

**OPERATING AGREEMENT  
FOR  
CONTAKT, LLC  
A CALIFORNIA LIMITED LIABILITY COMPANY  
  
AND  
  
THE MEMBERS NAMED HEREIN**

THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS AND CONDITIONS WHICH ARE SET FORTH HEREIN.

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**OPERATING AGREEMENT  
FOR  
CONTACT LLC  
A CALIFORNIA LIMITED LIABILITY COMPANY**

This OPERATING AGREEMENT, is made as of June 1, 2020 by and among the parties listed on the signature pages hereof, with reference to the following facts:

A. On March 30, 2020 Articles of Organization for CONTACT, LLC, a limited liability company organized under the laws of the State of California (the "Company"), were filed with the California Secretary of State.

B. The parties desire to adopt and approve an operating agreement (this "Agreement") for the Company.

NOW, THEREFORE, the parties (hereinafter sometimes collectively referred to as the "Members," or individually as the "Member") by this Agreement set forth the operating agreement for the Company under the laws of the State of California upon the terms and subject to the conditions of this Agreement.

**ARTICLE I  
DEFINITIONS**

When used in this Agreement, the following terms shall have the meanings set forth below (all terms used in this Agreement that are not defined in this Article I shall have the meanings set forth elsewhere in this Agreement):

1.1 "Act" shall mean the California Revised Uniform Limited Liability Company Act, codified in the California Corporations Code, Section 17701.01 *et seq.*, as may be amended from time to time.

1.2 "Affiliate" shall mean any individual, partnership, corporation, trust or other entity or association, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Member. The term "control," as used in the immediately preceding sentence, means, with respect to a corporation or limited liability company the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

1.3 "Agreement" shall mean this Operating Agreement, as originally executed and as amended from time to time.

1.4 "Articles" shall mean the Articles of Organization for the Company originally filed with the California Secretary of State and as amended from time to time.

1.5 "Bankruptcy" shall mean: (a) the filing of an application by a Member for, or his or her consent to, the appointment of a trustee, receiver, or custodian of his or her other assets; (b) the entry of an order for relief with respect to a Member in proceedings under the United States Bankruptcy Code, as amended or superseded from time to time; (c) the making by a Member of a general assignment for the benefit of creditors; (d) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of the assets of a Member unless the proceedings and the person appointed are dismissed within ninety (90) days; or (e) the failure by a Member generally to pay his or her debts as the debts become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or the admission in writing of his or her inability to pay his or her debts as they become due.

1.6 "Capital Account" shall mean with respect to any Member the capital account which the Company establishes and maintains for such Member pursuant to Section 3.3.

1.7 "Capital Contribution" shall mean the total value of cash and fair market value of property (including promissory notes or other obligation to contribute cash or property) contributed and/or services rendered or to be rendered to the Company by Members.

1.8 "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, the provisions of succeeding law, and to the extent applicable, the Regulations.

1.9 "Company" shall mean CONTACT, LLC, a California limited liability company.

1.10 "Company Minimum Gain" shall have the meaning ascribed to the term "Partnership Minimum Gain" in the Regulations Section 1.704-2(d).

1.11 "Corporations Code" shall mean the California Corporations Code, as amended from time to time, and the provisions of succeeding law.

1.12 "Distributable Cash" shall mean the amount of cash which the Managers deems available for distribution to the Members, taking into account all Company debts, liabilities, and obligations of the Company then due and amounts which the Managers deem necessary to place into reserves for customary and usual claims with respect to the Company's business.

1.13 "Economic Interest" shall mean a Member's or Economic Interest Owner's share of one or more of the Company's Net Profits, Net Losses, and distributions of the Company's assets pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management, or except as provided in the Act, any right to information concerning the business and affairs of Company.

1.14 "Economic Interest Owner" shall mean the owner of an Economic Interest who is not a Member.

1.15 "Joinder Agreement" means the joinder agreement in form and substance attached hereto as **Exhibit "C"**.

1.16 "Fiscal Year" shall mean the Company's fiscal year, which shall be the calendar year.

1.17 "Majority Interest" shall mean one or more Percentage Interests of Members which taken together exceed fifty percent (50%) of the aggregate of all Percentage Interests.

1.18 "Managers" shall mean one or more Manager. Specifically, "Manager" shall initially mean MB Partners, LLC, a California limited liability company.

1.19 "Members" shall mean each Person who (a) is an initial signatory to this Agreement, has been admitted to the Company as a Member in accordance with the Articles or this Agreement or is an assignee who has become a Member in accordance with Article VII, and (b) has not resigned, withdrawn, been expelled or, if other than an individual, dissolved.

1.20 "Member Nonrecourse Debt" shall have the meaning ascribed to the term "Partner Nonrecourse Debt" in Regulations Section 1.704-2(b)(4).

1.21 "Member Nonrecourse Deductions" shall mean items of Company loss, deduction, or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt.

1.22 "Membership Interest" shall mean a Member's entire interest in the Company including the Member's Economic Interest, the right to vote on or participate in the management, and the right to receive information concerning the business and affairs of the Company.

1.23 "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions, and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with generally accepted accounting principles employed under the method of accounting at the close of each fiscal year on the Company's information tax return filed for federal income tax purposes.

1.24 "Nonrecourse Liability" shall have the meaning set forth in Regulations Section 1.752-1(a)(2).

1.25 "Percentage Interest" shall mean the percentage of a Member set forth opposite the name of such Member under the column "Percentage Interest" in **Exhibit "A"** hereto, as such percentage may be adjusted from time to time pursuant to the terms of this Agreement.

1.26 "Person" shall mean an individual, general partnership, limited partnership, limited liability company, corporation, trust, estate, real estate investment trust association or any other entity.

1.27 "Regulations" shall, unless the context clearly indicates otherwise, mean the regulations currently in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the Code.

1.28 "Tax Matters Partner" shall be any Manager or all of them, or their successors as designated pursuant to Section 8.8.

## **ARTICLE II ORGANIZATIONAL MATTERS**

2.1 Formation. Pursuant to the Act, the Members have formed a California limited liability company under the laws of the State of California by filing the Articles with the California Secretary of State and entering into this Agreement. The rights and liabilities of the Member shall be determined pursuant to the Act and this Agreement. To the extent that the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

2.2 Name. The name of the Company shall be "CONTACT, LLC". The business of the Company may be conducted under that name or, upon compliance with applicable laws, any other name that the Managers deem appropriate or advisable. The Managers shall file any fictitious name certificates and similar filings, and any amendments thereto, that the Managers consider appropriate or advisable.

2.3 Term. The term of this Agreement shall be co-terminus with the period of duration of the Company provided in the Articles, unless extended or sooner terminated as hereinafter provided.

2.4 Office and Agent. The Company shall continuously maintain an office and registered agent in the State of California as required by the Act. The principal office of the Company shall be determined by the Manager. The Company also may have such offices, anywhere within or without the State of California, as the Managers from time to time may determine, or the business of the Company may require. The registered agent shall be as stated in the Articles or as otherwise determined by the Managers.

2.5 Addresses of the Member and the Manager. The respective addresses of the Members and the Managers are set forth on the signature page attached hereto.

2.6 Purpose of Company; B-Corporation. The purpose of the Company shall include creating a material positive impact on society and the environment, taken as a whole, from the business and operations of the Company; in addition to the foregoing, the purpose of the Company is to engage in any lawful activity for which a limited liability company may be organized under the Act.

