Interest of the Members” means the Member or Members with total Percentage Interests exceeding fifty percent (50%).

“Member” means each Person signing this Agreement and any Person who subsequently is admitted as a member in the Company.

“Net Income” and “Net Loss” mean, for a period as determined for federal income tax purposes, the taxable income or loss, respectively, computed with the following adjustments:

(a) tax-exempt income of the Company shall be included in gross income for purposes of this definition only; and

(c) expenditures of the Company described in section 705(a)(2)(B) of the Internal Revenue Code or treated as such expenditures pursuant to Regulations section 1.704-1(b)(2)(iv)(i) shall be treated, for purposes of this definition only, as deductible expenses.

“Percentage Interest” means, for any Interest Holder, the percentage interest of such Interest Holder in the Company as set forth on Exhibit A.

“Person” means any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate, or other entity or organization.

“Sale Transaction” shall mean any transaction pursuant to which the Company sells its business by (i) a sale or conveyance of all or substantially all of the Company’s assets to any Person, (ii) a sale or conveyance of all or substantially all of the equity interest in the Company to any Person, or (iii) a merger or consolidation of the Company with any Person pursuant to which the Members (and their affiliates) immediately prior to such merger or consolidation shall own, immediately after giving effect thereto, less than a majority of the equity interest of the surviving entity (or its parent) or the purchasing entity (or its parent), as the case may be.