### **ARTICLE III CAPITAL CONTRIBUTIONS**

3.1 Initial Capital Contributions. Each Member has contributed or shall contribute such amounts as are set forth on **Exhibit “A”** as his or her initial Capital Contribution, which **Exhibit “A”** shall be supplemented and/or revised to reflect additional contributions contributed in accordance herein.

3.2 Additional Capital Contributions. No Member shall be required to make any additional Capital Contributions. To the extent approved by the Managers, from time to time, the Members may be permitted to make additional Capital Contributions if and to the extent they so desire, and if the Managers determine that such additional Capital Contributions are necessary or appropriate for the conduct of the Company's business, including without limitation, expansion or diversification. In that event, the Members shall have the opportunity, but not the obligation, to participate in such additional Capital Contributions on a pro rata basis in accordance with their Percentage Interests. Immediately following such Capital Contributions, the Percentage Interests shall be adjusted by the Managers to reflect the new relative proportions of the Capital Accounts of the Members.

3.3 Capital Accounts. The Company shall establish an individual Capital Account for each Member. The Company shall determine and maintain each Capital Account in accordance with Regulations Section 1.704-1(b)(2)(iv). If a Member transfers all or a part of his Membership Interest in accordance with this Agreement, such Member's Capital Account attributable to the transferred Membership Interest shall carry over to the new owner of such Membership Interest pursuant to Regulations Section 1.704-1(b)(2)(iv)(1). Members shall not be required to restore a negative capital account.

3.4 No Interest. Except as otherwise expressly provided in this Agreement, no Member shall be entitled to receive any interest on his Capital Contributions.

3.5 Return of Contributions. Except as otherwise provided in this Agreement, no Member nor Economic Interest Owner is entitled to receive the return of any Capital Contribution or draw from the Company, except upon dissolution of the Company.

3.6 Funds Advanced by Members. Because Members are not required to make additional Capital Contributions per Section 3.2, or restore a negative capital account per Section 3.3 – any

### **ARTICLE IV MEMBERS**

4.1 Limited Liability. Except as required under the Act or as expressly set forth in this Agreement, no Member shall be personally liable for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise.

4.2 Admission of Additional Members. The Managers in their sole discretion may admit to the Company additional Members, however, the addition of any new Member or Members whose membership interests either individually or together in the aggregate equal 25% or more of the total membership interests then issued and outstanding shall not be valid unless approved in writing by a majority of the then existing Members. Any additional Members shall obtain Membership Interests and will have the same rights and interests in the Company on the same terms as existing Members. Notwithstanding the foregoing, substitute members may only be admitted in accordance with Article VII.

4.3 Withdrawals or Resignations. Any Member who is under an obligation to render services to the Company may withdraw or resign as a Member at any time upon 120 days prior written notice to the Company, without prejudice to the rights, if any, of the Company or the other Members under any contract to which the withdrawing Member is a party. No other Member may withdraw or resign from the Company.

4.4 Termination of Membership Interest. Upon the transfer of a Member's Membership Interest in violation of this Agreement, the occurrence of an event of dissolution as to such Member which does not result in the dissolution of the Company, or the withdrawal of a Member in accordance with Section 4.3, the Membership Interest of a Member shall be terminated by the Managers or such Membership Interest shall be purchased by the Company or remaining Members as provided herein. Each Member acknowledges and agrees that such termination or purchase of a Membership Interest upon the occurrence of any of the foregoing events is not unreasonable under the circumstances existing as of the date hereof.

4.5 Transactions With The Company. Subject to any limitations set forth in this Agreement and with the prior approval of the Managers after full disclosure of the Member's involvement, a Member may lend money to and transact other business with the Company. Subject to other applicable law, such Member has the same rights and obligations with respect thereto as a Person who is not a Member.

4.6 Remuneration To Members. Except as otherwise authorized in, or pursuant to, this Agreement or for services rendered as an employee or consultant to the Company, no Member is entitled to remuneration for acting in the Company business, subject to the entitlement of Managers or Members winding up the affairs of the Company to reasonable compensation pursuant to Section 9.3.

4.7 Members Are Not Agents. Pursuant to Section 5.1 and the Articles, the management of the Company is vested in the Managers. No Member, acting solely in the capacity of a Member, is an agent of the Company nor can any Member in such capacity bind nor execute any instrument on behalf of the Company.

4.8 Voting Rights. Except as expressly provided in this Agreement or the Articles, Members shall have no voting, approval or consent rights. Members shall have the right to approve or disapprove matters as specifically stated in this Agreement, including the following:

(i) Section 2.6 (B) on a change in the purpose of the Company, subject to Section 11.21;

(ii) Section 4.2 on a Manager's addition of new members individually or in the aggregate in excess of 25% of the outstanding membership interests;

(iii) Section 5.2 on election and removal of a Manager;

(iv) Section 5.3(B) on reorganization of the Company;

(v) Section 5.3(B) on other limitations on the Managers' authority; and

(vi) Section 9.1 on dissolving the Company.

4.9 Meetings of Members. No annual or regular meetings of the Members are required. If meetings are held, such meetings shall be noticed, held and conducted pursuant to the Act. Any action required or permitted to be taken by the Members may be taken by the written consent of Members having not less than the minimum number of votes that would be necessary to authorize or take action at a meeting at which all Members entitled to vote on that action at a meeting were present and voted.

4.10 Certificate of Membership Interest.

A. Certificate. A Membership Interest may be represented by a certificate of membership. The exact contents of a certificate of membership may be determined by action of the Managers but shall be issued substantially in conformity with the following requirements. The certificates of membership shall be respectively numbered serially, as they are issued, and shall be signed by the Managers or officers of the Company. Each certificate of membership shall state the name of the Company, the name of the Person to whom issued, the date of issue, and the Percentage Interests represented thereby. Each certificate of membership shall be otherwise in such form as may be determined by the Managers.

B. Cancellation of Certificate. All certificates of membership surrendered to the Company for transfer shall be canceled and no new certificates of membership shall be issued in lieu thereof until the former certificates for a like number of Membership Interests shall have been surrendered and canceled, except as herein provided with respect to lost, stolen, or destroyed certificates.

C. Replacement of Lost, Stolen, or Destroyed Certificate. Any Member claiming that his or her certificate of membership is lost, stolen, or destroyed may make an affidavit or affirmation of that fact and request a new certificate. Upon the giving of a satisfactory indemnity to the Company as reasonably as required by the Managers, a new certificate may be issued of the same tenor and representing the same Percentage Interest of membership as was represented by the certificate alleged to be lost, stolen, or destroyed.



**ARTICLE V  
MANAGEMENT AND CONTROL OF THE COMPANY**

5.1 Management of the Company by the Managers.

A. Exclusive Management by the Managers. The business, property and affairs of the Company shall be managed exclusively by the Managers. Except for situations in which the approval of the Members is expressly required by the Articles or this Agreement, the Managers shall have full, complete and exclusive authority, power, and discretion to manage and control the business, property and affairs of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business, property and affairs.

B. Agency Authority of Managers. Subject to Section 5.3(B), the Managers, acting alone or together are authorized to endorse checks, drafts, and other evidences of indebtedness made payable to the order of the Company. Each Manager shall be authorized to sign contracts and obligations on behalf of the Company.

C. Manager Obligations; B-Corporation.

- a) In discharging the duties of their positions and in considering the best interests of the Company, Managers shall consider the effects of any action or inaction on the following, on a best-efforts basis, in good faith, exercising their business judgment:
- i. the preservation of personal privacy and humanity of individual users associated with technologies or software deployed by the Company;
  - ii. the prevention and reduction of socioeconomic disparities in healthcare systems;
  - iii. the Members of the Company;
  - iv. the employees and work force of the Company, its subsidiaries, and its suppliers;
  - v. the interests of its customers as beneficiaries of the purpose of the Company to have a material positive impact on society and the environment;
  - vi. community and societal factors, including those of each community in which offices or facilities of the Company, its subsidiaries, or its suppliers are located;
  - vii. the local and global environment;
  - viii. the short-term and long-term interests of the Company, including benefits that may accrue to the Company from its long-term plans and the possibility that these interests may be best served by the continued independence of the Company; and

- ix. the ability of the Company to create a material positive impact on society and the environment, taken as a whole.
- b) In discharging his or her duties, and in determining what is in the best interests of the Company and its members, a Manager shall not be required to regard any interest, or the interests of any particular group affected by an action or inaction, including the members, as a dominant or controlling interest or factor. Managers shall not be personally liable for monetary damages for:
  - i. any action or inaction in the course of performing the duties of a Manager under this paragraph if the Manager was not interested with respect to the action or inaction; or
  - ii. failure of the Company to create a material positive impact on society and the environment, taken as a whole.
- c) A Manager does not have a duty to any person other than a Member in its capacity as a Member with respect to the purpose of the Company or the obligations set forth in this Article, and nothing in this Article express or implied, is intended to create or shall create or grant any right in or for any person other than a Member or any cause of action by or for any person other than a Member or the Company.
- d) Notwithstanding anything set forth herein, a Manager is entitled to rely on the provisions regarding “best interests” set forth above in enforcing his or her rights hereunder and under state law, and such reliance shall not, absent another breach, be construed as a breach of a Manager’s duty of care, even in the context of a change in control transaction where, as a result of weighing the interests set forth in subsection (a)(i)-(vii) above, a managing Member determines to accept an offer, between two competing offers, with a lower price per unit.
- e) A Manager who makes a business judgment in good faith fulfills the duty under this section if the Manager: (i) is not interested in the subject of the business judgment; (ii) is informed with respect to the subject of the business judgment to the extent the Manager reasonably believes to be appropriate under the circumstances; and (iii) rationally believes that the business judgment is in the best interests of the Company.

Notwithstanding anything to the contrary herein this Agreement, should there be any conflict of terms between this Article V, Section 5.1(C) and other provisions of this Agreement, the terms of this Section 5.1(C) shall take precedence.

## 5.2 Election of Managers.

A. Number, Term, and Qualifications. The Company shall be managed by its Managers. Subject to Section 5.2(C), unless a Manager resigns, assigns, sells or otherwise transfers his or her interest in the Company, each Manager shall hold office during the term of the Company. A new or additional Manager may be appointed at any time by the affirmative vote of the existing Managers and a majority of the membership interests then outstanding.

B. Resignation. A Manager may resign at any time by giving written notice to the Members without prejudice to the rights, if any, of the Company under any contract to which such Manager is a party. The resignation of a Manager shall take effect upon receipt of that notice or at such later time as shall be specified in the notice; and, unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect such Manager's rights as a Member and shall not constitute a withdrawal of a Member.

C. Removal. Unless prohibited by law or the Act, and to the greatest extent allowed thereunder, a Manager may be removed at any time, with or without cause, by the affirmative vote of Members holding at least sixty-seven percent (67%) of the Membership Interest of the Company at a meeting called expressly for that purpose, or by the written consent of the Members holding at least sixty-seven percent (67%) of the Membership Interest of the Company. Any removal shall be without prejudice to the rights, if any, of the Manager to its compensation as provided in Section 5.9 hereunder (which shall survive any such removal) and, if the Manager is also a Member, shall not affect the Manager's rights as a Member or constitute a withdrawal of a Member.

### 5.3 Powers of Managers.

A. Powers of Managers. Without limiting the generality of Section 5.1, but subject to Section 5.3(B) and to the express limitations set forth elsewhere in this Agreement, the Managers shall have all necessary powers to manage and carry out the purposes, business, property, and affairs of the Company. If there is more than one Manager, any actions taken by any Manager individually pursuant to this Section 5 must be approved in writing by all Managers unanimously.

B. Limitations on Power of Managers. The Managers shall not have authority hereunder to cause the Company to engage in the following transactions without first obtaining the affirmative vote or written consent of a Majority Interest (or such greater Percentage Interests set forth below) of the Members:

(i) The sale, exchange or other disposition of all, or substantially all, of the Company's assets occurring as part of a single transaction or plan, or in multiple transactions over a 12 month period, except in the orderly liquidation and winding up of the business of the Company upon its duly authorized dissolution, shall require the affirmative vote or written consent of Members holding a Majority Interest.

(ii) The merger of the Company with any other limited liability company or limited partnership shall require the affirmative vote or written consent of Members holding a Majority Interest; provided in no event shall a Member be required to become a general partner in a merger with a limited partnership without his or her express written consent or unless the agreement of merger provides each Member with the dissenter's rights described in the Act.

(iii) The merger of the Company with a corporation or a general partnership or other Person shall require the affirmative vote or written consent of all Members.

(iv) The establishment of different classes of Members.

(v) An alteration of the primary purpose of the Company as set forth in Section 2.6.

(vi) Any act which would make it impossible to carry on the ordinary business of the Company.

(vii) The confession of a judgment against the Company.

(viii) Any other transaction described in this Agreement as requiring the vote, consent, or approval of the Members.

5.4 Members Have No Managerial Authority. The Members shall have no power to participate in the management of the Company except as expressly authorized by this Agreement or the Articles and except as expressly required by the Act. Unless expressly and duly authorized in writing to do so by the Managers, no Member shall have any power or authority to bind or act on behalf of the Company in any way, to pledge its credit, or to render it liable for any purpose.

5.5 Performance of Duties; Liability of Managers. The Managers shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, gross negligence, reckless or intentional misconduct, or a knowing violation of law by the Managers. The Managers shall perform their managerial duties in good faith, in a manner they reasonably believe to be in the best interests of the Company and its Members, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. A Manager shall not have any liability by reason of being or having been a Manager of the Company.

In performing their duties, the Managers shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, of the following persons or groups unless the Managers have knowledge concerning the matter in question that would cause such reliance to be unwarranted and provided that the Managers act in good faith and after reasonable inquiry when the need therefor is indicated by the circumstances:

(a) one or more officers, employees or other agents of the Company whom the Managers reasonably believe to be reliable and competent in the matters presented; or

(b) any attorney, independent accountant, or other Person as to matters which the Managers reasonably believe to be within such Person's professional or expert competence.

5.6 Devotion of Time. The Managers are not obligated to devote all or any substantial portion of their time or business efforts to the affairs of the Company. The Managers shall devote whatever time, effort, and skill as they deem appropriate for the operation of the Company. It is

anticipated that the operations of the Company shall not require substantial efforts on the part of the Managers.

5.7 Competing Activities. The Managers may engage or invest in, independently or with others, any business activity of any type or description, including without limitation those that might be the same as or similar to the Company's business and that might be in direct or indirect competition with the Company. Neither the Company nor any Member shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. The Managers shall not be obligated to present any investment opportunity or prospective economic advantage to the Company, even if the opportunity is of the character that, if presented to the Company, could be taken by the Company. The Managers shall have the right to hold any investment opportunity or prospective economic advantage for its own account or to recommend such opportunity to Persons other than the Company. The Members acknowledge that the Managers and their Affiliates own and/or manage other businesses, including businesses that may compete with the Company and for the Managers' time. The Members hereby waive any and all rights and claims which they may otherwise have against the Managers, their agents and their Affiliates as a result of any of such activities.

5.8 Transactions Between the Company and the Managers. Notwithstanding that it may constitute a conflict of interest, the Managers may, and may cause their Affiliates to, engage in any transaction (including, without limitation, the purchase, sale, lease, or exchange of any property or the rendering of any service, or the establishment of any salary, other compensation, or other terms of employment) with the Company so long as such transaction is not expressly prohibited by this Agreement and so long as the terms and conditions of such transaction, on an overall basis, are fair and reasonable to the Company and are at least as favorable to the Company as those that are generally available from Persons capable of similarly performing them and in similar transactions between parties operating at arm's length, and provided that a Majority Interest of the Members having no interest in such transaction (other than their interests as Members) affirmatively vote or consent in writing to approve the transaction.

A transaction between a Manager and/or its Affiliates, on the one hand, and the Company, on the other hand, shall be conclusively determined to constitute a transaction on terms and conditions, on an overall basis, fair and reasonable to the Company and at least as favorable to the Company as those generally available in a similar transaction between parties operating at arm's length if a Majority Interest of the Members having no interest in such transaction (other than their interests as Members) affirmatively vote or consent in writing to approve the transaction. Notwithstanding the foregoing, the Managers shall not have any obligation, in connection with any such transaction between the Company and the Managers or an Affiliate of the Managers, to seek the consent of the Members.

5.9 Payments to Managers. Except as specified in this Agreement, no Manager or Affiliate of a Manager is entitled to remuneration for services rendered or goods provided to the Company. The Managers and their Affiliates shall receive the following payments:

A. Services Performed by Managers or Affiliates/Waiver of Conflict of Interest.

The Company shall pay the Managers or Affiliates of the Managers for services rendered or goods provided to the Company to the extent that the Managers are not required to render such services or goods themselves without charge to the Company, and to the extent that the fees paid to such Manager or Affiliates do not exceed the fees that would be payable to an independent responsible third party that is willing to perform such services or provide such goods.

B. Expenses. The Company shall reimburse the Managers and their Affiliates for

the actual cost of goods and materials used for or by the Company. The Company shall also pay or reimburse the Managers or their Affiliates for organizational expenses (including, without limitation, legal and accounting fees and costs) incurred to form the Company and prepare the Articles and this Agreement.

5.10 Officers.

A. Appointment of Officers. The Managers may appoint officers at any time.

The officers of Company, if deemed necessary by the Managers, may include a chairperson, chief executive officer, president, vice president, secretary, and chief financial officer. The officers shall serve at the pleasure of the Managers, subject to all rights, if any, of an officer under any contract of employment. Any individual may hold any number of offices. No officer need be a resident of the State of California or citizen of the United States. The Managers may serve as officers of Company.

The officers shall exercise such powers and perform such duties as specified in this Agreement and as shall be determined from time to time by the Managers.

B. Acts of Officers as Conclusive Evidence of Authority. Any note, mortgage,

evidence of indebtedness, contract, certificate, statement, conveyance, or other instrument in writing, and any assignment or endorsement thereof, executed or entered into between the Company and any other Person, when signed by the chairperson of the board, the chief executive officer, the president or any vice president and any secretary, any assistant secretary, the chief financial officer, or any assistant treasurer of the Company, is not invalidated as to the Company by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other Person that the signing officers had no authority to execute the same.

5.11 Limited Liability. No Person who is a Manager or officer or both a Manager and officer of the Company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Manager or officer or both a Manager and officer of the Company.

## ARTICLE VI

### ALLOCATIONS OF NET PROFITS AND NET LOSSES AND DISTRIBUTIONS

6.1 Allocations of Net Profit and Net Loss.

A. Net Profit. Net Profit of the Company shall be allocated to the Members first to the extent of allocated losses. Thereafter, the Net Profit of the Company shall be allocated to the Members in proportion to their Percentage Interest.

B. Net Loss. Net Loss shall be allocated to the Members in proportion to their Percentage Interest.

Notwithstanding the previous sentence, loss allocations to a Member shall be made only to the extent that such loss allocations will not create a deficit Capital Account balance for that Member in excess of an amount, if any, equal to such Member's share of Company Minimum Gain that would be realized on a foreclosure of the Company's property. Any loss not allocated to a Member because of the foregoing provision shall be allocated to the other Members (to the extent the other Members are not limited in respect of the allocation of losses under this Section 6.1(B)). Any loss reallocated under this Section 6.1(B) shall be taken into account in computing subsequent allocations of income and losses pursuant to this Article VI, so that the net amount of any item so allocated and the income and losses allocated to each Member pursuant to this Article VI, to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to this Article VI if no reallocation of losses had occurred under this Section 6.1(B).

6.2 Distribution of Assets by the Company. Subject to applicable law and any limitations contained elsewhere in this Agreement, the Managers may elect from time to time to distribute Distributable Cash to the Members, which distributions shall be in proportion to their Percentage Interests, except as otherwise provided in **Exhibit "B"**. All such distributions shall be made only to the Persons who, according to the books and records of the Company, are the holders of records of the Economic Interests in respect of which such distributions are made on the actual date of distribution. Neither the Company nor any Managers shall incur any liability for making distributions in accordance with this Section 6.2.

6.3 Special Allocations.

A. Minimum Gain Chargeback. Notwithstanding Section 6.1, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, in subsequent Fiscal Years) in an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain that is allocable to the disposition of Company property subject to a Nonrecourse Liability, which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(g)(2). Allocations pursuant to this Section 6.3(A) shall be made in proportion to the amounts required to be allocated to each Member under this Section 6.3(A). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f). This Section 6.3(A) is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

B. Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt. Notwithstanding Section 6.1 of this Agreement, if there is a net decrease in Company Minimum Gain attributable to a Member Nonrecourse Debt, during any Fiscal Year, each member who has a

share of the Company Minimum Gain attributable to such Member Nonrecourse Debt (which share shall be determined in accordance with Regulations Section 1.704-2(i)(5)) shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, in subsequent Fiscal Years) in an amount equal to that portion of such Member's share of the net decrease in Company Minimum Gain attributable to such Member Nonrecourse Debt that is allocable to the disposition of Company property subject to such Member Nonrecourse Debt (which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(i)(5)). Allocations pursuant to this Section 6.3(B) shall be made in proportion to the amounts required to be allocated to each Member under this Section 6.3(B). The items to be so allocated required to be allocated to each Member under this Section 6.3(B). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section 6.3(B) is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

C. Nonrecourse Deductions. Notwithstanding Section 6.1, any nonrecourse deductions (as defined in Regulations Section 1.704-2(b)(1)) for any Fiscal Year or other period shall be specially allocated to the Members in proportion to their Percentage Interests.

D. Member Nonrecourse Deductions. Notwithstanding Section 6.1, those items of Company loss, deduction, or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt for any Fiscal Year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such items are attributable in accordance with Regulations Section 1.704-2(i).

E. Qualified Income Offset. Notwithstanding Section 6.1, if a Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), or any other event creates a deficit balance in such Member's Capital Account in excess of such Member's share of Company Minimum Gain, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such excess deficit balance as quickly as possible. Any special allocations of items of income and gain pursuant to this Section 6.3(E) shall be taken into account in computing subsequent allocations of income and gain pursuant to this Article VI so that the net amount of any item so allocated and the income, gain, and losses allocated to each Member pursuant to this Article VI to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 6.3(E) if such unexpected adjustments, allocations, or distributions had not occurred.

6.4 Code Section 704(c) Allocations. Notwithstanding any other provision in this Article VI, in accordance with Code Section 704(c) and the Regulations promulgated thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value on the date of contribution. Allocations pursuant to this Section 6.4 are solely for purposes of federal, state and local taxes. As such, they shall not affect or in any way be taken into



account in computing a Member's Capital Account or share of profits, losses, or other items of distributions pursuant to any provision of this Agreement.

6.5 Allocation of Net Profits and Losses and Distributions in Respect of a Transferred Interest. If any Membership Interest is transferred, or is increased or decreased by reason of the admission of a new Member or otherwise, during any Fiscal Year of the Company, each item of income, gain, loss, deduction, or credit of the Company for such Fiscal Year shall be assigned pro rata to each day in the particular period of such fiscal year to which such item is attributable (i.e., the day on or during which it is accrued or otherwise incurred) and the amount of each such item so assigned to any such day shall be allocated to the Member based upon his or her respective Membership Interest at the close of such day.

However, for the purpose of accounting convenience and simplicity, the Company shall treat a transfer of, or an increase or decrease in, a Membership Interest which occurs at any time during a semi-monthly period (commencing with the semi-monthly period including the date hereof) as having been consummated on the last day of such semi-monthly period, regardless of when during such semi-monthly period such transfer, increase, or decrease actually occurs (i.e., sales and dispositions made during the first fifteen (15) days of any month will be deemed to have been made on the 15th day of the month).

Notwithstanding any provision above to the contrary, gain or loss of the Company realized in connection with a sale or other disposition of any of the assets of the Company shall be allocated solely to the parties owning Membership Interests as of the date such sale or other disposition occurs.

6.6 Form of Distribution. A Member, regardless of the nature of the Member's Capital Contribution, has no right to demand and receive any distribution from the Company in any form other than money. No Member may be compelled to accept from the Company a distribution of any asset in kind in lieu of a proportionate distribution of money being made to other Members. Except upon a dissolution and the winding up of the Company, no Member may be compelled to accept a distribution of any asset in kind.

6.7 Restriction on Distributions.

A. No distribution shall be made if, after giving effect to the distribution:

(i) The Company would not be able to pay its debts as they become due in the usual course of business.

(ii) The Company's total assets would be less than the sum of its total liabilities plus, unless this Agreement provides otherwise, the amount that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members, if any, upon dissolution that are superior to the rights of the Member receiving the distribution.

B. The Managers may base a determination that a distribution is not prohibited on any of the following:

- (i) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances.
- (ii) A fair valuation.
- (iii) Any other method that is reasonable in the circumstances.

Except as provided in the Act, the effect of a distribution is measured as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or the date payment is made if it occurs more than 120 days from the date of authorization.

C. A Member or Manager who votes for a distribution in violation of this Agreement or the Act is personally liable to the Company for the amount of the distribution that exceeds what could have been distributed without violating this Agreement or the Act if it is established that the Member or Manager did not act in compliance with Section 6.7(B). Any Member or Manager who is so liable shall be entitled to compel contribution from (i) each other Member or Manager who also is so liable and (ii) each Member for the amount the Member received with knowledge of facts indicating that the distribution was made in violation of this Agreement or the Act.

6.8 Return of Distributions. Except for distributions made in violation of the Act or this Agreement, no Member or Economic Interest Owner shall be obligated to return any distribution to the Company or pay the amount of any distribution for the amount of the Company or to any creditor of the Company. The amount of any distribution returned to the Company by a Member or Economic Interest Owner or paid by a Member or Economic Interest Owner for the account of the Company or to a creditor of the Company shall be added to the account or accounts from which it was subtracted when it was distributed to the Member or Economic Interest Owner.

6.9 Obligations of Members to Report Allocations. The Members are aware of the income tax consequences of the allocations made by this Article VI and hereby agree to be bound by the provisions of this Article VI in reporting their shares of Company income and loss for income tax purposes.

## **ARTICLE VII TRANSFER AND ASSIGNMENT OF INTERESTS**

7.1 Transfer and Assignment of Interests. No Member shall be entitled to transfer, assign, convey, sell, encumber or in any way alienate all or any part of his or her Membership Interest except with the prior written consent of the Managers, which consent may be withheld in the sole discretion of the Managers. Transfers permitted by the Managers shall be subject to an administrative fee according to a schedule set forth by the Managers. Transfers in violation of this Article VII shall only be effective to the extent set forth in Section 7.7. After the consummation of any transfer of any

part of a Membership Interest under this Article, the Membership Interest so transferred shall continue to be subject to the terms and provisions of this Agreement and any further transfers shall be required to comply with all the terms and provisions of this Agreement. A person who receives a transferred membership interest must execute and deliver to the Company a Joinder Agreement. On amendment of the Members schedule by the Manager and the satisfaction of any other applicable conditions, such person shall be admitted as a Member and deemed listed as such on the books and records of the Company.

7.2 Further Restrictions on Transfer of Interests. In addition to other restrictions found in this Agreement, no Member shall transfer, assign, convey, sell, encumber or in any way alienate all or part of his or her Membership Interest: (i) without compliance with Section 11.9, and (ii) if the Membership Interest to be transferred, assigned, sold or exchanged, when added to the total of all other Membership Interests sold or exchanged in the preceding twelve (12) consecutive months prior thereto, would cause the termination of the Company under the Code, as determined by the Managers.

7.3 Substitution of Members. A transferee of a Membership Interest shall have the right to become a substitute Member only if (i) the requirements of Sections 7.1 and 7.2 relating to the consent of the Managers, and securities and tax requirements hereof are met, (ii) such Person executes an instrument satisfactory to the Managers accepting and adopting the terms and provisions of this Agreement, and (iii) such Person pays any reasonable expenses in connection with his or her admission as a new Member. The admission of a substitute Member shall not result in the release of the Member who assigned the Membership Interest from any liability that such Member may have to the Company.

7.4 Family and Affiliate Transfers. The Membership Interest of any Member may be transferred, upon consent of the Managers, which shall not be unreasonably withheld, by the Member (i) by inter vivos gift or by testamentary transfer to any spouse, parent, sibling, in-law, child or grandchild of the Member, or to a trust for the benefit of the Member or such spouse, parent, sibling, in-law, child or grandchild of the Member, or (ii) to any Affiliate of the Member. Such transfers shall be subject to payment of an administrative transfer fee according to a schedule prepared by the Managers.

7.5 Effective Date of Permitted Transfers. Any permitted transfer of all or any portion of a Membership Interest shall be effective as of the date provided in Section 6.5 following the date upon which the requirements of Sections 7.1, 7.2 and 7.3 have been met. Any transferee of a Membership Interest shall take subject to the restrictions on transfer imposed by this Agreement.

7.6 Rights of Legal Representatives. If a Member who is an individual dies or is adjudged by a court of competent jurisdiction to be incompetent to manage the Member's person or property, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights for the purpose of settling the Member's estate or administering the Member's property, including any power the Member has under the Articles or this Agreement to give an assignee the right to become a Member. If a Member is a corporation, trust, or

other entity and is dissolved or terminated, the powers of that Member may be exercised by his or her legal representative or successor.

7.7 No Effect to Transfers in Violation of Agreement. Upon any transfer of a Membership Interest in violation of this Article VII, the transferee shall have no right to vote or participate in the management of the business, property and affairs of the Company or to exercise any rights of a Member. Such transferee shall only be entitled to become an Economic Interest Owner and thereafter shall only receive the share of one or more of the Company's Net Profits, Net Losses and distributions of the Company's assets to which the transferor of such Economic Interest would otherwise be entitled. Notwithstanding the immediately preceding sentences, if, in the determination of the Managers, a transfer in violation of this Article VII would cause the termination of the Company under the Code, in the sole discretion of the Managers, the transfer shall be null and void and the purported transferee shall not become either a Member or an Economic Interest Owner.

Upon and contemporaneously with any transfer, assignment, conveyance or sale (whether arising out of an attempted charge upon that Member's Economic Interest by judicial process, a foreclosure by a creditor of the Member or otherwise) of a Member's Economic Interest which does not at the same time transfer the balance of the rights associated with the Membership Interest transferred by the Member (including, without limitation, the rights of the Member to vote or participate in the management of the business, property and affairs of the Company), the Company shall purchase from the Member, and the Member shall sell to Company for a purchase price of \$1.00, all remaining rights and interests retained by the Member that immediately before the transfer, assignment, conveyance or sale were associated with the transferred Economic Interest. Such purchase and sale shall not, however, result in the release of the Member from any liability to the Company as a Member.

Each Member acknowledges and agrees that the right of the Company to purchase such remaining rights and interest from a Member who transfers a Membership Interest in violation of this Article VII is not unreasonable under the circumstances existing as of the date hereof.

7.8 Right of First Offer.

A. If a Member (a "Transferor") desires to sell, assign or otherwise convey (collectively, a "Transfer") all or any portion of, or any interest or rights in the Transferor's Economic Interest (the "Transferor Interest"), the Transferor shall notify the Company of that desire (the "Transfer Notice"). The Transfer Notice shall describe the purchase price and terms and conditions of the proposed Transfer. The Company, or its nominee(s), shall have the option (the "Purchase Option") to purchase all of the Transferor Interest for the price set forth in the Transfer Notice (the "Purchase Price") and upon such other terms and conditions set forth in the Transfer Notice. A Member who is an individual that dies or is adjudged by a court of competent jurisdiction to be incompetent to manage the Member's person or property shall also be considered a Transferor, and the legal representative of such Transferor shall be obligated to sell, assign, or convey such Transferor's Membership Interest in the Company pursuant to the same terms and conditions as set forth in this Section 7.8.

B. The Purchase Option shall be and remain irrevocable for a period (the "Transfer Period") ending at 11:59 P.M. local time at the Company's principal office on the thirtieth (30th) day following the day the Transfer Notice is given to the Company.

C. At any time during the Transfer Period, the Company and/or its nominee (the "Purchaser(s)") may elect to exercise the Purchase Option by giving written notice of its election to the Transferor. The Transferor shall not be deemed a Member for the purpose of voting on whether the Company shall elect to exercise the Purchase Option.

D. The Purchaser's notice of its election to purchase the Transfer Interest shall fix a closing date (the "Transfer Closing Date") for the purchase, which shall not be earlier than five (5) days after the date of the notice of election nor more than thirty (30) days after the expiration of the Transfer Period.

E. The Purchase Price shall be paid in cash, check, or other form of payment as agreed to by the Purchaser and Transferor on the Transfer Closing Date.

F. If the Company's Purchase Option is not exercised, the Transferor or its legal representative shall be permitted to offer and sell the Transferor Interest to any other Person for a period of six (6) months (the "Free Transfer Period") after the expiration of the Transfer Period. If the Transferor does not Transfer the Transferor Interest within the Free Transfer Period, the Transferor's right to Transfer the Transferor Interest pursuant to this Section shall cease and terminate.

G. Any Transfer of the Transferor Interest made after the last day of the Free Transfer Period or without strict compliance with the terms, provisions, and conditions of this Section and all other terms, provisions, and conditions of this Agreement, shall be null and void and of no force or effect.

## **ARTICLE VIII ACCOUNTING, RECORDS, REPORTING BY MEMBERS**

8.1 Books and Records. The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods followed for federal income tax purposes. The books and records of the Company shall reflect all the Company transactions and shall be appropriate and adequate for the Company's business. The Company shall maintain at its principal office in California all of the following:

A. A current list of the full name and last known business or residence address of each Member and Economic Interest Owner set forth in alphabetical order, together with the Capital Contributions, Capital Account and Percentage Interest of each Member and Economic Interest Owner;

B. A current list of the full name and business of the Managers;

C. A copy of the Articles and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which the Articles or any amendments thereto have been executed;

D. Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the five most recent taxable years;

E. A copy of this Agreement and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which this Agreement or any amendments thereto have been executed;

F. Copies of the financial statements of the Company, if any, for the five most recent Fiscal Years; and

G. The Company's books and records as they relate to the internal affairs of the Company for at least the current and past four Fiscal Years.

## 8.2 Delivery to Members and Inspection.

A. Upon the request of any Member or Economic Interest Owner for purposes reasonably related to the interest of that Person as a Member or Economic Interest Owner, the Managers shall promptly deliver to the requesting Member or Economic Interest Owner, at the expense of the Company, a copy of the information required to be maintained by Sections 8.1 (A), (B) and (D), and a copy of this Agreement.

B. Each Member, Manager and Economic Interest Owner has the right, upon reasonable request for purposes reasonably related to the interest of the Person as Member, Managers or Economic Interest Owner, to:

(i) inspect and copy during normal business hours any of the Company records described in Sections 8.1(A) through (G); and

(ii) obtain from the Managers, promptly after their becoming available, a copy of the Company's federal, state, and local income tax or information returns for each Fiscal Year.

C. Any request, inspection or copying by a Member or Economic Interest Owner under this Section 8.2 may be made by that Person or that Person's agent or attorney.

D. The Managers shall promptly furnish to a Member a copy of any amendment to the Articles or this Agreement executed by the Managers pursuant to a power of attorney from the Member.

## 8.3 Annual Statements.

A. The Managers shall cause an annual report to be sent to each of the Members not later than 120 days after the close of the Fiscal Year. The Report shall contain a balance sheet as of the end of the Fiscal Year and an income statement and statement of changes in financial position for the Fiscal Year. Such financial statements shall be accompanied by the report thereon, if any, of the independent accountants engaged by the Company or, if there is no report, the certificate of the Managers that the financial statements were prepared without audit from the books and records of the Company.

B. The Managers shall cause to be prepared at least annually, at Company expense, information necessary for the preparation of the Members' and Economic Interest Owners' federal and state income tax returns. The Managers shall send or cause to be sent to each Member or Economic Interest Owner within 90 days after the end of each taxable year such information as is necessary to complete federal and state income tax or information returns.

8.4 Financial and Other Information. The Managers shall provide such financial and other information relating to the Company or any other Person in which the Company owns, directly or indirectly, an equity interest, as a Member may reasonably request. The Managers shall distribute to the Members, promptly after the preparation or receipt thereof by the Managers, any financial or other information relating to any Person in which the Company owns, directly or indirectly, an equity interest, including any filings by such Person under the Securities Exchange Act of 1934, as amended, that is received by the Company with respect to any equity interest of the Company in such Person.

8.5 Filings. The Managers, at Company expense, shall cause the income tax returns for the Company to be prepared and timely filed with the appropriate authorities. The Managers, at Company expense, shall also cause to be prepared and timely filed, with appropriate federal and state regulatory and administrative bodies, amendments to, or restatements of, the Articles and all reports required to be filed by the Company with those entities under the Act or other then current applicable laws, rules, and regulations. If the Managers are required by the Act to execute or file any document and fails, after demand, to do so within a reasonable period of time or refuses to do so, any Member may prepare, execute and file that document with the California Secretary of State.

8.6 Bank Accounts. The Managers shall maintain the funds of the Company in one or more separate bank accounts in the name of the Company.

8.7 Accounting Decisions and Reliance on Others. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Managers. The Managers may rely upon the advice of the accountants for the Company as to whether such decisions are in accordance with accounting methods followed for federal income tax purposes.

8.8 Tax Matters for the Company Handled by the Managers as Tax Matters Partner. The Managers shall from time to time cause the Company to make such tax elections as it deems to be in the best interests of the Company and the Members. The Managers as Tax Matters Partners, as defined in Code Section 6231, shall represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting judicial and administrative proceedings, and shall expend the Company funds for professional services and costs associated therewith. The Tax Matters Partners shall oversee the Company tax affairs in the overall best interests of the Company. If for any reason the Tax Matters Partners can no longer serve in that capacity or ceases to be the Managers, Members holding a Majority Interest may designate another to be Tax Matters Partner.



## **ARTICLE IX DISSOLUTION AND WINDING UP**

9.1 Dissolution. The Company shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following:

- A. Upon the happening of any event of dissolution specified in the Articles;
- B. Upon the entry of a decree of judicial dissolution;
- C. Upon the vote of the Members holding greater than 50% in Economic Interests or of non-defaulting Members holding greater than fifty percent (50%) of the Percentage Interests held by all non-defaulting Members, provided, however, that such dissolution shall not terminate compensation payable to the Managers pursuant to Section 5.9 hereof; or
- D. The sale of all or substantially all of the assets of Company.

9.2 Certificate of Dissolution. As soon as possible following the occurrence of any of the events specified in Section 9.1, the Managers or the Members shall execute a Certificate of Dissolution in such form as shall be prescribed by the California Secretary of State and file the Certificate as required by the Act.

9.3 Winding Up. Upon the occurrence of any event specified in Section 9.1, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors. The Managers or the Members shall be responsible for overseeing the winding up and liquidation of the Company, shall take full account of the liabilities of the Company and assets, shall either cause its assets to be sold or distributed, and if sold as promptly as is consistent with obtaining the fair market value thereof, shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided in Section 9.5. The Persons winding up the affairs of the Company shall give written notice of the commencement of winding up by mail to all known creditors and claimants whose addresses appear on the records of the Company. The Managers or Members winding up the affairs of the Company shall be entitled to reasonable compensation for such services.

9.4 Distributions in Kind. Any non-cash asset distributed to one or more Members shall first be valued at its fair market value to determine the Net Profit or Net Loss that would have resulted if such asset were sold for such value, such Net Profit or Net Loss shall then be allocated pursuant to Article VI, and the Members' Capital Accounts shall be adjusted to reflect such allocations. The amount distributed and charged to the Capital Account of each Member receiving an interest in such distributed asset shall be the fair market value of such interest (net of any liability secured by such asset that such Member assumes or takes subject to). The fair market value of such asset shall be determined by the Managers or by the Members or if any Member objects by an

independent appraiser (any such appraiser must be recognized as an expert in valuing the type of asset involved) selected by the Managers or liquidating trustee and approved by the Members.

9.5 Order of Payment of Liabilities Upon Dissolution.

A. After determining that all known debts and liabilities of the Company in the process of winding-up, including, without limitation, debts and liabilities to Members who are creditors of the Company, have been paid or adequately provided for, the remaining assets shall be distributed to the Members in accordance with their positive Capital Account balances, after taking into account income and loss allocations for the Company's taxable year during which liquidation occurs. Such liquidating distributions shall be made by the end of the Company's taxable year in which the Company is liquidated, or, if later, within ninety (90) days after the date of such liquidation.

B. The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, has been adequately provided for if the payment has been provided for by either of the following means:

(i) Payment thereof has been assumed or guaranteed in good faith by one or more financially responsible Persons or by the United States government or any agency thereof, and the provision, including the financial responsibility of the Person, was determined in good faith and with reasonable care by the Members or Managers to be adequate at the time of any distribution of the assets pursuant to this Section.

(ii) The amount of the debt or liability has been deposited as provided in the Act.

This Section 9.5(B) shall not prescribe the exclusive means of making adequate provision for debts and liabilities.

9.6 Compliance with Regulations. All payments to the Members upon the winding up and dissolution of Company shall be strictly in accordance with the positive capital account balance limitation and other requirements of Regulations Section 1.704-1(b)(2)(ii)(d).

9.7 Limitations on Payments Made in Dissolution. Except as otherwise specifically provided in this Agreement, each Member shall only be entitled to look solely at the assets of Company for the return of his or her positive Capital Account balance and shall have no recourse for his or her Capital Contribution and/or share of Net Profits (upon dissolution or otherwise) against the Managers or any other Member except as provided in Article X.

9.8 Certificate of Cancellation. The Managers or Members who filed the Certificate of Dissolution shall cause to be filed in the office of, and on a form prescribed by, the California Secretary of State, a certificate of cancellation of the Articles upon the completion of the winding up of the affairs of the Company.

9.9 No Action for Dissolution. Except as expressly permitted in this Agreement, a Member shall not take any voluntary action that directly causes the dissolution of the Company. The Members acknowledge that irreparable damage would be done to the goodwill and reputation of the Company if any Member should bring an action in court to dissolve the Company under circumstances where dissolution is not required by Section 9.1. This Agreement has been drawn carefully to provide fair treatment of all parties and equitable payment in liquidation of the Economic Interests. Accordingly, except where the Managers have failed to liquidate the Company as required by this Article IX, each Member hereby waives and renounces his or her right to initiate legal action to seek the appointment of a receiver or trustee to liquidate the Company or to seek a decree of judicial dissolution of the Company on the ground that (a) it is not reasonably practicable to carry on the business of the Company in conformity with the Articles or this Agreement, or (b) dissolution is reasonably necessary for the protection of the rights or interests of the complaining Member. Damages for breach of this Section 9.9 shall be monetary damages only (and not specific performance), and the damages may be offset against distributions by the Company to which such Member would otherwise be entitled.

## **ARTICLE X INDEMNIFICATION AND INSURANCE**

10.1 Indemnification of Agents. The Company shall 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 reason of the fact that he or she is or was a Member, Manager, officer, employee or agent, he or she is or was serving at the request of the Company as a manager, director, officer, employee or other agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (all such Persons being referred to hereinafter as an "agent"), to the fullest extent permitted by applicable law in effect on the date hereof and to such greater extent as applicable law may hereafter from time to time permit. The Managers shall be authorized, on behalf of the Company, to enter into indemnity agreements from time to time with any Person entitled to be indemnified by the Company hereunder, upon such terms and conditions as the Managers deem appropriate in their business judgment.

10.2 Insurance. The Company shall have the power to purchase and maintain insurance on behalf of any Person who is or was an agent of the Company against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as an agent, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of Section 10.1 or under applicable law.

## **ARTICLE XI MISCELLANEOUS**

11.1 Complete Agreement. This Agreement and the Articles constitute the complete and exclusive statement of agreement among the Members and the Managers with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the Members and the Managers or any of them. No

representation, statement, condition or warranty not contained in this Agreement or the Articles will be binding on the Members or the Managers or have any force or effect whatsoever. To the extent that any provision of the Articles conflict with any provision of this Agreement, the Articles shall control.

11.2 Binding Effect. Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and inure to the benefit of the Members, and their respective successors and assigns.

11.3 Parties in Interest. Except as expressly provided in the Act, nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any Persons other than the Members and the Managers and their respective successors and assigns nor shall anything in this Agreement relieve or discharge the obligation or liability of any third Person to any party to this Agreement, nor shall any provision give any third Person any right of subrogation or action over or against any party to this Agreement.

11.4 Pronouns; Statutory References. All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the context in which they are used may require. Any reference to the Code, the Regulations, the Act, Corporations Code or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

11.5 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

11.6 Interpretation. In the event any claim is made by any Member relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Member or his or her counsel.

11.7 References to this Agreement. Numbered or lettered articles, sections and subsections herein contained refer to articles, sections and subsections of this Agreement unless otherwise expressly stated.

11.8 Jurisdiction. Each Member hereby consents to the exclusive jurisdiction of the state and federal courts sitting in Orange County, California in any action on a claim arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement, provided such claim is not required to be arbitrated pursuant to Section 11.9. Each Member further agrees that personal jurisdiction over him or her may be effected by service of process by registered or certified mail addressed as provided in Section 11.13 of this Agreement, and that when so made shall be as if served upon him or her personally within the State of California.

11.9 Disputed Matters; Liquidated Damages. Except as otherwise provided in this Agreement, any controversy or dispute arising out of this Agreement, the interpretation of any of the

provisions hereof, or the action or inaction of any Member or the Managers hereunder shall be submitted to arbitration in Orange County, California before the American Arbitration Association under the commercial arbitration rules then obtaining. Any award or decision obtained from any such arbitration proceeding shall be final and binding on the parties, and judgment upon any award thus obtained may be entered in any court having jurisdiction thereof. No action at law or in equity based upon any claim arising out of or related to this Agreement shall be instituted in any court by any Member except (a) an action to compel arbitration pursuant to this Section 11.9 or (b) an action to enforce an award obtained in an arbitration proceeding in accordance with this Section 11.9.

Should an action at law or in equity be commenced by any Member or Manager based upon any claim arising out of or related to this Agreement for any other reason than to (a) compel arbitration or (b) enforce an award as above, said Member or Manager shall be immediately liable for \$1,000,000 in liquidated damages (“Liquidated Damages”) to each defendant (Company, Member or Manager), in addition to any other damages inflicted thereby as may be determined pursuant to this Agreement and the proper venue for disputes. Any such filing would also be deemed to cause the defendant Company, Member(s), or Manager(s) immediate and irreparable harm. All Parties to this Agreement hereby acknowledge and agree that the Liquidated Damages sum is fair and reasonable, and further acknowledge and agree that this Section 11.9 is a material inducement for each Member to enter into this Agreement.

**Initials:**

Justin Beck	JB	MM
Miguel Motta		
Andre Basbaum	AB	RC
Robin Coleman		

11.10 Exhibits. All Exhibits attached to this Agreement are incorporated and shall be treated as if set forth herein.

11.11 Severability. If any provision of this Agreement or the application of such provision to any Person or circumstance shall be held invalid, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid shall not be affected thereby.

11.12 Additional Documents and Acts. Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

11.13 Notices. Any notice to be given or to be served upon the Company or any party hereto in connection with this Agreement must be in writing (which may include facsimile) and will be deemed to have been given and received when delivered to the address specified by the party

to receive the notice. Such notices will be given to a Member or Managers at the address specified on the signature page hereto. Any party may, at any time by giving five (5) days' prior written notice to the other parties, designate any other address in substitution of the foregoing address to which such notice will be given.

11.14 Amendments. All amendments and modifications of this Agreement must be in writing and signed by all of the Managers.

11.15 Reliance on Authority of Person Signing Agreement. If a Member is not a natural person, neither the Company nor any Member will (a) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual or (b) be responsible for the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such entity.

11.16 No Interest in Company Property; Waiver of Action for Partition. No Member or Economic Interest Owner has any interest in specific property of the Company. Without limiting the foregoing, each Member and Economic Interest Owner irrevocably waives during the term of the Company any right that he or she may have to maintain any action for partition with respect to the property of the Company.

11.17 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

11.18 Attorney's Fees. In the event that any dispute between the Company and the Members or among the Members should result in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses.

11.19 Time is of the Essence. All dates and times in this Agreement are of the essence.

11.20 Remedies Cumulative. The remedies under this Agreement are cumulative and shall not exclude any other remedies to which any Person may be lawfully entitled.

11.21 Members Intent. Notwithstanding any provision within this Agreement, no changes to this Agreement, to the Company, or change in control of the Company, even such changes or changes in control which may be duly adopted by its Managers or Members pursuant to this Agreement, may change Section 2.6 of this Agreement in a manner which materially differs from its composition as of the date hereof. It is the express intent of the Members that the Company maintain its balance of profit and purpose for humanity using their business judgment, in perpetuity.







**EXHIBIT “A”****CAPITAL CONTRIBUTIONS**

Total Authorized Membership Interests: 1,000,000 Total Authorized (Single Class)

<b>Member</b>	<b>Capital Contribution</b>	<b>Membership Interest</b>
Justin Beck	Completed Services	200,000   20%
Justin Beck	Payment*	100,000   10%
Miguel Motta	Completed Services	100,000   10%
Andre Basbaum	Completed Services	50,000   5%
Robin Coleman	Completed Services	150,000   15%

\*200,000 membership interests shall be issued to Justin Beck upon Contact LLC’s receipt of the Patent License Agreement under which Contact LLC will finance and pay for all related costs, including but not limited to, patent filing fees and PCT, among other things. Pursuant to the Patent License Agreement, Contact LLC will have the exclusive right to exploit the Patent License Agreement for any and all purposes related to healthcare, global health, and public health.

**EXHIBIT “B”**

**DISTRIBUTION OF ASSETS BY THE COMPANY**

The Managers may elect from time to time to distribute Distributable Cash to the Members, which distributions shall be in proportion to their Percentage Interests, except as otherwise provided in this Exhibit, if any:

**EXHIBIT "C"**

**JOINDER AGREEMENT**

Reference is hereby made to that certain Operating Agreement of CONTACT LLC, a California limited liability company (the "Company"), dated as of June 1, 2020 as amended from time to time (the "**LLC Agreement**"), between the Company and the members identified in the LLC Agreement. Pursuant to and in accordance with Section(s) 7.1 and 7.3 of the LLC Agreement, the undersigned hereby acknowledges that it has received and reviewed a complete copy of the LLC Agreement and agrees that upon execution of this Joinder, such person shall become a party to the LLC Agreement and shall be fully bound by, and subject to, all of the covenants, terms and conditions of the LLC Agreement as though an original party thereto and shall be deemed, and is hereby admitted as, a member for all purposes thereof and entitled to all the rights incidental thereto.

Capitalized terms used herein without definition shall have the meanings ascribed thereto in the LLC Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Joinder Agreement as of \_\_\_\_\_, 20\_\_.

CONTACT, LLC

MEMBER

\_\_\_\_\_  
By:  
Its: Manager

\_\_\_\_\_  
Name: