WIZARD PARENT LLC

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

Dated as of April 27, 2011

[Conformed copy reflecting amendment to be effective upon closing]

THE MEMBERSHIP INTERESTS REPRESENTED BY THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (THE "**LLC INTERESTS**") HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFER SET FORTH HEREIN.

THE LLC INTERESTS ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER SPECIFIED IN THIS AGREEMENT, AND THE LLC RESERVES THE RIGHT TO REFUSE THE TRANSFER OF SUCH INTERESTS UNTIL SUCH CONDITIONS HAVE BEEN FULFILLED WITH RESPECT TO ANY TRANSFER. A COPY OF THIS AGREEMENT SHALL BE PROMPTLY FURNISHED BY THE LLC TO THE HOLDER OF ANY LLC INTERESTS UPON WRITTEN REQUEST AND WITHOUT CHARGE.

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WIZARD PARENT LLC
AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "**Agreement**"), dated as of April 27, 2011, is adopted, and executed and agreed to, for good and valuable consideration, by the Members.

WHEREAS, Wizard Parent LLC (the "**Company**" or the "**LLC**") was formed as a Delaware limited liability company on December 9, 2004 pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del.C. § 18-101, et seq.) (as amended, and any successor to such statute, the "**Delaware Act**").

WHEREAS, the LLC and certain of the Members (as defined below) previously adopted a Limited Liability Company Agreement dated as of December 27, 2004 (the "**Prior LLC Agreement**").

WHEREAS, the LLC and certain of its Members desire to amend and restate the terms of the Prior LLC Agreement for the purpose of creating additional classes of LLC Units, admitting new Members and providing for certain rights and obligations as set forth herein.

WHEREAS, the LLC Units held by each Member as of immediately prior to the effectiveness of this Agreement shall be automatically converted into the number Series B Units set forth opposite such Member's name on Appendix B attached hereto (and such Series B Units shall be deemed to have the Unpaid Series B Yield and the Unreturned Series B Preference Amount set forth opposite such units on Appendix B) and the right to receive the Legacy Distribution (as defined herein).

WHEREAS, as a condition to the effectiveness of this Agreement, certain stockholders of The Attachmate Group (f/k/a Wizard Holding Corporation), a Delaware corporation ("**TAG**"), shall contribute to the LLC certain shares of TAG's capital stock in exchange for the issuance to them of certain Legacy Common Units (as defined herein) in accordance with the provisions of that certain Contribution Agreement, dated as of the date hereof (the "**Management Contribution Agreement**"), by and between the LLC, on the one hand, and Jeff Hawn, Bob Flynn, Jay Gardner and Charles Sansbury (collectively, the "**Legacy Management Members**"), on the other.

WHEREAS, upon the consummation of the transactions contemplated by the Management Contribution Agreement, the LLC will hold all of the issued and outstanding capital stock of TAG.

WHEREAS, pursuant to the Investor Subscription Agreement (as defined herein), certain of the Members, subject to the terms and conditions thereof, are purchasing certain LLC Units concurrent with the effectiveness of this Agreement to provide equity funding, in part, for the Novell Transaction (as defined below) and for various other needs of the LLC and its Subsidiaries.

WHEREAS, pursuant to that certain Agreement and Plan of Merger, dated as of November 21, 2010, by and among Attachmate Corporation, a Washington corporation and a wholly-owned indirect subsidiary of the LLC ("**Attachmate**"), Longview Software Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Attachmate ("**Merger Sub**"), and Novell, Inc., a Delaware corporation ("**Novell**"), Merger Sub shall be merged with and into Novell, with Novell surviving as a wholly-owned subsidiary of Attachmate and a wholly-owned indirect subsidiary of the LLC (the "**Novell Transaction**").

WHEREAS, upon the consummation of the Novell Transaction, TAG will directly or indirectly own all of the issued and outstanding capital stock of NetIQ, a Delaware corporation ("**NetIQ**"), Attachmate and Novell, as applicable.

WHEREAS, prior to the Closing Date, the LLC formed Novell Intellectual Property Holdings, Inc., a Delaware corporation ("**IP Holdings**"), as a wholly-owned subsidiary for the purpose of acquiring and holding certain patents.

WHEREAS, upon the effectiveness of this Agreement, the Prior LLC Agreement will be superseded entirely by this Agreement.

NOW, THEREFORE in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
GENERAL MATTERS

Section 1.01. *Definitions*. (a) As used herein, the following terms have the following meanings:

"**Additional Member**" means a Person admitted to the LLC as a Member pursuant to Section 8.02(ii) of this Agreement.

"**Affiliate**" of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where "**control**" means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, by contract or otherwise; *provided*, that for purposes hereof, the LLC and its Subsidiaries shall not be treated as Affiliates of a Member; *provided*,

further, that no Member shall be deemed to be an Affiliate of any other Member solely by virtue of their admission to this Agreement.

"**Beneficial Owner**" means, with respect to a Member, any person that holds an equity interest in such Member, either directly or indirectly through a nominee or agent or through one or more intervening entities qualifying as partnerships, grantor trusts or S corporations, in each case as determined for federal income tax purposes.

"**Business**" means the business of Attachmate, NetIQ and/or Novell, in each case as conducted on the Closing Date or as proposed to be conducted on the Closing Date or any reasonable extension thereof and any other activities reasonably related to, ancillary to, or incidental to, any of the foregoing.

[Redacted]

"**Capital Contribution**" means the aggregate contribution of cash or other property by a Member to the capital of the LLC specified on the Schedule of Members, as amended from time to time in accordance with the terms of this Agreement.

"**Carrying Value**" means, in relation to any LLC asset, the adjusted basis for United States federal income tax purposes of that LLC asset, adjusted as of the following times to equal its Fair Market Value (as determined by the LLC Board): (i) the acquisition of a LLC Interest by any new or existing Member in exchange for more than a *de minimis* (as that term is used in Regulation Section 1.704-1(b)(2)(iv)(f)) contribution of cash or property to the Capital Account of that new or existing Member; (ii) the distribution by the LLC to a Member of more than a *de minimis* amount of cash or LLC assets if the LLC Board determines that such adjustment is necessary or appropriate to reflect the economic interests of the Member in the LLC; (iii) the liquidation of the LLC for United States federal income tax purposes within the meaning of Regulation Section 1.704- 1(b)(2)(ii); and (iv) in connection with the grant of a LLC Interest (other than a *de minimis* interest) as consideration for the provision of services to or for the benefit of the LLC by an existing Member acting in a Member capacity, or by a new Member acting in a Member capacity or in anticipation of being a Member; *provided*, that if the Carrying Value of any LLC asset has been determined or adjusted pursuant hereto, such Carrying Value shall thereafter be adjusted by the depreciation taken into account with respect to that LLC asset for purposes for computing Profits and Losses.

"**Certificate**" means the LLC's Certificate of Formation as filed with the Secretary of State of the State of Delaware.

"**Closing Date**" means April 27, 2011.

"**Code**" means the United States Internal Revenue Code of 1986, as amended.

"**Common Stock**" means the common stock or other equity securities of a Subsidiary of the LLC that is taken public in a Public Offering, or, if the LLC is converted or "rolled-up" into a corporation in connection with an initial Public Offering, the common stock of the resulting corporation.

[Redacted]

"**Distribution**" means each distribution made by the LLC to a Member, whether in cash, property or securities of the LLC; *provided*, that none of the following shall be a Distribution (a) any cancellation by the LLC of any securities of the LLC (including LLC Units), (b) any redemption or repurchase by the LLC of the Management Incentive Units, (c) any recapitalization or exchange of securities of the LLC, and any subdivision (by split or otherwise) or any combination (by reverse split or otherwise) of any outstanding LLC Units or (d) any fees or remuneration paid in such Member's capacity as a service provider.

"**Elliott**" means Elliott Associates, L.P., Elliott International, L.P. and each of their Permitted Transferees admitted as a Member hereunder after the Closing Date.

"**Equity**" means (i) any LLC Units held in respect of a membership interest in the LLC, (ii) any equity securities distributed in respect of the LLC Units referred to in clause (i) above, and (iii) any securities issued directly or indirectly with respect to the foregoing securities by way of a split, dividend, or other division of securities, or in connection with a combination of securities, recapitalization, merger, consolidation, or other reorganization. Except as otherwise expressly provided in this Agreement, all holdings of Equity by Persons who are Affiliates shall be aggregated for purposes of meeting any threshold tests under this Agreement.

"**Fair Market Value**" means, with respect to any asset or equity interest, its fair market value determined according to Article 11 of this Agreement.

"**Family Member**" means, with respect to any Person that is an individual, any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, or sibling, including adoptive relationships, or a trust corporation, partnership, or other entity for the exclusive benefit of these Persons (or such Person).

"**Fiscal Year**" means the LLC's annual accounting period established pursuant to Section 6.02 of this Agreement.

"**FP**" means Francisco Partners, L.P., Francisco Partners Fund A, L.P., FP Annual Fund Investors, L.L.C., Francisco Partners GP, LLC, Francisco Partners

Fund E, LLC, Francisco Partners II, L.P., Francisco Partners Parallel Fund II, L.P. and each of their Permitted Transferees admitted as a Member hereunder after the Closing Date.

"**FP Management Rights Agreement**" means the letter agreement, dated as of the Original Closing Date, between FP and the LLC.

"**Fund Representatives**" means the FP Representatives, the GGC Representatives, the TB Representative and the Elliott Representative.

"**GGC**" means Golden Gate Capital Opportunity Fund, L.P., Golden Gate Capital Opportunity Fund-A, L.P., GGCOF Co-Invest, L.P., GGCOF Third Party Co-Invest, L.P., CCG AV, LLC- Series A, CCG AV, LLC- Series C, Golden Gate Capital Investment Fund II, L.P., Golden Gate Capital Investment Fund II (AI), L.P., Golden Gate Capital Associates II-QP, L.L.C., Golden Gate Capital Associates II-AI, L.L.C. and each of their Permitted Transferees admitted as a Member hereunder after the Closing Date.

"**GGC Management Rights Agreement**" means the letter agreement, dated as of the Original Closing Date, between Golden Gate Capital Investment Fund II, L.P. (or any designee thereof) and the LLC.

[Redacted]

"**Indebtedness**" of any Person means, at any time, without duplication, (i) any indebtedness for borrowed money of such Person, (ii) any indebtedness of such Person evidenced by any note, bond, debenture, other debt security, letter of credit or banker's acceptance, (iii) any indebtedness for the deferred purchase price of property or services with respect to which such Person is liable, contingently or otherwise, as obligor or otherwise (other than trade payables and other current liabilities incurred in the ordinary course of business), (iv) any indebtedness guaranteed in any manner by such Person, (v) any obligations under capitalized leases with respect to which such Person is liable, contingently or otherwise, as obligor, guarantor or otherwise, (vi) any indebtedness secured by a Lien on such Person's assets, and (vii) any obligations under any swap agreement, cap agreement, collar agreement, futures contract, forward contract or similar agreement or arrangement designed to protect against or mitigate the effect of fluctuations in interest rates, foreign exchange rates or commodity prices.

"**Investment**" as applied to any Person means (i) any direct or indirect purchase or other acquisition by such Person of any notes, obligations, instruments, stock, securities or ownership interest (including partnership interests and joint venture interests) of any other Person and (ii) any capital contribution by such Person to any other Person.

"**Investor Subscription Agreement**" means the Investor Subscription Agreement, dated as of the Closing Date, among the LLC and certain of the

Members signatory thereto, as amended from time to time in accordance with its terms.

[Redacted]

[Redacted]

[Redacted]

"**Lien**" means, with respect to any property or asset, any mortgage, pledge, security interest, encumbrance, lien or charge of any kind in respect of such property or asset.

"**LLC Board**" means the LLC's Board of Representatives constituted in accordance with Section 4.01.

"**LLC Interest**" means a limited liability company interest in the LLC, including all rights and obligations with respect thereto. All LLC Interests shall be represented by LLC Units.

"**LLC Unit**" means any unit representing an LLC Interest outstanding on or after the Closing Date in accordance with the terms of this Agreement.

"**Losses**" means items of LLC loss and deduction determined according to Section 2.04 of this Agreement.

"**Management Agreement**" means the letter agreement, dated as of the Closing Date, between TAG, NetIQ, Attachmate, Novell, Francisco Partners Management, LLC, Thoma Bravo, LLC, GGC Administration, LLC and Manchester Securities Corp.

"**Management Incentive Unit**" means an LLC Unit representing a fractional part of the Membership Interests of the Members and having the rights and obligations specified with respect to Management Incentive Units in this Agreement.

"**Management Series A Holder**" means a holder of Series A Units that is designated as a Management Series A Holder on the Schedule of Members attached hereto.

"**Marketable Securities**" means equity securities that are registered under the Securities Act, listed on a national securities exchange or on the NASDAQ Stock Market and which may be Transferred without legal or contractual restrictions, including, without limitation, restrictions arising under Rule 144 or Rule 145 under the Securities Act.

"**Member**" means each of the members of the LLC listed on the Schedule of Members or any other Person who becomes a member of the LLC in accordance with this Agreement, in each case, in such Person's capacity as a member of the LLC.

[Redacted]

"**Original Closing Date**" means December 27, 2004.

"**Original Investor Subscription Agreement**" means the Investor Subscription Agreement, dated as of the Original Closing Date, among the LLC and the Sponsors signatory thereto, as amended from time to time in accordance with its terms.

"**Permitted Transferee**" means:

(i) with respect to each Member that is not an individual, (A) any Affiliate of such Member, (B) any general or limited partner or member of such Member, to the extent any Transfer to such Person is made *pro rata* to all partners or members pursuant to in-kind distributions pursuant to the applicable partnership or limited liability company agreement of such Member (an "**Investor Partner**"), (C) any current, future or former managing director, general partner, director, member, limited partner, officer or employee pursuant to the applicable partnership or limited liability company agreement of such Member or any Investor Partner (collectively, "**Investor Associates**"), and (D) a Person to whom securities are Transferred by such Member or any of its Affiliates, Investor Partners or Investor Associates by will or the laws of descent and distribution, or as a result of other donative Transfer to any Family Member of such Member or any of its Affiliates, Investor Partners, Investor Associates; and

(ii) with respect to any other Member that is an individual, (A) a Person to whom securities are Transferred by such Member by will or the laws of descent and distribution, or as a result of other donative Transfer to any Family Member of such Member, and (B) the LLC.

"**Person**" means an individual, corporation, partnership, association, trust, limited liability company or any other entity or organization, including a government or political subdivision or an agency, unit or instrumentality thereof.

"**Pro Rata Share**" means, with respect to any Member at any time, the fraction that results from dividing (i) the number of LLC Units that such Person owns at such time, by (ii) the number of LLC Units owned by all Members at such time.

"**Profits**" means items of LLC income and gain determined according to Section 2.04 of this Agreement.

"**Public Offering**" means any underwritten sale of the Common Stock pursuant to an effective registration statement under the Securities Act filed with the Securities and Exchange Commission on Form S-1 (or a successor form) after which sale such Common Stock is (a) listed on a national securities exchange or authorized to be quoted on an inter-dealer quotation system of a registered national securities association, and (b) registered under the Securities Exchange Act; *provided*, that the following shall not be considered a Public Offering: (i) any issuance of Common Stock as consideration or financing for a merger or acquisition, and (ii) any issuance of Common Stock or rights to acquire such equity securities to employees, the LLC or its Subsidiaries as part of an incentive or compensation plan.

"**Rule 144**" means Rule 144 promulgated under the Securities Act (or any similar provision then in force).

"**Sale**" means either the sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of (i) all or substantially all of the assets of the LLC and its Subsidiaries, taken as a whole, (ii) 100% of the equity interests in the LLC or (iii) 100% of the outstanding shares of capital stock of TAG by the LLC (other than to a party directly or indirectly wholly-owned by the LLC.

"**Schedule of Members**" means the Schedule of Members attached as Appendix A hereto (which shall constitute part of the books and records of the LLC). Such Schedule shall be amended by the LLC Board from time to time to reflect the list of Members, their Capital Contributions and the LLC Units held by or issuable to them at such time.

"**Securities Act**" means the Securities Act of 1933, as amended, and applicable rules and regulations thereunder.

"**Securities and Exchange Commission**" means the U.S. Securities and Exchange Commission and any governmental body or agency succeeding to the functions thereof.

"**Securities Exchange Act**" means the Securities Exchange Act of 1934, as amended, and applicable rules and regulations thereunder.

"**Series A Unit**" means an LLC Unit representing a fractional part of the Membership Interests of the Members and having the rights and obligations specified with respect to Series A Units in this Agreement.

"**Series B Unit**" means an LLC Unit representing a fractional part of the Membership Interests of the Members and having the rights and obligations specified with respect to Series B Units in this Agreement.

[Redacted]

[Redacted]

"**Subsidiary**" means, with respect to any Person, any other entity of which such Person possesses direct or indirect power to direct or cause the direction of the management and policies, whether through the ownership of voting securities, by contract, or otherwise; *provided*, that for purposes hereof, the LLC and its Subsidiaries shall not be treated as Subsidiaries of a Member or its Affiliates.

"**Substituted Member**" means a Person that is admitted as a Member to the LLC pursuant to Section 8.02(i) of this Agreement.

"**Taxable Year**" means the LLC's accounting period for federal income tax purposes determined pursuant to Section 7.02 of this Agreement.

"**TB**" means Thoma Cressey Equity Partners Fund VII, L.P., Thoma Cressey Equity Partners Friends Fund VII, L.P., Thoma Bravo Fund IX, L.P. and each of their Permitted Transferees admitted as a Member hereunder after the Closing Date.

"**TB Management Rights Agreement**" means the letter agreement, dated as of the Original Closing Date, between TB and the LLC.

"**Transfer**" shall include any direct or indirect sale, transfer, assignment, pledge or other disposition (whether with or without consideration and whether voluntary or involuntary or by operation of law) of the relevant asset or security or any economic interest therein or any equity interest in any entity holding such assets or security.

"**Treasury Regulations**" means the Treasury Regulations, including Temporary Regulations, promulgated under the Code, as such regulations are in effect from time to time. References to specific provisions of the Regulations include references to corresponding provisions of successor regulations.

"**Unitholder**" means any holder of an LLC Unit.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

"**Voting Units**" means the Series A Units and the Series B Units and, for avoidance of doubt, no other class or series of LLC Units.

(b) Each of the following terms is defined in the Section forth opposite such term:

Term	**Section**
Agreement	Preamble
Buyer	8.04(b)
Capital Account	2.04
Closing	2.01(b)
Closing Capital Contribution	2.01(b)
Closing LLC Units	2.01(b)
Company	Recitals
Delaware Act	Recitals
Director Cause	4.01(c)
discretion	4.06(b)
Drag-Along Notice	8.06(b)
Drag-Along Notice Period	8.06(c)
Drag-Along Sale	8.06(a)
Dragging Investors	8.06(a)
Election Notice	2.03(d)
Election Period	2.03(d)
[Redacted]	
Fair Market Value	11.01
FP	Preamble
FP Representative	4.01(a)
good faith	4.06(c)
Indemnified Person	5.04(a)
Information	4.08
IP Holdings	Recitals
[Redacted]	
Issued Securities	2.03(a)
[Redacted]	
[Redacted]	
Legacy Management Members	Recitals
[Redacted]	
Liquidation Assets	10.02(c)
Liquidation FMV	10.02(c)
Liquidation Statement	10.02(c)
LLC	Recitals
Management Contribution Agreement	Recitals
[Redacted]	
[Redacted]	
Maximum Share	8.04(b)

Term	Section
Novell Transaction	Recitals
Notice of Purchase	8.04(b)
Offer Notice	8.04(a)
Offer Terms	8.04(a)
Offered LLC Units	8.04(a)
Original Cost	8.04(c)
Other Business	4.07
[Redacted]	
[Redacted]	
Preemptive Notice	2.03(b)
Prior LLC Agreement	Recitals
Representative	4.01(a)
[Redacted]	
[Redacted]	
Seller	8.04(a)
Selling Person	8.05(a)
sole discretion	4.06(b)
Sponsor	2.03(a)
Stock Purchase Agreement	Recitals
Tag-Along Notice	8.05(a)
Tag-Along Sale	8.05(a)
Tagging Person	8.05(a)
Tax Matters Partner	7.03
[Redacted]	
[Redacted]	
[Redacted]	
[Redacted]	

Section 1.02. *Formation and Continuation of LLC*. The LLC was formed pursuant to the provisions of the Delaware Act by the filing on such date of the Certificate with the office of the Secretary of State of the State of Delaware. The Members hereby agree to continue the Company as a limited liability company under and pursuant to the Delaware Act without dissolution (except in accordance with Article 10).

Section 1.03. *Limited Liability Company Agreement*. The Members hereby ratify the execution of this Agreement for the purpose of governing the affairs of the LLC and the conduct of its business in accordance with the provisions of the Delaware Act and this Agreement. The Members hereby agree that during the term of the LLC set forth in Section 1.07 the rights and obligations of the Members with respect to the LLC will be determined in accordance with the terms and conditions of this Agreement and the Delaware Act.

Section 1.04. *Name*. The name of the LLC shall be "Wizard Parent LLC". The LLC Board in its sole discretion may change the name of the LLC at

any time and from time to time. Notification of any such change shall be given to all Members. The LLC's business may be conducted under its name and/or any other name or names deemed advisable by the LLC Board.

Section 1.05. *Purpose*. The purpose of the LLC shall be (i) to purchase, hold and dispose of equity or debt securities of TAG, IP Holdings and their respective Subsidiaries and to perform such other obligations and duties as are imposed upon the LLC under this Agreement and the other agreements contemplated hereby, (ii) to manage and direct the operations and affairs of TAG, IP Holdings and their respective Subsidiaries (including the development, adoption and implementation of strategies, plans and policies concerning the conduct of TAG's, IP Holdings' and their respective Subsidiaries' operations), and (iii) to exercise all rights and powers granted to the LLC under this Agreement and the Delaware Act, TAG's, IP Holdings' and their respective Subsidiaries' organizational documents and the other agreements contemplated hereby and thereby, as the same may be amended from time to time, in connection with the activities described in clauses (i) and (ii), above.

Section 1.06. *Registered Office; Principal Office*. (a) The address of the registered office of the LLC in the State of Delaware shall be c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801 and the registered agent for service of process on the LLC in the State of Delaware at such registered office shall be The Corporation Trust Company.

(b) The LLC shall have its principal office at 1500 Dexter Avenue North, Seattle, WA 98109, or at such other place as the LLC Board may from time to time designate, and all operations and activities of the LLC shall be deemed to have occurred at its principal office. The LLC may maintain offices at such other place or places as the LLC Board deems advisable. Notification of any such change shall be given to all Members.

Section 1.07. *Term*. The term of the LLC commenced upon the filing of the Certificate in accordance with the Delaware Act and shall continue until dissolution of the LLC in accordance with the provisions of Article 10 hereof.

Section 1.08. *No State-law Partnership*. The Members intend that the LLC not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement, for any purposes other than as set forth in the last sentence of this Section 1.08, and neither this Agreement nor any other document entered into by the LLC or any Member relating to the subject matter hereof shall be construed to suggest otherwise. The Members intend that the LLC shall be treated as a partnership for federal and, if applicable, state and local income tax purposes, and agree that each Member and the LLC shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment.

Section 1.09. *Authorization*. The Members hereby ratify the entry into and performance by the LLC of the Investor Subscription Agreement, the Management Contribution Agreement and the other agreements contemplated by this Agreement. The LLC shall cause TAG, NetIQ, Attachmate and Novell promptly to enter into and perform the Management Agreement.

Section 1.10. *Title to Property*. All property of the LLC, whether real or personal, tangible or intangible, shall be deemed to be owned by the LLC as an entity, and no Member, individually, shall have any direct ownership interest in such property.

Section 1.11. *Filing of Certificates.* FP is hereby designated as an authorized person, within the meaning of the Delaware Act, to execute, deliver and file, or to cause the execution, delivery and filing, of any amendments or restatements of the Certificate and any other certificates, notices, statements or other instruments (and any amendments or restatements thereof) necessary or advisable for the formation of the LLC or the operation of the LLC in all jurisdictions where the LLC may elect to do business.

ARTICLE 2
AUTHORIZATION AND ISSUANCE OF UNITS; PRE-EMPTIVE RIGHTS; CAPITAL ACCOUNTS

Section 2.01. *Authorization and Issuance of Units.*

(a) *Authorization*. The LLC has authority to issue an unlimited number of LLC Units. All LLC Units issued hereunder shall be uncertificated unless otherwise determined by the LLC Board.

(b) *Issuances of LLC Units at Closing*. At the closing of the transactions contemplated by the Management Contribution Agreement and the Investor Subscription Agreement (the "**Closing**"), each Member set forth on the Schedule of Members shall have made the Capital Contributions set forth opposite the name of such Member on such schedule and, in consideration therefor, the LLC shall have issued to such Member the number and class of LLC Units set forth opposite such Member's name on such schedule. Each such Member shall have been admitted as a Member of the LLC on the date of such Capital Contribution and shall be shown as such on the books and records of the LLC.

Section 2.02. *Other Matters*. (a) Except as provided in Section 2.01, no Member will have any obligation to make any Capital Contribution to the LLC.

(b) Except as otherwise provided in this Agreement, no Member shall be permitted to borrow, make an early withdrawal of, demand or receive a return of its Capital Contributions.

(c) No Member shall receive any interest, salary or drawing with respect to its Capital Contributions or its Capital Account in its capacity as a Member.

Section 2.03. *Pre-emptive Rights*. (a) Subject to Section 2.03(f), each of FP, GGC, TB and Elliott (each a "**Sponsor**") and each Management Series A Holder shall have the right to purchase, on the terms set forth herein, a portion of any Equity (including securities linked to Equity) or any equity securities issued by any Subsidiary of the LLC, other than securities issued to a party that directly or indirectly wholly owns or is wholly-owned by such Subsidiary (the "**Issued Securities**") that the LLC or any such Subsidiary may propose to issue, excluding any LLC Units issued pursuant to Section 2.01.

(b) The LLC shall deliver written notice (the "**Preemptive Notice**") to each Sponsor and each Management Series A Holder at least fifteen (15) days prior to the date of any proposed issuance of Issued Securities. Such notice shall describe the price, the aggregate number of Issued Securities and the amount or number of Issued Securities that each Sponsor and each Management Series A Holder may elect to purchase in connection with such issuance (assuming that all Sponsors elect to purchase Issued Securities) determined in accordance with Section 2.03(c). Such notice shall also describe any other terms of such Issued Securities, including rights to receive distributions and the rank of such Issued Securities relative to the LLC Units then outstanding.

(c) Each Sponsor and each Management Series A Holder shall have the right to purchase up to its pro rata share (based on the aggregate number of LLC Units held by the Sponsors and the Management Series A Holders) of any Issued Securities (it being understood that each Sponsor shall be entitled to assign its right to purchase such Issued Securities to an Affiliate of such Sponsor).

(d) Each Sponsor and each Management Series A Holder shall have a period of ten (10) days from the date the Preemptive Notice is given (the "**Election Period**") within which to agree to purchase up to the number or amount of Issued Securities which such Sponsor or Management Series A Holder is entitled to purchase pursuant to Section 2.03(c), at the price and upon the terms specified in the Preemptive Notice by giving written notice (an "**Election Notice**") to the LLC. An Election Notice delivered by any Sponsor or Management Series A Holder shall be irrevocable and binding upon such Sponsor or Management Series A Holder and shall, subject to Section 2.03(e), constitute an irrevocable commitment on the part of such Sponsor or Management Series A Holder to purchase the number and class of Issued Securities set forth therein. Such Election Notice shall also include the maximum number or amount of additional Issued Securities such Sponsor or Management Series A Holder would be willing to purchase in the event that the Sponsors and Management Series A Holders elect to purchase less than the maximum number or amount of Issued Securities that they are entitled to purchase pursuant to this provision. If any such Sponsor or Management Series A Holders shall not have delivered an Election

Notice within the Election Period, such Sponsor or Management Series A Holder will be deemed to have irrevocably waived any and all rights under this Section 2.03 with respect to such Issued Securities (but not with respect to future issuances in accordance with this Section 2.03). In the event that fewer than all of the Sponsors and Management Series A Holders elect to purchase any Issued Securities in the manner described above, the under subscription shall be allocated among such Sponsors and Management Series A Holders on a pro rata basis (based on the number of LLC Units owned by such Sponsors and Management Series A Holder) who have indicated in an Election Notice a desire to purchase additional Issued Securities, subject to any limitations such Sponsors or Management Series A Holders may have indicated as to the amount of such additional Issued Securities they desire to purchase. Promptly following the end of the Election Period, the LLC shall notify each electing Sponsor and Management Series A Holder of the amount of Issued Securities that it will purchase.

(e) If the Sponsors and Management Series A Holders have elected to purchase all of the Issued Securities proposed to be issued at any one time pursuant to this Section 2.03, the consummation of such purchase shall take place as soon as practicable (but in no event more than sixty (60) days) following the expiration of the Election Period. If the Sponsors and Management Series A Holders do not elect to purchase all of the Issued Securities proposed to be so issued, the LLC shall have ninety (90) days after the expiration of the Election Period to sell the remaining Issued Securities to any Person (including a Person that is a Sponsor or an Affiliate of a Sponsor) at a price and upon terms that are not more favorable to such Person than offered to the Sponsors and Management Series A Holders; *provided*, that if such purchase is subject to receipt of regulatory approvals, such ninety (90) day period shall be extended until the expiration of ten (10) days after all regulatory approvals have been received, but in no event later than 180 days following the expiration of the Election Period. The purchase of Issued Securities by the Sponsors and Management Series A Holders exercising their rights pursuant to this Section 2.03 shall be consummated simultaneously with the closing of the sale of the Issued Securities to such Person. In the event the LLC has not sold the Issued Securities to such Person within said 90 day period (or said 180 day period (or such shorter period as may be required) if regulatory approvals are required), then the LLC's rights to sell such Issued Securities, and the rights of the Sponsors and Management Series A Holders to purchase such Issued Securities pursuant to this Section 2.03 shall expire and the procedures in this Section 2.03 shall be reinstated. Notwithstanding anything to the contrary in this Agreement, no sale of Issued Securities to any Person pursuant to this Section 2.03(e) will be valid and no purchaser of an Issued Security will be admitted as a Member of the LLC unless such purchaser shall execute a counterpart to this Agreement, accepting and agreeing to be bound by all terms and conditions hereof, and shall enter into such other documents and instruments to effect such commitment and/or issuance as are required by the LLC Board (including a purchase agreement, and any other document or instrument

contemplated hereby or thereby) and shall otherwise comply with Section 8.02 hereof in connection with becoming a Member. In consideration for Capital Contributions made by the purchaser, the LLC will issue such Issued Securities to the purchaser at the time of such Capital Contribution. The LLC Board will amend the Schedule of Members from time to time to reflect the foregoing. In connection with the issuance of any Issued Securities pursuant to this Section 2.03, the LLC Board may designate any terms and conditions applicable to the Issued Securities.

(f) Notwithstanding the foregoing provisions of this Section 2.03, no Sponsor or Management Series A Holder shall have preemptive rights to purchase any Issued Securities as contemplated by this Section 2.03 in connection with issuances of Equity (or securities linked to Equity) or equity securities issued by any Subsidiary of the LLC:

(i) (x) in connection with the conversion or reorganization of outstanding equity or equity-based securities, (y) as additional yield or return in respect of Indebtedness or (z) as a dividend or distribution in respect of outstanding equity or equity-based securities in connection with a stock split or similar event;

(ii) (x) in connection with an initial Public Offering or (y) in connection with any bona fide, arm's-length direct or indirect merger, acquisition or similar transaction permitted under Section 4.02;

(iii) to officers, employees or consultants of the LLC or any Subsidiary of the LLC or members of the LLC Board or of the board of directors of any Subsidiary of the LLC pursuant to an employee benefit plan or any similar arrangement that has been approved by the LLC Board; or

(iv) for non-cash consideration in consideration of the provision of services that has been approved by the LLC Board.

Each Sponsor shall have the right to transfer or assign its right to purchase all or a portion of its Pro Rata Share of any issuance of Issued Securities pursuant to this Section 2.03 to any Permitted Transferee upon written notice to the LLC during the Election Period. For purposes of this Section 2.01, reference to any Sponsor shall be deemed to include any of such Sponsor's Permitted Transferees so notified to the LLC. The LLC shall not be under any obligation to consummate any proposed issuance of Issued Securities, regardless of whether it shall have delivered notice hereunder in respect of such proposed issuance. The provisions of this Section 2.03 shall terminate immediately prior to the effectiveness of the initial Public Offering. All calculations of pro rata ownership of Units under this Section 2.03 shall exclude any class of Units held by a Management Series A Holder other than Series A Units.

Section 2.04. *Capital Accounts*. (a) A capital account (each, a "**Capital Account**") shall be maintained for each Member. Each Member's Capital Account shall be increased by any allocations of income or gain and by any additional Capital Contributions by that Member and shall be reduced by any allocations of loss, deduction or credit and by any Distributions to that Member. Upon any Distribution (other than of cash), unrealized gain or loss with respect to such distributed property shall be allocated to the Capital Accounts of the Members in proportion to their Pro Rata Share. The aggregate Capital Account for each holder of Series A Units as of immediately following the Closing is set forth opposite each such Member's name on Schedule A hereto.

(b) If the LLC Board determines that an adjustment is necessary or appropriate to reflect the relative economic interests of the Members, the Capital Accounts of the Members and the value of the LLC property on the books of the LLC shall be adjusted in accordance with Treasury Regulations Sections 1.704-1(b)(2)(iv)(f) and (g) to reflect the gross fair market value of LLC property as of the following times (A) a Capital Contribution (other than a *de minimis* Capital Contribution) by a new or existing Member as consideration for an interest in the LLC, (B) the Distribution by the LLC to a Member of more than a *de minimis* amount of LLC assets as consideration for the redemption of an interest in the LLC, or (C) the liquidation of the LLC within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g), other than (as provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(l)) in connection with a termination of the LLC under Code Section 708(b)(1)(B).

Section 2.05. *Loans from Members*. Loans by Members to the LLC shall not be considered Capital Contributions. If any Member shall loan funds to the LLC in excess of the amounts required hereunder to be contributed by such Member to the capital of the LLC, the making of such loans shall not result in any increase in the amount of the Capital Account of such Member. The amount of any such loans shall be a debt of the LLC to such Member and shall be payable or collectible in accordance with the terms and conditions upon which such loans are made.

Section 2.06. *[Redacted]*.

Section 2.07. *[Redacted]*.

ARTICLE 3
DISTRIBUTIONS AND ALLOCATIONS

Section 3.01. *[Redacted]*.

Section 3.02. *[Redacted]*.

Section 3.03. *[Redacted]*.

Section 3.04. *[Redacted]*.

Section 3.05. *[Redacted]*.

Section 3.06. *[Redacted]*.

ARTICLE 4
GOVERNANCE OF THE LLC

Section 4.01. *Composition of the LLC Board; LLC Board Action.* (a) The LLC Board shall consist of six representatives of which, subject to Section 4.01(b), (i) two shall be designated by FP (the "**FP Representatives**"), (ii) two shall be designated by GGC (the "**GGC Representatives**"), (iii) one shall be designated by TB (the "**TB Representative**"), and (iv) one shall be designated by Elliott (the "**Elliott Representative**" and together with the FP Representatives, the GGC Representatives and the TB Representative, the "**Representatives**"). The Chairman of the LLC Board shall be as designated from time to time by the LLC Board. Each Unitholder agrees that it will vote its LLC Units or execute a written consent, as the case may be, and take all other necessary action (including causing the LLC to call a special meeting of Members) in order to designate or remove Representatives as required by this Article 4 and to ensure that the composition of the LLC Board is as set forth in this Section 4.01. The LLC will take all actions that are necessary and within its power in order to ensure that the composition of the LLC Board is as set forth in this Section 4.01.

(b) During any period that the Pro Rata Share of FP, GGC, TB or Elliott is below the applicable threshold provided in this Section 4.01(b), the number of Representatives that such Member may designate pursuant to Section 4.01(a) shall be reduced as follows:

(i) FP will have (x) the right to designate one FP Representative if its Pro Rata Share is below 15.0%, but not below 5.0%, and (y) no right to designate any FP Representatives if its Pro Rata Share is below 5.0%;

(ii) GGC will have (x) the right to designate one GGC Representative if its Pro Rata Share is below 15.0%, but not below 5.0%, and (y) no right to designate any GGC Representatives if its Pro Rata Share is below 5.0%;

(iii) TB will have no right to designate any TB Representative if its Pro Rata Share is below 5.0%; and

(iv) Elliott will have no right to designate any Elliott Representative if its Pro Rata Share is below 5.0%.

(c) *Removal*. Any Unitholder shall be entitled to remove at any time any Representative designated by such Unitholder pursuant to Section 4.01(a). Each Unitholder agrees that, if at any time, it or any Representative designated by it, is then entitled to vote for the removal of any Representative, it and any such designated Representative, will not vote any of its LLC Units or otherwise in favor of the removal of any Representative who shall have been designated or nominated pursuant to Section 4.01(a), unless such removal shall be for Director Cause or the Unitholder who is entitled to remove such Representative under this Section 4.01(c) shall have requested such removal in writing. For purposes of this Section 4.01(c), removal for "**Director Cause**" shall mean removal of a Representative because of such Representative's (i) willful and continued failure to substantially perform his or her duties to the LLC or any of its Subsidiaries (as determined in accordance with this Agreement), (ii) subject to Section 4.07, willful breach of such Representative's fiduciary duty of loyalty to the LLC or any of its Subsidiaries (as determined in accordance with this Agreement), or (iii) conviction of, or guilty plea to, a felony. Subject to Section 4.01(b), after any such removal, a replacement director shall be designated in the manner such removed director had been originally designated pursuant to Section 4.01(a).

(d) *Quorum; Action by the LLC Board*. A quorum of the LLC Board shall consist of four Representatives. All actions of the LLC Board (or any committee thereof) shall require the affirmative vote or written consent of Representatives holding a majority of the voting power of the entire LLC Board or any committee thereof (regardless of whether one or more directors is not present).

(e) *Voting Power*. With respect to any matter submitted for approval of, or any action to be taken by, the LLC Board (or any committee thereof) at any time, each Representative shall be entitled to cast one vote; *provided*, that, with respect to any such matter or action, each FP Representative shall be entitled to cast a number of votes equal to the number of FP Representatives designated by FP hereunder, divided by the number of FP Representatives present at the meeting or acting by written consent; *provided, further*, that, with respect to any such matter or action, each GGC Representative shall be entitled to cast a number of votes equal to the number of GGC Representatives designated by GGC hereunder, divided by the number of GGC Representatives present at the meeting or acting by written consent.

(f) *Committees*. The LLC Board shall create and maintain customary committees, including an executive committee, an audit committee and a compensation committee. The Sponsors entitled to appoint Representatives to the LLC Board will be represented on such committees by their Representatives consistent with the number of Representatives such Sponsor is entitled to appoint to the LLC Board as a percentage of the entire LLC Board. Notwithstanding the foregoing, and without limitation to the foregoing, (i) no Representative who is an officer of the LLC or any Subsidiary of the LLC may serve on the audit committee or the compensation committee or other similar committee established

by the LLC Board, (ii) at least one FP Representative and one GGC Representative shall serve on all committees, and (iii) the TB Representative and the Elliott Representative shall each serve on any compensation committee and (iv) all major actions or decisions concerning the LLC, any of its Subsidiaries or the Business will be discussed before the full LLC Board.

(g) *Subsidiaries*. As soon as practicable after the Closing Date, the board of directors or equivalent body of TAG, IP Holdings, Attachmate, Novell, NetIQ and any other material direct or indirect Subsidiary of the LLC shall be constituted to consist of the same individuals who are then Representatives, and each committee of such board of directors or equivalent body shall consist of the same individuals who are then members of the equivalent committee of the LLC Board and the LLC shall cause such board compositions to be maintained accordingly.

(h) For so long as TB and Elliott have the right to designate the TB Representative and the Elliott Representative, respectively, TB and Elliott shall each have the right to have an additional representative reasonably acceptable to the rest of the LLC Board attend meetings of the LLC Board and board meetings of any Subsidiary in a nonvoting observer capacity; *provided, however,* that the LLC and its Subsidiaries reserve the right to exclude such representative from access to any of its meeting or portion thereof if the LLC or any such Subsidiary believes that such exclusion is reasonably necessary to satisfy its fiduciary duties, to preserve the attorney-client privilege, to protect highly confidential proprietary information or for other similar reasons. Such representative may participate in discussions of matters brought to the board of the LLC or its Subsidiaries, as the case may be. Each of TB and Elliott agrees, and any representative of TB and/or Elliott will agree, to hold in confidence and trust and not use or disclose any confidential information provided to or learned by it in connection with its rights under this paragraph (h), and represents and agrees that the information provided by the LLC or any Subsidiary pursuant to these rights shall not be used by TB, Elliott of their respective representatives in any manner inconsistent with the fiduciary obligations of a director of the LLC or any Subsidiary (as determined in accordance with this Agreement and the Delaware Act).

Section 4.02. *Governance Rights*. (a) Notwithstanding anything in this Agreement to the contrary, the LLC shall not (and shall not permit any of its Subsidiaries to and shall cause its Subsidiaries not to), without the (x) prior approval of the LLC Board in accordance with Section 4.01(a) acting as a whole and not through any committee thereof and (y) affirmative vote or written consent of at least one FP Representative, at least one GGC Representative, the TB Representative and the Elliott Representative:

(i) enter into, amend, modify or supplement, or permit any of its Subsidiaries to enter into, amend, modify or supplement, (A) any material agreement, transaction, commitment or arrangement relating to, or (B) any agreement, transaction, benefit plan, commitment or

arrangement with, any of the LLC's or any of its Subsidiaries' equity holders, executive officers, directors or Affiliates or with any Affiliates of such equity holders, executive officers or directors, or any individual related by blood, marriage or adoption to any such individual or with any entity in which any such Person or individual owns a beneficial interest, except in each case for any issuance of LLC Units (to which the provisions of Section 2.03 shall apply) or as otherwise expressly contemplated by this Agreement or employee benefit plans or arrangements previously approved by the LLC Board;

(ii) amend, waive, or otherwise modify any agreement entered into by the LLC on the Closing Date;

(iii) issue any LLC Units for a price per LLC Unit lower than the price set forth in the Investor Subscription Agreement (as adjusted to reflect any change in capital structure of the LLC);

(iv) issue any Management Incentive Unit if such issuance would result in the number of Management Incentive Units outstanding after giving effect to such issuance to be greater than 10% of the aggregate number of Series A Units and Management Incentive Units outstanding as of such date; or

(v) agree or commit to any of the foregoing.

(b) Without limitation to paragraphs (a), (c), (d) and (e) of this Section 4.02, the LLC shall not (and shall not permit any of its Subsidiaries to and shall cause its Subsidiaries not to), without (x) prior approval of the LLC Board in accordance with Section 4.01(a) acting as whole and not through any committee thereof and (y) (other than with respect to subclauses (x), (xiv), (xv), (xviii) and (xix) of this Section 4.02(b)) the prior affirmative vote or written consent of Sponsors holding at least 75% of the voting power of the Sponsors; *provided*, that neither Elliott nor the Elliott Representative shall be entitled to vote on any action set forth in this Section 4.02(b) and the Voting Units held by Elliott shall not be counted for purposes of calculating the voting power of the Sponsors for purposes of clause (y) above:

(i) directly or indirectly declare or pay any dividends or make any distributions upon any of the LLC Units or equity securities of any such Subsidiary;

(ii) except for issuances of LLC Units as contemplated in Section 2.01 hereof, authorize, issue or enter into any agreement providing for the issuance (contingent or otherwise) of any equity securities (including any warrants, rights or options to acquire any equity securities and any securities convertible into or exercisable or exchangeable for any equity securities), notes or debt securities containing equity features,

including pursuant to any Public Offering, other than (A) as may be expressly specified in any management equity plan and associated budget which has been previously approved by the LLC Board or (B) issuance of securities by a wholly-owned Subsidiary of the LLC to the LLC;

(iii) merge or consolidate with any Person or, except as permitted under Section 4.02(b)(ix), permit any of its Subsidiaries to merge or consolidate with any Person (other than a merger between wholly-owned domestic Subsidiaries);

(iv) liquidate, dissolve or effect a recapitalization or reorganization, or permit any of its Subsidiaries to liquidate, dissolve or effect a recapitalization or reorganization, in any form of transaction (including, in the case of corporate entities, any reorganization into a limited liability company, a partnership or any other non-corporate entity which is treated as a partnership for federal income tax purposes and, in the case of the LLC, by means of any reorganization into a corporation or by making an election to be treated as a corporation for federal income tax purposes);

(v) enter into any voting trust, voting or stockholder agreement with respect to any of its or its Subsidiaries' securities or register any securities pursuant to the Securities Act or the Securities Exchange Act, or grant, or permit any of its Subsidiaries to grant, any registration rights with respect to any of its capital stock, in each case other than pursuant to this Agreement;

(vi) select or retain, or enter into, amend, terminate, or modify any retention arrangement with any underwriter, manager, or financial advisor to advise the LLC and its Subsidiaries with respect to any proposed Sale or to underwrite, or advise the LLC with respect to, a Public Offering or any acquisition or financing transaction or effect any public offering of debt or equity securities;

(vii) make, or permit any of its Subsidiaries to make, any loans or advances to, guarantees for the benefit of, or Investments in, any Person (other than a wholly-owned Subsidiary), except for (x) in the case of Subsidiaries only, trade credit in the ordinary course of business, (y) acquisitions permitted under Section 4.02(b)(ix) and (z) Investments having a stated maturity no greater than one year from the date the LLC makes such Investment in obligations of the United States government or any agency thereof or obligations guaranteed by the United States government, certificates of deposit of commercial banks having combined capital and surplus of at least $500,000,000 or commercial paper with a rating of at least "*Prime-1*" by Moody's Investors Service, Inc.;

(viii) sell, lease or otherwise dispose of, or permit any of its Subsidiaries to sell, lease or otherwise dispose of, assets of the LLC and its Subsidiaries, other than, in the case of the Subsidiaries, in the ordinary course of business consistent with past practice, having in the aggregate, a fair market value, of more than $1,000,000 in any transaction or series of related transactions or $2,000,000 in the aggregate for any fiscal year, or sell, license or permanently dispose of any of its or any of its Subsidiaries material intellectual property rights, other than in the ordinary course of business consistent with past practice;

(ix) acquire, or permit any of its Subsidiaries to acquire, any interest in any company or business (whether by a purchase of assets, purchase of stock, merger or otherwise) or enter into any joint venture or partnership or enter into any strategic alliance (in each case, other than as may be expressly specified in any business plan and budget which has been previously approved by the LLC Board);

(x) engage in any business or activity other than as provided for in a business plan and budget which has been previously approved by the LLC Board or activities incidental thereto or authorize any action by the LLC or any of its Subsidiaries in connection with a transaction not substantially related to such business or activity as provided for in a business plan and budget which has been previously approved by the LLC Board or make any material change in the nature of the Business, including entering into the management of other lines of business;

(xi) become subject to, or permit any of its Subsidiaries to become subject to (including by way of amendment to or modification of) any agreement or instrument which by its terms would (under any circumstances) restrict the right of any Subsidiary to make loans or advances or pay dividends to, transfer property to, or repay any Indebtedness owed to, the LLC or one of its Subsidiaries or restrict the LLC's performance of its obligations under the provisions of this Agreement or the Certificate;

(xii) create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, Indebtedness at any time (other than Indebtedness expressly specified in any business plan and budget which has been previously approved by the LLC Board), or take or omit to take any action that would require a consent or waiver under any agreement or contract of Indebtedness of the LLC or any of its Subsidiaries;

(xiii) create, incur, assume or suffer to exist, or permit any Subsidiary to create, incur, assume or suffer to exist, Liens, other than Liens that arise by operation of law or in the ordinary course of business consistent with past practice;

(xiv) make any capital expenditures or permit any of its Subsidiaries to make any capital expenditures exceeding $1,000,000 in the aggregate on a consolidated basis during any 12-month period (other than capital expenditures expressly specified in any business plan and budget which has been previously approved by the LLC Board);

(xv) enter into, or permit any of its Subsidiaries to enter into, any leases or other rental agreements under which the amount of the aggregate lease payments for all such agreements exceeds $500,000 on a consolidated basis for any 12-month period (other than leases or other rental agreements expressly specified in any business plan and budget which has been previously approved by the LLC Board);

(xvi) change its Fiscal Year or permit any of its Subsidiaries to change its fiscal year;

(xvii) adopt or amend any stock option plan or employee stock ownership plan, stock purchase or restricted stock or stock appreciation rights plan or issue any LLC Units or equity of its Subsidiaries to its or its Subsidiaries' employees;

(xviii) (A) terminate the employment of or hire the Chief Executive Officer of the LLC or any of its Subsidiaries, (B) enter into, amend or modify any employment agreement (including arrangements relating to compensation and equity participation) with the Chief Executive Officer of the LLC or any of its Subsidiaries or any of his or her direct reports, or (C) enter into, adopt, amend or modify any collective bargaining agreement or arrangement, any employee pension benefit plan (as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended and the rules and regulations promulgated thereunder), any severance or similar contract, plan, arrangement or policy, or any plan or arrangement providing for severance benefits or post-employment or retirement benefits;

(xix) approve any operations plan and budget of the LLC and its Subsidiaries or amend, waive, or otherwise modify any operations plan and budget which has been previously approved by the LLC Board;

(xx) change any of the accounting principles or practices utilized by the LLC or its Subsidiaries;

(xxi) make or change any tax election, change any annual tax accounting periods, adopt or change any method of tax accounting or make any change in the LLC's or any of its Subsidiaries' independent accounting firm or amend, terminate or modify the retention arrangement with such firm;

(xxii) make any election(s), or adopt or change any policies or methodologies, for federal, state or local tax purposes, or extend the statute of limitations for assessment of tax deficiencies against Members with respect to adjustments to the Company's federal income tax returns, or make an election pursuant to Section 754 of the Code, or take any action to revoke or withdraw any such election, adoption or change made in accordance with the foregoing;

(xxiii) commence or settle any material litigation with respect to the LLC, any Subsidiary or any of their respective properties;

(xxiv) change the authorized size or composition of the LLC Board or the board of directors of any of its Subsidiaries from that set forth in Section 4.01 or establish any committee of the LLC Board or the board of directors of any of its Subsidiaries; or

(xxv) agree or commit to any of the foregoing.

(c) Notwithstanding anything in this Agreement to the contrary, the LLC shall not (and shall not permit any of its Subsidiaries to and shall cause its Subsidiaries not to), without the affirmative vote or written consent of the Sponsors holding at least 85% of the voting power of the Sponsors, amend, waive or otherwise modify any provision of the Certificate, or any constitutive document of TAG, IP Holdings, Attachmate, Novell, NetIQ or any other material Subsidiary, or file any resolution of the LLC Board with the Delaware Secretary of State.

(d) Notwithstanding anything in this Agreement to the contrary, without the prior written consent of any Sponsor (for so long as such Sponsor or its Permitted Transferees hold LLC Units), the LLC shall not (and shall not permit any of its Subsidiaries to and shall cause its Subsidiaries not to) take any action described in any of subsections (a), (b) or (c) of Section 4.02 that has been approved, whether by affirmative vote or written consent, by the requisite Representatives or Sponsors specified in such subsection, if such action would have an adverse effect on the LLC Units held by such Sponsor (or its Permitted Transferees) that is disproportionate to the adverse effect that such action would have on all Sponsors holding the same class of LLC Units as such Sponsor.

(e) Notwithstanding anything in this Agreement to the contrary, without the prior written consent of each Sponsor (for so long as such Sponsor or its Permitted Transferees hold LLC Units), the LLC shall not (and shall not permit any of its Subsidiaries to and shall cause its Subsidiaries not to):

(i) directly or indirectly make any Distribution that is not (A) in accordance with the rights and preferences of the LLC Units set forth in this Agreement or (B) on a pro rata basis within the applicable class of the LLC Units;

(ii) directly or indirectly redeem, purchase or otherwise acquire any of the LLC Units in a manner that would result in a distribution of proceeds other than (A) in accordance with the priority of payments set forth in Section 3.02(a) or (B) on a pro rata basis within the applicable class of the LLC Units;

(iii) directly or indirectly redeem, purchase or otherwise acquire any of the LLC Units or any equity securities of any Subsidiary of the LLC;

(iv) amend this Agreement, the Certificate or any constitutive document of any Subsidiary of the LLC, or otherwise modify the terms of or take any other action with respect to any Equity (or securities linked to any Equity) or equity securities of any Subsidiary of the LLC (or any securities linked thereto), in any way that would directly or indirectly adversely alter the rights and preferences of the Series A Units vis-à-vis the Legacy Units or the Management Incentive Units; or

(v) agree or commit to any of the foregoing.

Section 4.03. *Proxies*. A Representative may vote at a meeting of the LLC Board or any committee thereof either in person or by proxy executed in writing by such Representative. An email, PDF or similar transmission by the Representative, or a facsimile or similar reproduction of a writing executed by the Representative shall (if stated thereon) be treated as a proxy executed in writing for purposes of this Section 4.03. Proxies for use at any meeting of the LLC Board or any committee thereof or in connection with the taking of any action by written consent shall be filed with the LLC Board, before or at the time of the meeting or execution of the written consent, as the case may be. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

Section 4.04. *Meetings, Etc.* (a) Meetings of the LLC Board or any committee thereof shall be held in Menlo Park, California, or at such other place as may be determined by the LLC Board or such committee. Regular meetings of the LLC Board shall be held on such dates and at such times as shall be determined by the LLC Board, but no less frequently than once per year. Special meetings of the LLC Board or any committee may be called by any one Representative (or, in the case of a special meeting of any committee of the LLC Board, by any member thereof) on at least ten (10) days' prior written notice to the other Representatives, which notice shall state the purpose or purposes for which such meeting is being called; *provided*, that if the nature of the action to be taken is such that time is of the essence with respect to such action (such as the need for the LLC Board to grant approval under Section 4.02 hereof for time-critical matters), such meeting may be held without such ten (10) days' notice if at

least one business day's notice has been given and (A) a good faith effort has been made to notify and consult with each of the Representatives entitled to vote on such action, and (B) a quorum exists for the taking of such action. The actions taken by the LLC Board or any committee at any meeting, however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if immediately before, at or after the meeting, the Representative as to whom it was improperly held signs a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes thereof. The actions by the LLC Board or any committee thereof may be taken by vote of the LLC Board or any committee at a meeting thereof or by written consent (without a meeting and without a vote) so long as in the case of a written consent (i) such consent is signed by Representatives having the minimum number of votes that would be necessary to authorize or take such action under Section 4.01(d) at a meeting of the LLC Board or such committee in which all members thereof were present, and (ii) at least ten (10) days' prior written notice is given to all Representatives of the proposed action; *provided*, that if the nature of the action to be taken is such that time is of the essence with respect to such action (such as the need for the LLC Board to grant approval under Section 4.02 hereof for time-critical matters), such action may be taken without such ten (10) days' notice if at least one business day's notice has been given and (A) a good faith effort has been made to notify and consult with each of the Representatives entitled to vote on such action, and (B) such written consent has the requisite signatures necessary under clause (i) of this sentence. Prompt written notice of the action so taken without a meeting shall be given to those Representatives who have not consented in writing. A meeting of the LLC Board or any committee may be held by, and any Representative may attend any meeting of the LLC Board or any committee thereof by, conference telephone or similar communications equipment by means of which all individuals participating in the meeting can be heard.

(b) The LLC shall pay (or shall cause its Subsidiaries to pay) the reasonable out-of-pocket costs and expenses incurred by each Representative in connection with attending the meetings of the LLC Board and any committee thereof. Except as otherwise provided in the immediately preceding sentence or elsewhere in this Agreement, the Representatives shall not be compensated for their services as members of the LLC Board. So long as any Representative designated under this Agreement serves on the LLC Board and for six years thereafter, the LLC shall (and shall cause its Subsidiaries to) maintain directors and officers indemnity insurance coverage satisfactory to the LLC Board at the time such insurance is first obtained and, with respect to such Representative, not thereafter reduced in amount or coverage.

Section 4.05. *Persons Authorized to Act*. The LLC Board may designate an agent, employee or other representative of the LLC as an "**officer**" or representative authorized to take action for or sign agreements or documents on behalf of the LLC, to the extent such actions are authorized hereunder.

Section 4.06. *Limitation of Liability*. (a) Except as otherwise provided herein or in any agreement entered into by such Person and the LLC, no Representative nor any of such Representative's Affiliates shall be liable to the LLC or to any Member for any act performed or omitted in good faith by such Representative in its capacity as a member of the LLC Board or an LLC Board committee, to the maximum extent permitted by the Delaware Act. The LLC Board may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and no Representative or any of such Representative's Affiliates shall be responsible for any misconduct or negligence on the part of any such agent appointed by the LLC Board in good faith. The LLC Board shall be entitled to rely upon the advice of legal counsel, independent public accountants and other experts, including financial advisors, and any act of or failure to act by the LLC Board in good faith reliance on such advice shall in no event subject the LLC Board or any Representative thereof to liability to the LLC or any Member.

(b) Whenever in this Agreement or any other agreement contemplated herein, the LLC Board is permitted or required to take any action or to make a decision in its "**sole discretion**" or "**discretion**" or under a grant of similar authority or latitude, the LLC Board shall be entitled to consider only such interests and factors as it desires, including its own, and shall, to the maximum extent permitted by applicable law, have no duty or obligation to give any consideration to any interests or factors affecting any Member.

(c) Whenever in this Agreement the LLC Board is permitted or required to take any action or to make a decision in its "**good faith**" or under another express standard, the LLC Board shall act under such express standard and shall not be subject to any other or different standards imposed by this Agreement or any other agreement contemplated herein or by relevant provisions of law or in equity or otherwise, and, notwithstanding anything contained herein to the contrary, so long as the LLC Board acts in good faith, the resolution, action or terms so made, taken or provided by the LLC Board shall not constitute a breach of this Agreement or any other agreement contemplated herein or impose liability upon the LLC Board, any Representative thereof or any of such Representative's Affiliates.

(d) To the fullest extent permitted by law, a Representative shall be deemed the agent of the Member that so appointed such Person as Representative, and such Representative shall not be deemed an agent or sub-agent of the LLC or the other Members and shall have no duty (fiduciary or otherwise) to the LLC or the other Members. Each Member, by execution of this Agreement, agrees and consents to the actions and decisions of such Representative within the scope of such Representative's authority as provided herein as if such actions or decisions had been taken or made by the Member appointing such Representative.

Section 4.07. *Investment Opportunities and Conflicts of Interest.* The Members expressly acknowledge and agree that (a) the Sponsors and their

respective Affiliates are permitted to have, and may presently or in the future have, investments or other business relationships, ventures, agreements or arrangements with entities engaged in the Business and in related businesses other than through the LLC, or any of its Subsidiaries (an "**Other Business**"), (b) the Sponsors and their respective Affiliates have or may develop a strategic relationship with businesses that are or may be competitive with the LLC, or any of its Subsidiaries, (c) none of the Sponsors or their respective Affiliates (including their respective designees serving on the LLC Board) will be prohibited by virtue of their investments in the LLC, or any of its Subsidiaries or their service on the LLC Board from pursuing and engaging in any such activities, (d) none of the Sponsors or their respective Affiliates, will be obligated to inform each other or the LLC of any such opportunity, relationship or investment, (e) the other Members will not acquire, be provided with an option or opportunity to acquire or be entitled to any interest or participation in any Other Business as a result of the participation therein of any of the Sponsors or their respective Affiliates, (f) the Members and the LLC expressly waive, to the fullest extent permitted by applicable law, any rights to assert any claim that such involvement breaches any duty owed to any Member, the LLC, or any of the LLC's Subsidiaries or to assert that such involvement constitutes a conflict of interest by such Persons with respect to the LLC, the Members or any of the LLC's Subsidiaries, and (g) nothing contained herein shall limit, prohibit or restrict any designee serving on the LLC Board or any committee thereof or any representative of any of its Affiliates from serving on the board of directors or other governing body or committee of any Other Business.

Section 4.08. *Confidentiality*. Each Member shall keep confidential and not reveal, and shall cause its Affiliates and the officers, directors, employees, partners, agents and Representatives of such Member and its Affiliates to keep confidential and not reveal, to any other Person (other than to any Affiliate or any officer, director, employee, partner, member, agent or Representative of such Member or its Affiliates, or to any other Member or such other Member's Affiliates; *provided*, that such disclosing Member shall use commercially reasonable efforts to cause any such recipient to comply with the provisions of this Section 4.08 with respect to any Information), from (x) the later of (i) the Original Closing Date and (ii) the first date on which such Member became a Member through (y) the third anniversary of the first date on which such Member is no longer a Member, any and all confidential documents, trade secrets and other confidential information concerning, relating to or in connection with the LLC or any of its Subsidiaries, that come to the knowledge of such Member or its Affiliates or their respective officers, directors, employees, partners, agents and Representatives by reason of the relationship of such Member or Affiliate or such other Person with the LLC or any of its Subsidiaries (the "**Information**"), except for such Information that (a) is generally available to the public (other than as a result of a disclosure by such Member or its Affiliates), (b) is available to such Person on a non-confidential basis from a source that is not prohibited from disclosing such Information to such Person, or (c) after notice and an opportunity

to contest, such Person is required to disclose under any applicable law, subpoena or other legal process or pursuant to any agreement with a national securities exchange; *provided*, that nothing in this Agreement or any other agreement between the Members or its Affiliates shall preclude any Member or its Affiliates from using any Information in any manner reasonably connected to its investment in the LLC.

ARTICLE 5
RIGHTS AND OBLIGATIONS OF MEMBERS

Section 5.01. *Liability for Debts of the LLC; Limited Liability*. (a) Except as otherwise provided in the Delaware Act, the debts, obligations and liabilities of the LLC, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the LLC, and no Member shall be obligated personally for any such debt, obligation or liability of the LLC solely by reason of being a Member.

(b) Except as otherwise expressly required by law, a Member, in its capacity as such, shall have no liability to the LLC, any other Member or to the creditors of the LLC in excess of such Member's Capital Contribution and other payments required to be made by such Member under this Agreement.

(c) An individual Member may also be an employee, agent, officer or director of the LLC or any Subsidiary of the LLC. The existence of these relationships and acting in such capacities shall not affect the liability of the individual Member so existing or acting.

Section 5.02. *Lack of Authority*. No Member, in its capacity as such, has the authority or power to act for or on behalf of the LLC in any manner, to do any act that would be (or could be construed as) binding on the LLC or to make any expenditures on behalf of the LLC, unless such specific authority has been expressly granted to such Member by the LLC Board or this Agreement, and the Members hereby consent to the exercise by the LLC Board and the Representatives of the powers conferred on them by law and this Agreement.

Section 5.03. *No Right of Partition*. No Member shall have the right to seek or obtain partition by court decree or operation of law of any LLC property, or the right to own or use particular or individual assets of the LLC.

Section 5.04. *Indemnification*. (a) The LLC hereby agrees to indemnify and hold harmless any Person (each, an "**Indemnified Person**") to the fullest extent permitted under the Delaware Act, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement only to the extent that such amendment, substitution or replacement permits the LLC to provide broader indemnification rights than the LLC is providing immediately prior to such amendment), against all expenses,

liabilities and losses (including reasonable attorney costs, fees and expenses, judgments, fines, excise taxes or penalties) reasonably incurred or suffered by such Person (or one or more of such Person's Affiliates) by reason of the fact that such Person is or was a Member or is or was serving as a Representative, employee or agent of the LLC or is or was serving as a director, employee, agent or representative of a Subsidiary of the LLC; *provided*, that (unless the LLC Board otherwise consents) no Indemnified Person shall be indemnified for any expenses, liabilities and losses suffered that are attributable to such Indemnified Person's or its Affiliates' gross negligence, willful misconduct or knowing violation of law or for any present or future breaches of any representations, warranties or covenants by such Indemnified Person or its Affiliates contained herein or in any other agreement with the LLC or for Losses incurred by the LLC or any Subsidiary of the LLC. Expenses, including reasonable attorney costs, fees and expenses, incurred by any such Indemnified Person in defending a proceeding shall be paid by the LLC in advance of the final disposition of such proceeding, including any appeal therefrom, upon receipt of an undertaking by or on behalf of such Indemnified Person to repay promptly such amount if it shall ultimately be determined that such Indemnified Person is not entitled to be indemnified by the LLC.

(b) The right to indemnification and the advancement of expenses conferred in this Section 5.04 shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute, agreement, bylaw, vote of Representatives or otherwise. The Fund Representatives appointed by the Sponsors have, and certain other Indemnified Persons may have, certain rights to indemnification, advancement of expenses and/or insurance provided by certain Members, which are intended to be secondary to the primary obligation of the LLC to indemnify the Indemnified Persons as provided herein. Notwithstanding anything contained herein to the contrary (i) the LLC shall be the indemnitor of first resort (i.e., its obligations to the Indemnified Persons are primary and any obligation of any Member to advance expenses or to provide indemnification for the same expenses or liabilities incurred by the Indemnified Persons are secondary), (ii) the LLC shall be required to advance the full amount of expenses incurred by the Indemnified Persons and shall be liable for the full amount of all expenses, liabilities and losses reasonably incurred or suffered by such Indemnified Person (or one or more of such Indemnified Person's Affiliates) to the extent legally permitted and as required by the terms of this Agreement (or any other agreement between the LLC and such Indemnified Persons), without regard to any rights such Indemnified Persons may have against any Member, and (iii) the LLC hereby irrevocably waives, relinquishes and releases each Member from any and all claims against such Member for contribution, subrogation or any other recovery of any kind in respect thereof. No advancement or payment by any Member on behalf of any Indemnified Person with respect to any claim for which such Indemnified Person has sought indemnification from the LLC shall affect the foregoing, and the Members shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of

recovery of the Indemnified Persons against the LLC. The terms of this Section 5.04(b) are a material condition to the willingness of the Fund Representatives appointed by the Sponsors to serve on the LLC Board. The Sponsors are express third party beneficiaries of the terms of this Section 5.04(b).

(c) To the extent available on commercially reasonable terms, the LLC shall (and shall cause its Subsidiaries to) maintain insurance, at its expense, to protect any Indemnified Person against any expense, liability or loss described in Section 5.04(a) above whether or not the LLC would have the power to indemnify such Indemnified Person against such expense, liability or loss under the provisions of this Section 5.04.

(d) Notwithstanding anything contained herein to the contrary (including in this Section 5.04) any indemnity by the LLC relating to the matters covered in this Section 5.04 shall be provided out of and to the extent of LLC assets only and no Member (unless such Member otherwise agrees in writing or is found in a final decision by a court of competent jurisdiction to have personal liability on account thereof) shall have personal liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity of the LLC.

(e) If this Section 5.04 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the LLC shall nevertheless indemnify and hold harmless each Indemnified Person pursuant to this Section 5.04 to the fullest extent permitted by any applicable portion of this Section 5.04 that shall not have been invalidated and to the fullest extent permitted by applicable law.

Section 5.05. *Members' Right to Act; Voting Rights of LLC Units*. For situations where the approval of the Members (rather than the approval of the LLC Board on behalf of the Members) is required by applicable law, the Members shall act through meetings and written consents as described in Sections 5.05(a) and 5.05(b) below:

(a) Except as otherwise provided in this Agreement, each Member owning Voting Units shall be entitled to vote on or approve or consent as to any action permitted or required to be taken or any determination required to be made by the LLC or the Members under this Agreement or the Delaware Act. Each Voting Unit shall have one vote. Except as otherwise provided in the Delaware Act or as otherwise provided herein, (i) acts by the Members holding a majority of the Voting Units shall be the act of the Members and (ii) Members holding LLC Units other than Voting Units shall not be entitled to any vote or consent right with respect to any matters of the LLC. Any Member entitled to vote at a meeting of Members or to express consent or dissent to LLC action in writing without a meeting may authorize another person or persons to act for them by proxy. An email, PDF or similar transmission by the Member, or a facsimile or similar reproduction of a writing executed by the Member shall (if stated thereon)

be treated as a proxy executed in writing for purposes of this Section 5.05(a). No proxy shall be voted or acted upon after eleven (11) months from the date thereof, unless the proxy provides for a longer period. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

(b) The actions by the Members permitted hereunder may be taken at a meeting called by Members holding at least 50% of the outstanding Voting Units on at least five (5) days' prior written notice to the other Members entitled to vote, which notice shall state the purpose or purposes for which such meeting is being called. The actions taken by the Members entitled to vote or consent at any meeting, however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if immediately before, at or after the meeting, each of the Members as to whom it was improperly held signs a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes thereof. The actions by the Members entitled to vote or consent may be taken by vote of the Members entitled to vote or consent at a meeting or by written consent (without a meeting and without a vote) so long as in the case of a written consent such consent is signed by the Members having not less than the minimum number of Voting Units that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted. Prompt written notice of the action so taken without a meeting shall be given to those Members entitled to vote or consent who have not consented in writing. Any action taken pursuant to such written consent of the Members shall have the same force and effect as if taken by the Members at a meeting thereof.

(c) Notwithstanding anything to the contrary in this Agreement, Members voting on matters pursuant to Sections 4.02(b), Section 5.05 or on any other matter (whether pursuant to the terms of this Agreement or the Delaware Act), shall have no greater fiduciary duty to any other Member than a stockholder would have to another stockholder of the same corporation under the Delaware General Corporation Law.

Section 5.06. *Delivery of Financial Statements*. Until the consummation of an initial Public Offering, the LLC shall cause TAG to use its reasonable best efforts provide to each Representative:

(a) as soon as practicable, but in any event within ninety (90) days after the end of each Fiscal Year, an income statement for such Fiscal Year, a balance sheet and statement of member's equity as of the end of such year, a statement of cash flows for such year, such year-end financial reports to be in reasonable detail, prepared on a consolidated basis and in accordance with generally accepted accounting principles and audited and certified by independent public accountants selected by the LLC Board;

(b) as soon as practicable, but in any event within thirty (30) days after the end of each first eleven (11) months of each Fiscal Year, an unaudited profit or loss statement, a statement of cash flows schedule for such month, and an unaudited balance sheet as of the end of such month and management's commentary thereto;

(c) as soon as practicable, but in any event thirty (30) days prior to the end of each Fiscal Year, a budget and business plan for the next Fiscal Year, prepared on a monthly basis, including balance sheets and a statement of cash flows for such months and, as soon as prepared, any other budgets or revised budgets;

(d) access to management of the LLC and its Subsidiaries for technical meetings at the facilities of the LLC or its Subsidiaries at least once per fiscal quarter to review and discuss the business of the LLC and its Subsidiaries;

(e) access to the books and records of the LLC and its Subsidiaries, as well as their facilities, for inspection at reasonable times and intervals; and

(f) promptly, from time to time, such other information regarding its business, prospects, financial condition, operations, property or affairs as such Representative reasonably may request.

ARTICLE 6
BOOKS, RECORDS, ACCOUNTING AND REPORTS

Section 6.01. *Records and Accounting*. The LLC shall keep, or cause to be kept, appropriate books and records with respect to the LLC's business, including all books and records necessary to provide any information, lists and copies of documents required to be provided pursuant to Section 6.03 or pursuant to applicable laws. All matters concerning (i) the determination of the relative amount of allocations and distributions among the Members pursuant to Articles 2 and 3, and (ii) accounting procedures and determinations, and other determinations not specifically and expressly provided for by the terms of this Agreement, shall be determined by the LLC Board in good faith, consistent with the economic arrangement of the Members.

Section 6.02. *Fiscal Year*. The Fiscal Year of the LLC shall constitute the 12-month period (or shorter period for the LLC's first Fiscal Year) ending on December 31 of each calendar year, or such other annual accounting period as may be established by the LLC Board.

Section 6.03. *Reports*. The LLC shall, at the expense of the LLC, use its reasonable best efforts to deliver, or cause to be delivered, on or before February 28th of each Fiscal Year (subject to reasonable delays in the event of the late receipt of any necessary financial statements), to each Member who was a

Member at any time during such Fiscal Year a Form K-1 and such other information, if any, with respect to the LLC as may be necessary for the preparation of such Member's federal, state, local and foreign income tax returns as well as the preparation of any other filing as may be required to be made by a Member by law, including a statement showing each Member's share of income, gain, loss, deductions and credits for such Fiscal Year for federal income tax purposes. In addition, the LLC shall, at the expense of the LLC, (i) prepare and provide to each Member all other information as may be reasonably requested by such Member in order to enable such Member (or the holder of a direct or indirect interest therein) to comply with its tax obligations, and (ii) prepare any filings, applications or elections necessary to obtain any available exemption from, or refund of, any material withholding or other taxes imposed by any non-U.S. (whether sovereign or local) taxing authority with respect to amounts distributable to the Members pursuant to this Agreement.

ARTICLE 7
TAX MATTERS

Section 7.01. *Preparation of Tax Returns*. The Tax Matters Partner shall, at the expense of the LLC, arrange for the preparation and timely filing of all tax returns required to be filed by the LLC, and shall cause the LLC to deliver to each Member Schedule K-1s no later than March 1 of each year with respect to the preceding year.

Section 7.02. *Tax Elections*. The Taxable Year shall be the Fiscal Year set forth in Section 6.02 unless the LLC Board shall determine otherwise in its sole discretion and in compliance with applicable laws. Except as otherwise provided herein, all elections by the LLC for income and franchise tax purposes and all determinations regarding the fair market value of any LLC assets, book basis, depreciation or amortization and all other matters relating to all tax returns (including amended returns) filed by the LLC, including tax audits and related matters and controversies, shall be made by the LLC Board, in its sole discretion but consistent with the economic arrangement of the Members.

Section 7.03. *Tax Controversies*. Francisco Partners, L.P., is hereby designated as the "**Tax Matters Partner**" for purposes of Section 6231 of the Code. The Tax Matters Partner shall on a timely basis keep all Members fully informed of the progress of any examinations, audits or other proceedings, and all Members shall have the right to participate in any such examinations, audits or other proceedings. The Tax Matters Partner shall not settle or otherwise compromise any issue in any such examination, audit or other proceeding without first obtaining the approval of the LLC Board and any Member who is disproportionately impacted by that settlement or compromise.

ARTICLE 8
TRANSFER OF LLC INTERESTS; ADMISSION OF MEMBERS

Section 8.01. *Transfer in General*. (a) Except as expressly contemplated by this Agreement, no Member may Transfer any of its Equity except (i) pursuant to Section 8.04 in its capacity as a Seller, (ii) pursuant to Section 8.05 in its capacity as a Tagging Person, (iii) pursuant to Section 8.06 in a Drag-Along Sale, (iv) pursuant to Section 8.08 to its Permitted Transferees or (v) pursuant to Rule 144 or a registration statement filed pursuant to the registration rights provided pursuant to Section 8.09, provided, that no Sponsor Member may Transfer any of its Equity without the prior approval of a majority of the members of the LLC Board (it being understood that any such approved Transfer shall remain subject to Section 8.04 and 8.05). The foregoing transfer restriction shall terminate after the consummation of an initial Public Offering by the LLC and upon such time that FP, GGC and their respective Permitted Transferees shall beneficially own 30% or less of the outstanding shares of Common Stock.

(b) A permitted Transfer of LLC Units pursuant to Section 8.01(a) shall be effective as of the date of (i) compliance with all of the conditions to such Transfer referred to in Section 8.01(a), and (ii) admission of the Substituted Member pursuant to Section 8.02. Profits, Losses and other LLC items shall be allocated between the transferor and the transferee according to Code Section 706. The Capital Account of the transferor attributable to the LLC Units shall carry over to the transferee. Distributions made before the effective date of such Transfer shall be paid to the transferor, and Distributions made after such date shall be paid to the transferee.

(c) Any Member who effectively Transfers any LLC Units or other interest in the LLC pursuant to this Article 8 shall cease to be a Member with respect to such LLC Units or other interest and shall no longer have any rights or privileges of a Member with respect to such LLC Units or other interest (it being understood, however, that the applicable provisions of Sections 4.06, 5.01, 5.04 and 7.03 hereof shall continue to inure to such Person's benefit). Nothing contained herein shall relieve any Member who Transfers any LLC Units or other interest in the LLC from any liability or obligation of such Member to the LLC or the other Members with respect to such LLC Units or other interest that may exist on the date of such Transfer or that is otherwise specified in the Delaware Act and incorporated into this Agreement or for any liability to the LLC or any other Person for any breaches of any representations, warranties or covenants by such Member (in its capacity as such) contained herein or in the other agreements with the LLC. Rights of a Sponsor under Article 4 and Sections 2.03, 8.04, 8.05, 8.06, 8.09, and 10.01(a) are transferable in connection with a Transfer permitted by this Agreement.

(d) In addition to any other restrictions on Transfer imposed by this Agreement, no Member may Transfer any Equity (except pursuant to an effective registration statement under the Securities Act) without first delivering to the LLC

an opinion of counsel (reasonably acceptable in form and substance to the LLC) that such Transfer would not (i) require registration or qualification under the Securities Act or applicable state securities laws, (ii) require the LLC to register as an investment company or elect to be a "business development company" under the Investment Company Act of 1940, as amended, (iii) cause the LLC to be classified as an association taxable as a corporation for federal income tax purposes or as a "publicly traded partnership" within the meaning of Section 469(k) or 7704 of the Code, (iv) effect a termination of the LLC under Section 708 of the Code, or (v) violate the terms of this Agreement; *provided*, that in the case of a Transfer to an Affiliate such opinion need address only the matter set forth in clauses (i) – (iii), above. The LLC Board may waive such opinion requirement on advice of counsel acceptable to the LLC (and will not unreasonably withhold or delay consent to the waiver of such opinion) and such opinion requirement shall not apply to any Transfer by Elliot International, L.P. to a wholly-owned Affiliate of Elliot International, L.P. during the period beginning on the Closing Date and ending on the three (3) month anniversary thereof.

(e) The certificates, if any, representing Equity shall bear a legend in substantially the following form:

> "The securities represented by this certificate were originally issued on _____, 20__, have not been registered under the Securities Act of 1933, as amended (the "**Act**"), or the securities laws of any state, and such securities may not be sold or transferred except pursuant to an effective registration statement under the Act or an exemption from registration thereunder. The securities represented by this certificate are also subject to additional restrictions on transfer set forth in the Limited Liability Company Agreement of the issuer. A copy of such agreement may be obtained by the holder hereof at the issuer's principal place of business without charge."

The legend set forth above shall be removed from the certificates evidencing any shares or units which cease to be subject to any of the transfer restrictions contained in this Agreement.

Section 8.02. *Admission of Members*. A Person may be admitted to the LLC (without requiring any consent of the Members pursuant to Section 12.02) as (i) a Substituted Member in connection with the Transfer of any LLC Units or LLC membership interests permitted under the terms of this Agreement, or (ii) an Additional Member as contemplated under Section 2.03, in each case, subject to Section 8.08, upon executing (x) a counterpart to this Agreement, accepting and agreeing to be bound by all of the terms and conditions hereof, and (y) such other documents or instruments as may be required by Section 2.03 of this Agreement

or as the LLC Board reasonably determines are necessary or appropriate to effect such Person's admission as a Member including, without limitation, the provision of representations and warranties by such Person, in substantially the same terms as those set forth in the Investor Subscription Agreement. Such admission shall become effective on the date on which the LLC Board determines in its reasonable discretion that such conditions have been satisfied and when such admission is shown on the books and records of the LLC (which the LLC Board shall cause to occur promptly following a transfer in compliance with this Article 8).

Section 8.03. *Transfers in Violation of Agreement*. Any Transfer or attempted Transfer in violation of this Article 8 shall be void, and neither the LLC, nor any of its Subsidiaries shall record such purported Transfer on its books or treat any purported transferee as the owner of such Equity.

Section 8.04. *Right of First Offer*. (a) Subject to Section 8.04(g), if any Sponsor proposes to Transfer all or a portion of its LLC Units to any Person (including any other Member) and such Transfer is not prohibited by Section 8.01, such Member (the "**Seller**"), prior to any offer to any Person with respect to any such Transfer shall give written notice ("**Offer Notice**") to the LLC and the Sponsors, which Offer Notice shall state the Seller's desire to make such Transfer, the number and class of the Seller's LLC Units proposed to be Transferred (the "**Offered LLC Units**"), the proposed consideration per LLC Unit and all other material terms and conditions on which the Seller proposes to Transfer its LLC Units (collectively, the "**Offer Terms**"). Each Offer Notice shall constitute an irrevocable offer by the Seller to sell to the Sponsors (other than the Seller, if it is a Sponsor) the Offered LLC Units on the Offer Terms. Notwithstanding anything to the contrary contained in this Section 8.04, no Offer Terms in respect of Offered LLC Units may include any form of consideration other than cash (which may be paid at closing, in installments or after any period of time), or readily liquid Marketable Securities (in which case a Buyer (as defined below) may elect to pay cash in an amount equal to the fair market value as of the date of the Offer notice of such Marketable Securities in lieu of delivering such Marketable Securities).

(b) Each Sponsor (other than the Seller, if it is a Sponsor) shall have the right, at its option, to purchase (or cause an Affiliate designated by it to purchase) the Offered LLC Units on the Offer Terms exercisable by written notice ("**Notice of Purchase**") given to the Seller, with a copy to the LLC and the other Sponsors, within fifteen (15) days after receipt of the Offer Notice by such Sponsor. The Notice of Purchase shall state (x) the maximum number of the Offered LLC Units that such Sponsor (or such designated Affiliate) elects to purchase (the "**Maximum Share**") (which Maximum Share may be greater than such Sponsor's proportionate share of the Offered LLC Units calculated ratably in accordance with its Pro Rata Share), and (y) that such Sponsor irrevocably commits to purchase any number of the Offered LLC Units up to and including its Maximum Share on the Offer Terms. Each Sponsor that delivers a Notice of Purchase (each,

a "**Buyer**") shall be allocated the Maximum Share of the Offered LLC Units set forth in such Buyer's Notice of Purchase, unless such allocation, together with the number of Offered LLC Units allocated to the other Buyers, exceeds 100% of the Offered LLC Units, in which case, each Buyer whose Maximum Share is less than such Buyer's proportionate amount of the Offered LLC Units calculated in accordance with its Pro Rata Share shall receive its Maximum Share, and the remaining share of the Offered LLC Units shall be allocated among the remaining Buyers ratably in accordance with their respective Pro Rata Shares.

(c) If (x) no Sponsor delivers any Notice of Purchase, or (y), in the aggregate, the Buyers do not commit to purchase all of the Offered LLC Units, in either case, within the time period specified in Section 8.04(b), the Seller may within a period of ninety (90) days after the date which is fifteen (15) days from the date of the Offer Notice, Transfer all or any portion of the Offered LLC Units to any Person (including any Buyer, upon prompt notice to such Buyer), at a price equal to or higher than the price included in the Offer Terms and on terms and conditions no more favorable to the transferee of the of the Offered LLC Units than those contained in the Offer Terms.

(d) Subject to obtaining any required regulatory approvals, the closing of the sale of any Offered LLC Units to any Buyer shall take place on a date not earlier than twenty (20) days nor later than ninety (90) days following the date of the last Notice of Purchase delivered in accordance with Section 8.04(b), or as the Buyers and the Seller shall mutually agree, at the principal office of the LLC. The Buyers shall give at least ten (10) days prior notice of such date and location to the Seller. At such closing, (i) the Seller shall deliver to each Buyer the certificate or certificates (if any) representing the allocated portion of the Offered LLC Units, free and clear of any Lien (except to the extent arising under this Agreement) (and each Seller hereby represents and warrants that such LLC Units shall, immediately prior to such sale, be so free and clear and that it will have good and marketable title to such LLC Units), (ii) each Buyer shall deliver to the Seller the consideration to be paid for its portion of the Offered LLC Units in accordance with the Offer Terms, (iii) the LLC shall duly record the Transfer on its books and records, and (iv) the Seller and each Buyer shall execute such other documents and take such other action as shall be reasonably necessary to consummate the purchase and sale of the applicable Offered LLC Units on the terms contemplated by the Offer Terms.

(e) If the Sponsors do not elect to purchase all of the Offered LLC Units on the Offer Terms and the Seller shall not have consummated the Transfer of the Offered LLC Units to any Person prior to the expiration of the ninety (90) day period specified in Section 8.04(c), then the provisions of this Section 8.04 shall again apply to any and all future Transfers.

(f) Notwithstanding Section 8.04(a), any Buyer that fails to deliver to the Seller pursuant to Section 8.04(d)(ii) the full amount of the consideration required to be paid for its share of such Offered LLC Units in accordance with the

Offer Terms, such Buyer shall, in addition to all other liabilities and claims to which it may otherwise be subject due to such failure, forfeit any right such Buyer otherwise may have pursuant to Section 8.04 to receive any Offer Notice and to submit a Notice of Purchase with respect to any subsequent Offered LLC Units.

(g) The provisions of this Section 8.04 shall not apply to any proposed Transfer (i) pursuant to a Public Offering or Rule 144, (ii) to the LLC or any of its Subsidiaries, (iii) to a Permitted Transferee of any Seller, (iv) pursuant to Section 8.06 or (v) to any Tagging Person pursuant to Section 8.05.

Section 8.05. *Right to Participate in Transfers.* (a) Subject to Section 8.05(g), if any Member (such Member, a "**Selling Person**") proposes to Transfer all or a portion of its LLC Units to a bona fide third party or any other Member (each such transaction, a "**Tag-Along Sale**"), and such Transfer is not prohibited by Section 8.01, the Selling Person shall provide the LLC, each Sponsor and each Management Series A Holder (other than the Selling Person, if it is a Sponsor) with written notice of the terms and conditions of such proposed Transfer (the "**Tag-Along Notice**") and each Sponsor and each Management Series A Holder (other than the Selling Person, if it is a Sponsor) that holds the same class of LLC Units as the class of LLC Units proposed to be Transferred by the Selling Person may elect, at their option, to exercise its rights under this Section 8.05 (each such Sponsor or Management Series A Holder, a "**Tagging Person**"); *provided*, that with respect to any such Transfer that is also governed by Section 8.04, the Sponsors having a right of first offer under such Section 8.04 shall have first been afforded the opportunity to acquire any LLC Units to be sold in a Tag-Along Sale in accordance with the provisions of Section 8.04.

(b) The Tag-Along Notice must identify the aggregate number of each class of LLC Units subject to the offer (the "**Tag-Along Offer**"), the name and address of the proposed transferee (the "**Tag-Along Buyer**"), the proposed consideration per LLC Unit, and all other material terms and conditions of the Tag-Along Offer.

(c) Each Tagging Person shall have the right, at its option, exercisable by written notice (the "**Exercise Notice**") given to the Selling Person with a copy to the LLC, the Sponsors and the Management Series A Holders, within twenty (20) days after receipt of the Tag-Along Notice by such Tagging Person (the "**Tag-Along Notice Period**"), to include in the proposed Transfer any number of LLC Units then held by such Tagging Person of the same class as the LLC Units proposed to be Transferred by the Selling Person; *provided*, that if the aggregate number of LLC Units proposed to be Transferred by the Selling Person and all Tagging Persons in such transaction exceeds the maximum amount that can be Transferred on the terms and conditions set forth in the Tag-Along Notice, then each Tagging Person who has timely delivered an Exercise Notice to the Selling Person will be entitled to sell only up to an amount equal to such maximum amount of LLC Units multiplied by a fraction, the numerator of which is the number of LLC Units of the class held by the Tagging Person and the

denominator of which is the aggregate number of outstanding LLC Units of such class held by all Tagging Persons and the Selling Person, and the number of LLC Units to be Transferred by the Selling Person as set forth in the Tag-Along Notice shall be reduced to the extent necessary so that each such Tagging Person who has timely delivered an Exercise Notice shall be able to sell the amount set forth in this sentence; *provided, further,* that if the Selling Person is required to Transfer more than one class of LLC Units in connection with the Tag-Along Sale, then each Tagging Person exercising its rights pursuant to this paragraph that holds the same classes of LLC Units being transferred by such Selling Person shall also be required to Transfer the same strip of LLC Units (on the same terms and conditions) that such Selling Person is required to Transfer.

(d) If any Tagging Person has delivered an Exercise Notice to the Selling Person, then not less than ten (10) days prior to the proposed closing of the Tag-Along Sale, the Selling Person shall deliver to each such Tagging Person notice of (i) the number and class of such Tagging Person's LLC Units to be Transferred in such sale as determined pursuant to clause (c) above, and (ii) the time and location of the closing of such sale. Not less than five (5) days prior to the closing of the Tag-Along Sale, each such Tagging Person shall deliver to the Buyer a written notice containing the payment instructions to be followed in connection with the Transfer of such Tagging Person's LLC Units in the Tag-Along Sale. On the date of closing of the Tag-Along Sale, each such Tagging Person shall deliver, subject to the terms and conditions of the Tag-Along Offer, the certificate or certificates (if any) representing the LLC Units of such Tagging Person to be included in such Tag-Along Sale at the time and location specified in the notice given pursuant to the first sentence of this clause (d). If, at the end of a ninety (90) day period after delivery of the Exercise Notice, such Tag-Along Sale has not been consummated on substantially the same terms and conditions as set forth in the Tag-Along Notice, the Selling Person shall return any certificate previously delivered by any Tagging Person and must again follow all of the procedures set forth in this Section 8.04.

(e) If at the termination of the Tag-Along Notice Period any Sponsor or Management Series A Holder shall not have delivered an Exercise Notice, such Tagging Person will be deemed to have waived its rights under this Section 8.05 to Transfer any LLC Units pursuant to such Tag-Along Sale (but not in respect of future Tag-Along Sales).

(f) The rights and obligations of the Selling Person and the Tagging Persons under this Section 8.04 shall be subject to satisfaction of the following conditions:

(i) upon the consummation of any Tag-Along Sale, each of the Selling Person and the Tagging Persons participating therein will receive the same form and amount of consideration per LLC Unit or if the Selling Person or any Tagging Person is given an option as to the form and

amount of consideration to be received, the Selling Person and all Tagging Persons participating therein will be given the same option;

(ii) no Selling Person nor Tagging Person shall be obligated to pay more than its pro rata portion (based on the aggregate consideration to be received in respect of its LLC Units in the Tag-Along Sale) of costs, fees and expenses incurred in connection with the Tag-Along Sale to the extent such costs, fees and expenses are incurred for the benefit of all such Tagging Persons and the Selling Person and are not otherwise paid by the LLC or the acquiring party; and

(iii) if the Selling Person and the Tagging Persons are required to provide any representations or indemnities in connection with such Tag-Along Sale (other than representations and indemnities concerning the Selling Person's and each Tagging Person's title to the LLC Units and authority, power and right to enter into and consummate the Transfer without contravention of any law or agreement, for which each such Person will be entirely liable for its own representations and warranties only), then liability for misrepresentation or indemnity shall be expressly stated to be several but not joint and the Selling Person and each Tagging Person shall not be liable for more than its pro rata portion (based on the aggregate consideration to be received in respect of its LLC Units in the Tag-Along Sale) of any liability for misrepresentation or indemnity.

(g) The provisions of this Section 8.04 shall not apply to any proposed Transfer (i) pursuant to a Public Offering or Rule 144, (ii) to the LLC or any of its Subsidiaries, (iii) to a Permitted Transferee of such Selling Person, or (iv) pursuant to Section 8.06.

Section 8.06. *All Holders Required to Participate in Certain Sales*. (a) The LLC, the LLC Board, each Representative and each Member shall vote for, consent to and raise no objections to any Drag-Along Sale and shall take all reasonable, necessary or desirable actions requested by the LLC and the Dragging Investors in connection with the consummation of such Drag-Along Sale. Such actions shall include the Transfer of all of each Member's Equity to the acquiror. As used herein, "**Drag-Along Sale**" means any Transfer by Members (the "**Dragging Investors**") of outstanding Equity to any Person (other than to a Permitted Transferee) pursuant to a bona fide offer that has been designated as such by holders of at least 75% of the outstanding Equity held by the Sponsors; *provided*, that for purposes of this Section 8.06(a) the outstanding Equity held by Elliott shall be disregarded and such Equity shall not be included in calculating the outstanding Equity held by the Sponsors. This Section 8.06 shall terminate after the consummation of an initial Public Offering by the LLC and upon such time that FP, GGC and their respective Permitted Transferees shall beneficially own 30% or less of the outstanding shares of Common Stock.

(b) In the case of any proposed Drag-Along Sale, the Dragging Investors shall give written notice thereof to the LLC not later than the 30th day prior to the proposed Drag-Along Sale. Such notice shall set forth all of the information required to be included in the Drag-Along Notice. The LLC shall provide written notice of any Drag-Along Sale to each Member (a "**Drag-Along Notice**") not later than the 25th day prior to the proposed Drag-Along Sale. The Drag-Along Notice must identify (i) the name and the address of the transferee, (ii) the number and type of securities subject to the Drag-Along Sale and the proposed consideration, and (iii) all other material terms and conditions of the Drag-Along Sale. Each Member shall be required to participate in the Drag-Along Sale on the terms and conditions set forth in the Drag-Along Notice and to tender a Pro Rata Share of its Equity in the manner set forth below.

(c) Within fifteen (15) days following the date of the Drag-Along Notice (the "**Drag-Along Notice Period**"), each Member must deliver to a representative of the LLC designated in the Drag-Along Notice (i) the certificate or certificates, if any, representing the applicable Pro Rata Share of the Equity held by such Member as specified in the Drag-Along Notice, duly endorsed (or, if such delivery is not permitted by applicable law, an unconditional agreement to deliver or assign such Equity pursuant to this Section 8.06(c) at the closing of such Drag-Along Sale against delivery to such Member of the consideration), and (ii) all other documents required to be executed in connection with such Drag-Along Sale. If any such Member fails to deliver any certificate or other documents referred to in clauses (i) and (ii) above to such representative of the LLC, the LLC shall cause its books and records to show that such Equity is bound by the provisions of this Section 8.06 and that such Equity shall be Transferred to the acquiring party immediately upon surrender for Transfer by the Member thereof.

(d) If, within ninety (90) days after the date on which the LLC gives the Drag-Along Notice to the Members, the Drag-Along Sale has not been completed on substantially the same terms and conditions set forth in the Drag-Along Notice, the Members shall no longer be obligated to sell their Equity pursuant to such Drag-Along Notice, and the LLC shall promptly return to each Member (i) all certificates (if any) representing Equity that such Member delivered for Transfer pursuant hereto, and (ii) any documents in the possession of the LLC executed by the Member in connection with such proposed Transfer, and all of the restrictions on Transfer contained in this Agreement or otherwise applicable at such time with respect to such Equity shall remain in effect.

(e) Promptly after the consummation of the Drag-Along Sale, the LLC shall give written notice thereof to each Member, shall remit to each such Member who has complied with Section 8.06(c) the same portion of the aggregate consideration from such Drag-Along Sale that such Member would have received if such aggregate consideration had been distributed by the LLC in a complete liquidation pursuant to the rights and preferences set forth in this Agreement as in effect immediately prior to such Drag-Along Sale, and shall furnish such other

evidence of the completion and time of completion of such Transfer and the terms thereof as may be reasonably requested by such Members.

(f) The rights and obligations of the Members under this Section 8.06 shall be subject to satisfaction of the following conditions:

(i) upon the consummation of any Drag-Along Sale, all of the Members participating therein will receive the same form and amount of consideration per number or amount of Equity as other Members holding Equity of the same class or if any Member is given an option as to the form and amount of consideration to be received, all Members participating therein and holding Equity of the same class as such Member will be given the same option;

(ii) no Member shall be obligated to pay more than its pro rata portion (based upon the number and class of the LLC Units sold by such Person in relation to the number of LLC Units sold by all Persons in such Drag-Along Sale of such class of LLC Units (with each class to bear such expenses based upon the relative distribution priorities and preferences of each such class in relation to the other on the basis of such expenses having reduced the aggregate consideration to be distributed by the LLC in complete liquidation) of the costs, fees and expenses incurred in connection with the Drag-Along Sale to the extent such costs, fees and expenses are incurred for the benefit of all such Members and are not otherwise paid by the LLC or the acquiring party; and

(iii) if the Members are required to provide any representations or indemnities in connection with such Drag-Along Sale (other than representations and indemnities concerning each Member's title to the Equity and authority, power and right to enter into and consummate the Transfer without contravention of any law or agreement, for which each such Person will be entirely liable for its own representations and warranties only), then liability for misrepresentation or indemnity shall be expressly stated to be several but not joint and each Member shall not be liable for more than its pro rata portion (based upon the number and class of the LLC Units sold by such Person in relation to the number of LLC Units sold by all Persons in such Drag-Along Sale of such class of LLC Units (with each class to bear such expenses based upon the relative distribution priorities and preferences of each such class in relation to the other on the basis of such expenses having reduced the aggregate consideration to be distributed by the LLC in complete liquidation) of any liability for misrepresentation or indemnity.

Section 8.07. *Reserved.*

Section 8.08. *Transfers to Permitted Transferees*. A holder of Equity may Transfer Equity to its Permitted Transferees, subject to the conditions that (i)

if such transfer is a transfer of LLC Units, the transferring holder delivers to the LLC twenty (20) days' prior written notice of a proposed Transfer specifying the Equity to be Transferred and the identity of the proposed transferee, together with such documentation as the LLC Board may reasonable require such transferring holder to provide in order to demonstrate that the proposed transferee qualifies as such holder's "Permitted Transferee", and the proposed transferee executes and delivers the agreements, documents and other instruments required pursuant to Section 8.02 hereof, and (ii) if such transfer is a transfer of Equity other than LLC Units, the transferring holder delivers to the other parties to the shareholders agreement contemplated by Section 10.06(b) twenty (20) days' prior written notice of a proposed Transfer specifying the Equity to be Transferred and the identity of the proposed transferee, together with documentation and appropriate certificates showing, to the reasonable satisfaction of such other parties, that the proposed transferee qualifies as such transferring holder's "Permitted Transferee", and the proposed transferee executes and delivers an instrument reasonably satisfactory to such other parties agreeing to be bound as a party to the terms of such shareholders agreement; *provided*, that any time after an initial Public Offering, the foregoing provisions will not be applied to any Transfer by any Member or any of their respective Permitted Transferees, if the Transfer is proposed to be made to Permitted Transferees who are partners or members of such Member pursuant to a distribution that is made pro rata to such partners or members in accordance with the respective partnership or limited liability company agreement of such Member without payment of additional consideration therefor by such partners or members, and such partners or members will not be bound by the provisions of either this Agreement or such shareholders agreement.

Section 8.09. *Registration Rights Agreement*. Upon the occurrence of the initial Public Offering, the LLC shall cause the issuer of the Common Stock to enter into a registration rights agreement with the Members on substantially the same terms and conditions as set forth in Appendix C.

ARTICLE 9
WITHDRAWAL AND RESIGNATION OF MEMBERS

Section 9.01. *Withdrawal and Resignation of Members.* (a) No Member shall have the power or right to withdraw or otherwise resign from the LLC prior to the dissolution of the LLC pursuant to Article 10 except as otherwise expressly permitted by this Agreement. Upon (i) a Transfer of all of a Member's LLC Interest in a Transfer permitted by this Agreement, and (ii) the admission of such transferee as a Substituted Member pursuant to Section 8.02 such transferring Member shall cease to be a Member.

(b) Notwithstanding that a payment on account of a withdrawal may be made after the effective time of such withdrawal, any completely withdrawing Member will not be considered a Member for any purpose after the effective time

of such complete withdrawal, and, in the case of a partial withdrawal, such Member's Capital Account (and corresponding voting and other rights) shall be reduced for all other purposes hereunder upon the effective time of such partial withdrawal.

ARTICLE 10
DISSOLUTION AND LIQUIDATION

Section 10.01. *Dissolution*. The LLC shall not be dissolved by the admission of Additional Members or Substituted Members. The LLC shall dissolve, and its affairs shall be wound up upon the first to occur of the following:

(a) the affirmative vote of the LLC Board and the Members approving such dissolution and liquidation in accordance with Section 4.02(b)(v);

(b) a liquidation, dissolution, or winding up of TAG and its material Subsidiaries upon the approval of the LLC Board and the Members in accordance with Section 4.02(b)(v);

(c) at any time there are no Members, unless within ninety (90) days of the occurrence of the event that terminated the continued membership of the last remaining Member, the personal representative of the last remaining Member agrees in writing to continue the LLC and to the admission to the LLC of such personal representative or its nominee or designee as a Member, effective as of the occurrence of the such event, and such personal representative or its nominee or designee shall be admitted upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement; or

(d) the entry of a decree of judicial dissolution of the LLC pursuant to Section 18-802 of the Delaware Act.

Except as otherwise set forth in this Article 10, the LLC is intended to have perpetual existence. The death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member in the LLC shall not in and of itself cause a dissolution of the LLC, and the LLC shall continue in existence subject to the terms and conditions of this Agreement.

Section 10.02. *Liquidation and Termination*. On dissolution of the LLC, the LLC Board shall act as liquidator or may appoint one or more Representatives or Members as liquidator. The liquidators shall proceed diligently to wind up the affairs of the LLC and make final distributions as provided herein and in the Delaware Act. The costs of liquidation shall be borne as an LLC expense. Until final distribution, the liquidators shall continue to operate the LLC properties with all of the power and authority of the LLC Board. The steps to be accomplished by the liquidators are as follows:

(a) The liquidators shall pay, satisfy or discharge from LLC assets all of the debts, liabilities and obligations of the LLC (including all expenses incurred in liquidation) or otherwise make reasonable provision for payment and discharge thereof (including the establishment of a cash fund for contingent liabilities in such amount and for such term as the liquidators may reasonably determine).

(b) Notwithstanding anything else contained in this Agreement, the liquidators may withhold, in their discretion, from any Distributions to any Member (i) any amounts then due from such Member to the LLC or its Subsidiaries under a promissory note and apply the amounts withheld to pay the amounts then due and (ii) any amounts required to pay any taxes and related expenses that the liquidators determine to be properly attributable to such Member (including withholding taxes and interest, penalties and expenses incurred in respect thereof) and apply the amounts withheld to pay the taxes or expenses attributable thereto.

(c) As promptly as practicable after dissolution, the liquidators shall (i) determine the Fair Market Value of the assets (the "**Liquidation Assets**") of the LLC that are available for distribution pursuant to Section 3.02(a) in accordance with Article 11 (the "**Liquidation FMV**"), (ii) determine the amounts to be distributed to each Member in accordance with Section 3.02(a), and (iii) deliver to each Member a statement (the "**Liquidation Statement**") setting forth the Liquidation FMV and the amounts and recipients of such Distributions.

(d) As soon as the Liquidation FMV and the proper amounts of Distributions have been determined in accordance with Section 10.02(c) above, the liquidators shall promptly distribute the LLC's Liquidation Assets to the holders of LLC Units in accordance with Section 3.02(a) above. Any non-cash Liquidation Assets will first be written up or down to their Fair Market Value, thus creating Profit or Loss (if any), which shall be allocated in accordance with Sections 3.03 and 3.04. In making such distributions, the liquidators shall allocate each type of Liquidation Assets (i.e., cash or cash equivalents, Common Stock, etc.) among the Members ratably based upon the aggregate amounts to be distributed with respect to the LLC Units held by each Member.

The distribution of cash and/or property to a Member in accordance with the provisions of this Section 10.02 constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member with respect to its interest in the LLC. This provision constitutes a compromise to which all Members have consented within the meaning of the Delaware Act. To the extent that a Member returns funds to the LLC, it has no claim against any other Member for those funds.

Section 10.03. *Cancellation of Certificate*. On completion of the distribution of LLC assets as provided herein, the LLC is terminated (and the LLC shall not be terminated prior to such time), and the LLC Board (or such other Person or Persons as the Delaware Act may require or permit) shall file a

certificate of cancellation with the Secretary of State of the State of Delaware, cancel any other filings made pursuant to this Agreement that are or should be canceled and take such other actions as may be necessary to terminate the LLC. The LLC shall be deemed to continue in existence for all purposes of this Agreement until it is terminated pursuant to this Section 10.03.

Section 10.04. *Reasonable Time for Winding Up*. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the LLC and the liquidation of its assets pursuant to Section 10.02 in order to minimize any losses otherwise attendant upon such winding up.

Section 10.05. *Return of Capital Only from LLC Assets*. The liquidators shall not be personally liable for the return of Capital Contributions or any portion thereof to the Members (it being understood that any such return shall be made solely from LLC assets).

Section 10.06. *Termination of Agreement upon Dissolution; Survival of Rights*. (a) All provisions of this Agreement shall terminate upon termination of the LLC, except as expressly provided otherwise herein (it being agreed that Sections 4.06, 5.01, 5.04, 7.03, 10.06, 12.04, 12.09, 12.10 shall survive termination of the LLC).

(b) In connection with (i) any dissolution of the LLC pursuant to this Article 10 as a result of the consummation of a Public Offering in which the Common Stock is Distributed to the Members pursuant to **Error! Reference source not found.**, or (ii) any conversion, merger or other reorganization of the LLC pursuant to which the Members receive securities in a corporation subject to Subchapter C of the Code (a "**roll-up**" transaction), upon request of holders of 75% of the Voting Units then held by the Sponsors, the Members agree to enter into a shareholders agreement with respect to such Common Stock or other securities (or the securities of any successor corporation) setting forth rights and obligations of the parties equivalent to those set forth in Article 4 and Sections 5.04, 5.06, 8.01, 8.02, 8.04, 8.05, 8.06, 8.08, 8.09, 12.02, 12.04, 12.05 and 12.10; *provided*, that the Voting Units held by Elliott shall not (A) be entitled to make such a request in connection with a roll-up transaction and (B) be counted for purposes of determining whether the 75% threshold referenced in clause (ii) above has been met.

ARTICLE 11
VALUATION

Section 11.01. *Determination of Fair Market Value*. The "**Fair Market Value**" of non-cash property or assets will be determined for purposes of this Agreement as follows:

(a) *Valuation of Common Stock Upon an Initial Public Offering*. If the dissolution of the LLC occurs in connection with the initial Public Offering or there occurs a Distribution of Common Stock in connection with the initial Public Offering without a dissolution of the LLC, the Fair Market Value of each share of Common Stock shall be deemed to equal the price at which shares of the Common Stock are initially offered to the public in connection with such Public Offering.

(b) *Valuation Upon Other Dissolution Event*. If the dissolution of the LLC occurs prior to an initial Public Offering, the Fair Market Value of each share of Common Stock shall be equal to the quotient of (x) the fair value of the issuer of the Common Stock and its Subsidiaries taken as a whole (determined on the basis of an orderly sale to a willing, unaffiliated buyer in an arm's-length transaction) *divided by* (y) the number of shares of Common Stock then outstanding (determined on a fully diluted basis (A) with respect to all outstanding securities convertible into Common Stock, assuming the conversion of such convertible securities (without regard to any conditions or other restrictions on such conversion) and (B) with respect to all outstanding options, warrants and other rights or securities exercisable or exchangeable for shares of Common Stock, in accordance with the treasury stock method under generally accepted accounting principles for determining earnings per share). If the dissolution of the LLC occurs after an initial Public Offering, the Fair Market Value of each share of Common Stock shall be equal to (i) the average of the closing prices of the Common Stock (at the end of the regular session, as reported on the consolidated tape) on all securities exchanges on which the Common Stock may at the time be listed, (ii) if there have been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges (at the end of the regular session, as reported on the consolidated tape) on such day, (iii) if on any day the Common Stock is not so listed, the average of the representative bid and asked prices quoted in the Nasdaq System as of 4:00 p.m., New York time, or (iv) if on any day the Common Stock is not quoted in the Nasdaq System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau Incorporated, or any similar successor organization, in each such case averaged over a twenty-one (21) day period consisting of the day of such dissolution and the twenty (20) consecutive business days prior to such day.

For purposes of the foregoing, the Fair Market Value of publicly traded securities received as consideration in a Sale shall mean, with respect to each such security, (i) the average of the closing prices of such security (at the end of the regular session, as reported on the consolidated tape) on all securities exchanges on which such security may at the time be listed, (ii) if there have been no sales on any such exchange on any day, the average of the highest bid and lowest asked prices on all such exchanges (at the end of the regular session, as reported on the consolidated tape) on such day, (iii) if on any day such security is not so listed, the average of the representative bid and asked prices quoted in the Nasdaq

System as of 4:00 p.m., New York time, or (iv) if on any day such security is not quoted in the Nasdaq System, the average of the highest bid and lowest asked prices on such day in the domestic over-the-counter market as reported by the National Quotation Bureau Incorporated, or any similar successor organization, in each such case averaged over a twenty-one (21) day period consisting of the day of closing of such Sale and the twenty (20) consecutive business days prior to such day.

(c) *Valuation of Other Assets*. The "**Fair Market Value**" of all non-cash assets not covered above in this Section 11.01 shall mean the fair value for such assets as between a willing, unaffiliated buyer and a willing seller in an arm's-length transaction occurring on the date of valuation, taking into account all relevant factors determinative of value.

ARTICLE 12
GENERAL PROVISIONS

Section 12.01. *Power of Attorney*. (a) Each Member hereby constitutes and appoints each Representative of the LLC Board and the liquidators, with full power of substitution, as such Person's true and lawful agent and attorney-in-fact, with full power and authority in such Person's name, place and stead, to execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (i) this Agreement, all certificates and other instruments and all amendments thereof in accordance with the terms hereof which the LLC Board deems appropriate or necessary to form, qualify, or continue the qualification of, the LLC as a limited liability company in the State of Delaware and in all other jurisdictions in which the LLC may conduct business or own property, (ii) all instruments which the LLC Board deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms, (iii) all conveyances and other instruments or documents which the LLC Board deems appropriate or necessary to reflect the dissolution of the LLC pursuant to the terms of this Agreement, including a certificate of cancellation, and (iv) all instruments relating to the admission, withdrawal or substitution of any Member pursuant to Section 8.02 or Article 9.

(b) The foregoing power of attorney is irrevocable and coupled with an interest, and shall survive and not be affected by the death, disability, incapacity, dissolution, bankruptcy, insolvency or termination of any Member and the Transfer of all or any portion of such Member's LLC Units or membership interest in the LLC and shall extend to such Member's heirs, successors, assigns and personal representatives.

Section 12.02. *Amendments*. This Agreement may only be amended, modified, or waived in writing with the prior written consent of Members holding at least 75% of the aggregate outstanding LLC Units, voting as a single class;

provided, that (a) without limitation to the provisos in this Section 12.02, Elliott shall not be entitled to vote on any such amendment, modification or waiver and the LLC Units held by Elliott shall not be counted for purposes of determining whether such 75% threshold has been met; (b) no amendment, modification or wavier pursuant to this Section 12.02 that would materially and adversely affect holders of one class or group of LLC Units in a manner disproportionate to the holders of any other class or group of LLC Units shall be effective against the holders of such class or group of LLC Units without the prior written consent of holders of at least a majority of LLC Units of such class or group materially and adversely affected thereby; (c) no amendment, modification or waiver that would increase the required Capital Contributions to be made by any Member, disproportionately reduce or limit the voting rights of a Member or impose restrictions in addition to the transfer restrictions set forth herein on a Member's right to transfer its LLC Units shall be effective against any Member (which includes Elliott regardless of whether Elliott is entitled to vote in respect of the applicable amendment) without the consent of such Member; and (d) any amendment, modification or waiver of any provision of this Agreement that specifies that the approval of a specified percentage of voting power held by Members or the approval of any particular Member or group of Members shall be required for any matter, shall require such level of approval for such amendment, modification or waiver to be effective (it being understood and agreed that, for purposes of this clause (d), with respect to matters requiring approval of a specified percentage of voting power, the voting power of the LLC Units held by Elliott, solely to the extent such LLC Units are entitled to vote on such matter under the terms of this Agreement, shall be taken into account to determinate both the applicable level of approval required for the amendment and whether such level has been met). Notwithstanding the foregoing, this Agreement shall be deemed amended from time to time to reflect (a) the addition, substitution of a party to this Agreement pursuant to the terms hereof, (b) the failure of any party hereto to make its Closing Capital Contribution pursuant to Section 2.01, or (c) the issuance, repurchase or cancellation of LLC Units pursuant to Sections 2.01 or 2.03 (including any such amendment to reflect the terms of such LLC Units), and no consent pursuant to this Section 12.02 shall be required in connection with any such amendment.

Section 12.03. *Title to LLC Assets*. LLC assets shall be owned by the LLC as an entity, and no Member, individually or collectively, shall have any ownership interest in such LLC assets or any portion thereof. Legal title to any or all LLC assets may be held in the name of the LLC, the LLC Board or one or more nominees, as the LLC Board may determine. The LLC Board hereby declares and warrants that any LLC assets for which legal title is held in its name or the name of any nominee shall be held in trust by the LLC Board or such nominee for the use and benefit of the LLC in accordance with the provisions of this Agreement. All LLC assets shall be recorded as the property of the LLC on its books and records, irrespective of the name in which legal title to such LLC assets is held.

Section 12.04. *Remedies*. Each Member shall have all rights and remedies set forth in this Agreement and all rights and remedies which such Person has been granted at any time under any other agreement or contract and all of the rights which such Person has under any law. Any Person having any rights under any provision of this Agreement or any other agreements contemplated hereby shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law.

Section 12.05. *Successors and Assigns*. All covenants and agreements contained in this Agreement shall bind and inure to the benefit of the Members and their respective heirs, executors, administrators, successors, legal representatives and permitted assigns, whether so expressed or not. Notwithstanding the foregoing, neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable other than in connection with a Transfer permitted pursuant to and in accordance with Article 8.

Section 12.06. *Severability*. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 12.07. *Counterparts*. This Agreement may be executed simultaneously in two or more separate counterparts, any one of which need not contain the signatures of more than one party, but each of which will be an original and all of which together shall constitute one and the same agreement binding on all the parties hereto.

Section 12.08. *Descriptive Headings; Interpretation*. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. The use of the word "**including**" in this Agreement shall be by way of example rather than by limitation. Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with its terms.

Section 12.09. *Governing Law; Submission to Jurisdiction*. This Agreement shall be governed by, and construed under, the laws of the State of Delaware, and all rights and remedies shall be governed by said laws, without regard to conflict of laws principles. To the fullest extent permitted by law, the parties hereto agree that any claim, suit, action or proceeding seeking to enforce

any provision of, or based on any matter arising out of or in connection with, this Agreement or the other agreements or transactions contemplated hereby shall only be brought in the Chancery Court of the State of Delaware (or other appropriate state court in the State of Delaware) or the Federal courts located in the State of Delaware or in the County of New York in the State of New York and not in any other State or Federal courts located in the United States of America or any court in any other country, and each of the parties hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. To the fullest extent permitted by law, process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees, to the fullest extent permitted by law, that service of process on such party as provided in Section 12.10 shall be deemed effective service of process on such party.

Section 12.10. *Addresses and Notices*. All notices, requests or other communications to any party hereunder shall be in writing (which may include facsimile transmission) and shall be given,

if to the LLC, to:

Wizard Parent LLC
1500 Dexter Avenue North
Seattle, WA 98109
Attention: LLC Board
Facsimile: (206) 217-7515

with copies to:

Francisco Partners Management, LLC
c/o Francisco Partners GP II, LP
One Letterman Drive
Building C – Suite 410
San Francisco, CA 94129
Attention: David Golob
Facsimile: (415) 418-2999

Golden Gate Capital
One Embarcadero Center, 39th Floor
San Francisco, CA 94111
Attention: Prescott Ashe
Facsimile: (415) 627-4501

Thoma Bravo, LLC
600 Montgomery Street, 32nd Floor
San Francisco, CA 94111
Attention: Scott Crabill
Facsimile: (415) 392-6480

Elliott Associates, L.P.
712 Fifth Avenue, 36th Floor
New York, NY 10019
Attention: Jesse Cohn
Facsimile: (212) 478-2871

Shearman & Sterling LLP
525 Market Street
San Francisco, CA 94105
Attention: Michael J. Kennedy
Facsimile: (415) 616-1448

Kirkland & Ellis LLP
555 California Street
San Francisco, CA 94104
Attention: Steve Oetgen

Facsimile: (415) 439-1500

Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
Attention: Gerald T. Nowak
Facsimile: (312) 862-2200

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Attention: Robert B. Schumer
Steven J. Williams
Facsimile: (212) 757-3990

and if to any Member, to the address or facsimile set forth on the books of the LLC or any other address or facsimile number as a party may hereafter specify for such purpose to the LLC.

All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5 p.m. in the place of receipt and such day is a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding business day in the place of receipt.

Section 12.11. *Creditors*. None of the provisions of this Agreement shall be for the benefit of or, to the fullest extent permitted by law, enforceable by any creditors of the LLC or any of its Affiliates, and no creditor who makes a loan to the LLC or any of its Affiliates may have or acquire (except pursuant to the terms of a separate agreement executed by the LLC in favor of such creditor) at any time as a result of making the loan any direct or indirect interest in LLC Profits, Losses, Distributions, capital or property other than as a secured creditor.

Section 12.12. *Waiver*. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

Section 12.13. *Further Action*. The parties shall execute and deliver all documents, provide all information and take or refrain from taking such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 12.14. *Entire Agreement*. This Agreement and those documents expressly referred to herein (and those documents expressly referred to therein) embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations

by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

* * * * *

IN WITNESS WHEREOF, the undersigned have executed or caused to be executed on their behalf this Amended and Restated Limited Liability Company Agreement as of the date first written above.

[MEMBER SIGNATURES]

Schedule 1

Additional Member Admitted After the Closing:

Name of Member: _____

Signature: _____

Date of Admission: _____

Substitute Member Admitted After the Closing:

Name of Member: _____

Capacity of Member: Institutional Investor/Other
(circle as appropriate)

Signature: _____

Date of Admission: _____

APPENDIX A – SCHEDULE OF MEMBERS

[Redacted]

APPENDIX B – CONVERSION SCHEDULE

[Redacted]

APPENDIX C – REGISTRATION RIGHTS

Upon the occurrence of the initial Public Offering, the LLC or its successor shall, or shall cause the issuer of the Common Stock to, enter into a registration rights agreement with the Members on substantially the terms and conditions set forth in this Appendix.

Terms used in this Appendix shall have the following meaning, and terms used but not defined herein shall have the meaning assigned to them in Section 1.01 of the Agreement:

"**Commission**" means the Securities and Exchange Commission and any successor commission or agency having similar powers.

"**Company**" means the issuer of the Common Stock.

"**Holders**" means the Members.

"**IPO Lock-Up Period**" means the earlier of (x) 180 days after the effective date of the registration statement for the initial Public Offering, and (y) the expiration of the period during which the managing underwriters for the initial Public Offering will prohibit the Company from effecting any other public sale or distribution of securities of the Company.

"**Registrable Securities**" means shares of Common Stock; *provided*, that as to any particular shares of Common Stock, such shares of Common Stock will cease to be Registrable Securities when (i) they have been effectively registered under the Securities Act and disposed of in accordance with the applicable registration statement, (ii) they have been sold pursuant to Rule 144, or (iii) they will have ceased to be outstanding or will have been repurchased by the Company.

"**Registration Expenses**" means all (i) registration and filing fees, and all other fees and expenses payable in connection with the listing of securities on any securities exchange or automated interdealer quotation system, (ii) fees and expenses of compliance with any securities or "blue sky" laws (including reasonable fees and disbursements of counsel in connection with "blue sky" qualifications of the securities registered), (iii) expenses in connection with the preparation, printing, mailing and delivery of any registration statements, prospectuses and other documents in connection therewith and any amendments or supplements thereto, (iv) security engraving and printing expenses, (v) internal expenses of the Company (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), (vi) reasonable fees and disbursements of counsel for the Company and customary fees and expenses for independent certified public accountants retained by the Company (including the expenses relating to any comfort letters or costs associated with the delivery by independent certified public accountants of any comfort letters requested pursuant to Section 1.04(h)), (vii) reasonable fees and expenses of any special experts retained by the Company in connection with such registration, (viii) reasonable fees, out-of-pocket costs and expenses of the Holders, including one counsel for all of the Holders participating in the offering selected by the Holders of a majority of the Registrable Securities to be sold for the account of all Holders in the offering, (ix) fees and expenses in connection with any review by the NASD of the underwriting

arrangements or other terms of the offering, and all fees and expenses of any "qualified independent underwriter," including the fees and expenses of any counsel thereto, (x) fees and disbursements of underwriters customarily paid by issuers or sellers of securities, but excluding any underwriting fees, discounts and commissions attributable to the sale of Registrable Securities, (xi) costs of printing and producing any agreements among underwriters, underwriting agreements, any "blue sky" or legal investment memoranda and any selling agreements and other documents in connection with the offering, sale or delivery of the Registrable Securities, (xii) transfer agents' and registrars' fees and expenses and the fees and expenses of any other agent or trustee appointed in connection with such offering, (xiii) expenses relating to any analyst or investor presentations or any "road shows" undertaken in connection with the registration, marketing or selling of the Registrable Securities, (xiv) fees and expenses payable in connection with obtaining any rating of the Registrable Securities, including expenses relating to any presentations to rating agencies and (xv) all out-of pocket costs and expenses incurred by the Company or its appropriate officers in connection with their compliance with Section 1.04(m). Except as set forth in clause (viii) above, Registration Expenses will not include any out-of pocket expenses of the Holders (or the agents who manage their accounts).

Section 1.01. *Demand Registration*. (a) If, following the expiration of the IPO Lock-Up Period, the Company shall receive a request from one or more Holders of (x) 50% or more of the Registrable Securities then outstanding or (y) 10% or more of the Registrable Securities then outstanding in the case of any registration statement on Form S-3 (or any successor form) not involving an underwriting, in each case, calculated on a fully-diluted basis (in each case, the "**Requesting Holders**"), that the Company effect the registration under the Securities Act of all or any portion of the Registrable Securities beneficially owned by such Requesting Holders, and their respective Permitted Transferees, and specifying the intended method of disposition thereof, then the Company will promptly give notice of such requested registration (each such request will be referred to herein as a "**Demand Registration**") at least thirty (30) business days prior to the anticipated filing date of the registration statement relating to such Demand Registration to the other Holders and thereupon will use its best efforts to effect, as expeditiously as possible, the registration under the Securities Act of:

(i) all Registrable Securities for which the Requesting Holders have requested registration, and

(ii) subject to the restrictions set forth in Sections 1.01(e) and 1.02, all other Registrable Securities that any Holders with rights to request registration under Section 1.02 (all such Holders, together with the Requesting Holders, and their respective Permitted Transferees, the "**Registering Holders**") beneficially own and have requested the Company to register by request received by the Company within fifteen (15) business days after such Holders receive the Company's notice of the Demand Registration, all to the extent necessary to permit the disposition (in accordance with the intended methods thereof as aforesaid) of the Registrable Securities so to be registered; *provided*, that, subject to Section 1.01(d), the Company will not be obligated to effect more than four Demand Registrations in the aggregate which shall have been requested pursuant to Section 1.01(a), other than Demand Registrations to be effected pursuant to a

Registration Statement on Form S-3 (or any successor thereto), which shall have been requested by any Member, for which an unlimited number of Demand Registrations will be permitted; *provided*, *further*, that the Company shall not, other than if requested by FP, GGC, TB or Elliott, be obligated to effect any shelf registration of Registrable Securities pursuant to Rule 415 under the Securities Act. In no event will the Company be required to effect more than one Demand Registration hereunder within any six-month period.

(b) Promptly after the expiration of the 15-business day-period referred to in Section 1.01(a)(ii), the Company will notify all Registering Holders of the identities of the other Registering Holders and the number of shares of Registrable Securities requested to be included therein. At any time prior to the effective date of the registration statement relating to such registration, the Requesting Holders may revoke such request, without liability to any of the other Registering Holders, by providing a notice to the Company revoking such request. A request, so revoked, will be considered to be a Demand Registration unless (i) such revocation arose out of the fault of the Company (in which case the Company will be obligated to pay all Registration Expenses in connection with such revoked request), or (ii) the Requesting Holders reimburse the Company for all Registration Expenses relating to such revoked request.

(c) The Company will be liable for and pay all Registration Expenses in connection with any Demand Registration, regardless of whether such Registration is effected, except as set forth in Section 1.01(b).

(d) A Demand Registration will not be deemed to have occurred:

(i) unless the registration statement relating thereto (x) has become effective under the Securities Act and (y) has remained effective for a period of at least 180 days (or such shorter period in which all Registrable Securities of the Registering Holders included in such registration have actually been sold thereunder); *provided*, that such registration statement will not be considered a Demand Registration if, after such registration statement becomes effective, (1) such registration statement is interfered with by any stop order, injunction or other order or requirement of the Commission or other governmental agency or court, and (2) less than 75% of the Registrable Securities included in such registration statement have been sold thereunder; or

(ii) if the Maximum Offering Size (as defined below) is reduced in accordance with Section 1.01(e) such that less than 50% of the Registrable Securities of the Requesting Holders sought to be included in such registration are included and such registration includes Registrable Securities of Holders exercising rights to request registration under Section 1.02.

(e) If the managing underwriter advises the Company and the Requesting Holders that, in its view, the number of shares of Registrable Securities requested to be included in such registration (including any securities that the Company proposes to be included that are not Registrable Securities) exceeds the largest number of shares that can be sold without having an adverse effect on such offering, including the price at which such shares can be sold (the

"**Maximum Offering Size**"), the Company will include in such registration, in the priority listed below, up to the Maximum Offering Size:

(i) first, all Registrable Securities requested to be registered by the Registering Holders (allocated, if necessary for the offering not to exceed the Maximum Offering Size, pro rata among such Registering Holders on the basis of the relative number of Registrable Securities then beneficially owned by each such Registering Holder), and

(ii) second, any securities proposed to be registered for the account of any other Persons (including the Company), with such priorities among them as the Company will determine.

(f) Upon notice to each Requesting Holder, the Company may postpone effecting a registration pursuant to this Section 1.01 on one occasion during any period of twelve consecutive months for a reasonable time specified in the notice but not exceeding ninety (90) days (which period may not be extended or renewed), if (i) an investment banking firm of recognized national standing will advise the Company and the Requesting Holders in writing that effecting the registration would materially and adversely affect an offering of securities of the Company the preparation of which had then been commenced prior to receipt by the Company of the Demand Registration request or (ii) the Company is in possession of material non-public information the disclosure of which during the period specified in such notice the Board of Directors of the Company reasonably believes would not be in the best interests of the Company.

(g) In the event that any registration pursuant to this Section 1.01 will involve, in whole or in part, a Public Offering, the Requesting Holder will select the lead underwriter, as well as counsel for the Holders, with respect to such registration; *provided*, that the Holders of a majority of the Registrable Securities to be registered shall be entitled to select the lead underwriter instead of the Requesting Holder.

Section 1.02. *Piggyback Registration*. (a) If the Company proposes to register any Securities of the Company under the Securities Act (other than a registration on Form S-8 or S-4, or any successor forms, relating to shares of Common Stock issuable upon exercise of employee stock options or in connection with any employee benefit or similar plan of the Company or in connection with a direct or indirect acquisition by the Company of another Person), whether or not for sale for its own account (including, without limitation, any registration effected pursuant to Section 1.01), the Company will each such time give prompt notice at least thirty (30) business days prior to the anticipated filing date of the registration statement relating to such registration to each Holder, which notice will set forth such Holder's rights under this Section 1.02 and will offer such Holder the opportunity to include in such registration statement the number of beneficially owned Registrable Securities as each such Holder may request (a "**Piggyback Registration**"), subject to the provisions of Section 1.02 (b). Upon the request of any such Holder made within fifteen (15) business days after the receipt of notice from the Company (which request will specify the number of Registrable Securities intended to be registered by such Holder), the Company will use its best efforts to effect the registration under

the Securities Act of all Registrable Securities that the Company has been so requested to register by all such Holders; *provided*, that (i) if such registration involves an underwritten Public Offering, all such Holders requesting to be included in the Company's registration must sell their Registrable Securities to the underwriters on the same terms and conditions as apply to the Company or the Requesting Holders, as applicable, and (ii) if, at any time after giving notice of its intention to register any Securities of the Company pursuant to this Section 1.02(a) and prior to the effective date of the registration statement filed in connection with such registration, the Company will determine for any reason not to register such securities, the Company will give notice to all such Holders and, thereupon, will be relieved of its obligation to register any Registrable Securities in connection with such registration. No registration effected under this Section 1.02 will relieve the Company of its obligations to effect a Demand Registration to the extent required by Section 1.01. The Company will pay all Registration Expenses in connection with each Piggyback Registration.

(b) If a Piggyback Registration involves an underwritten Public Offering (other than any Demand Registration, in which case the provisions with respect to priority of inclusion in such offering set forth in Section 1.01(e) will apply) and the managing underwriter advises the Company that, in its view, the number of shares of Registrable Securities that the Company and such Holders intend to include in such registration exceeds the Maximum Offering Size, the Company will include in such registration, in the following priority, up to the Maximum Offering Size:

(i) first, so much of the Securities of the Company proposed to be registered for the account of the Company as would not cause the offering to exceed the Maximum Offering Size;

(ii) second, all Registrable Securities requested to be included in such registration by any Holders pursuant to Section 1.02 (allocated, if necessary for the offering not to exceed the Maximum Offering Size, pro rata among such Holders on the basis of the relative number of shares of Registrable Securities then beneficially owned by each such Holder); and

(iii) third, any securities proposed to be registered for the account of any other Persons with such priorities among them as the Company will determine.

Section 1.03. *Lock-Up Agreements*. If any registration of Registrable Securities will be effected in connection with a Public Offering (other than the initial Public Offering), neither the Company nor any Holder will effect any public sale or distribution, including any sale pursuant to Rule 144, of any securities of the Company (except as part of such Public Offering) within fourteen (14) days prior to or ninety (90) days (or such lesser period as the lead or managing underwriters may permit) after the effective date of the registration statement (or the commencement of the offering to the public of such Registrable Securities in the case of a shelf registration statement). In addition, neither the Company nor any Holder will effect any public sale or distribution of any securities of the Company during the IPO Lock-Up Period. The Company hereby also agrees to use its reasonable best efforts to cause each other holder of

securities of the Company (other than in the case of securities of the Company issued under dividend reinvestment plans or employee stock plans) purchased from the Company otherwise than in a Public Offering to so agree.

Section 1.04. *Registration Procedures*. Whenever Holders request that any Registrable Securities be registered pursuant to Section 1.01 or 1.02, subject to the provisions of such Sections, the Company will use its best efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof as quickly as practicable, and, in connection with any such request:

(a) The Company will as expeditiously as possible prepare and file with the Commission a registration statement on any form for which the Company then qualifies or that counsel for the Company will deem appropriate and which form will be available for the sale of the Registrable Securities to be registered thereunder in accordance with the intended method of distribution thereof, and use its best efforts to cause such filed registration statement to become and remain effective for a period of not less than 180 days, or in the case of a shelf registration statement, one year (or such shorter period in which all of the Registrable Securities of the Registering Holders included in such registration statement will have actually been sold thereunder).

(b) Prior to filing a registration statement or prospectus or any amendment or supplement thereto, the Company will, if requested, furnish to each participating Holder and each underwriter, if any, of the Registrable Securities covered by such registration statement copies of such registration statement as proposed to be filed, and thereafter the Company will furnish to such Holder and underwriter, if any, such number of copies of such registration statement, each amendment and supplement thereto (in each case including all exhibits thereto and documents incorporated by reference therein), the prospectus included in such registration statement (including each preliminary prospectus and any summary prospectus) and any other prospectus filed under Rule 424 or Rule 430A under the Securities Act and such other documents as such Holder or underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities beneficially owned by such Holder. Each Holder will have the right to request that the Company modify any information contained in such registration statement, amendment and supplement thereto pertaining to such Holder and the Company will use its best efforts to comply with such request; *provided*, that the Company will not have any obligation so to modify any information if the Company reasonably expects that so doing would cause the prospectus to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(c) After the filing of the registration statement, the Company will (i) cause the related prospectus to be supplemented by any required prospectus supplement, and, as so supplemented, to be filed pursuant to Rule 424 under the Securities Act, (ii) comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities covered by such registration statement during the applicable period in accordance with the intended methods of disposition by the Registering Holders thereof set forth in such registration

statement or supplement to such prospectus and (iii) promptly notify each Registering Holder holding Registrable Securities covered by such registration statement of any stop order issued or threatened by the Commission or any state securities commission and take all reasonable actions required to prevent the entry of such stop order or to remove it if entered and promptly notify such Registering Holder of such lifting or withdrawal of such order.

(d) The Company will use its best efforts to (i) register or qualify the Registrable Securities covered by such registration statement under such other securities or "blue sky" laws of such jurisdictions in the United States as any Registering Holder holding such Registrable Securities reasonably (in light of such Holder's intended plan of distribution) requests and (ii) cause such Registrable Securities to be registered with or approved by such other governmental agencies or authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be reasonably necessary or advisable to enable such Holder to consummate the disposition of the Registrable Securities beneficially owned by such Holder; *provided*, that the Company will not be required to (x) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 1.04(d), (y) subject itself to taxation in any such jurisdiction or (z) consent to general service of process in any such jurisdiction.

(e) The Company will immediately notify each Registering Holder holding such Registrable Securities covered by such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the occurrence of an event requiring the preparation of a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and promptly prepare and make available to each such Holder and file with the Commission any such supplement or amendment.

(f) Subject to Section 1.01(g), the Company will have the right to select an underwriter or underwriters in connection with any Public Offering initiated by the Company. In connection with any Public Offering, the Company will enter into customary agreements (including an underwriting agreement in customary form) and take such all other actions as are reasonably required in order to expedite or facilitate the disposition of such Registrable Securities in any such Public Offering, including the engagement of a "qualified independent underwriter" in connection with the qualification of the underwriting arrangements with the NASD.

(g) Upon execution of confidentiality agreements in form and substance reasonably satisfactory to the Company, the Company will make available for inspection by any Registering Holder and any underwriter participating in any disposition pursuant to a registration statement being filed by the Company pursuant to this Section 1.04 and any attorney, accountant or other professional retained by any such Holder or underwriter (collectively, the "**Inspectors**"), all financial and other records, pertinent corporate documents and properties of the Company (collectively, the "**Records**") as will be reasonably necessary or desirable to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors and

employees to supply all information reasonably requested by any Inspectors in connection with such registration statement. Records that the Company determines, in good faith, to be confidential and that it notifies the Inspectors are confidential will not be disclosed by the Inspectors unless (i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in such registration statement or (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction or otherwise required by any applicable Legal Requirement (including complying with any oral or written questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process). Each Registering Holder agrees that information obtained by it as a result of such inspections that is confidential and material and will not be used by it or its Affiliates as the basis for any market transactions in the Securities of the Company unless and until such information is made generally available to the public. Each Registering Holder further agrees that, upon learning that disclosure of such Records is sought in a court of competent jurisdiction, it will give notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of the Records deemed confidential.

(h) The Company will furnish to each Registering Holder and to each such underwriter, if any, a signed counterpart, addressed to such Holder or underwriter, of an opinion or opinions of counsel to the Company and will use its reasonable best efforts to so furnish to such Persons a comfort letter or comfort letters from the Company's independent public accountants, each in customary form and covering such matters of the kind customarily covered by opinions or comfort letters, as the case may be, as a majority of such Holders or the managing underwriter therefor reasonably requests.

(i) The Company will otherwise use its best efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement or such other document covering a period of 12 months, beginning within the first full calendar month after the effective date of the registration statement, which earnings statement or that will satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

(j) The Company may require each Registering Holder promptly to furnish in writing to the Company such information regarding such Registering Holder and the distribution of the Registrable Securities as the Company may from time to time reasonably request and such other information as may be legally required in connection with such registration.

(k) Each such Registering Holder shall, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 1.04(e), forthwith discontinue disposition of Registrable Securities pursuant to the registration statement covering such Registrable Securities until such Holder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 1.04(e), and, if so directed by the Company, such Holder will deliver to the Company all copies in its possession, other than any permanent file copies then in such Holder's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice. If the Company will give such notice, the Company will extend the period during which such registration statement will be maintained

effective (including the period referred to in Section 1.04(a)) by the number of days during the period from and including the date of the giving of notice pursuant to Section 1.04(e) to the date when the Company will make available to such Holder a prospectus supplemented or amended to conform with the requirements of Section 1.04(e).

(l) The Company will use its best efforts to list all Registrable Securities covered by such registration statement on any securities exchange or quotation system on which any of the Registrable Securities are then listed or traded.

(m) The Company will have appropriate officers of the Company (i) prepare and make presentations at any "road shows" and before analysts and rating agencies, as the case may be, (ii) take other actions to obtain ratings for any Registrable Securities and (iii) otherwise use their best efforts to cooperate as reasonably requested by the Registering Holders and the underwriters in the offering, marketing or selling of the Registrable Securities.

Section 1.05. *Indemnification by the Company*. The Company shall indemnify and hold harmless each Registering Holder holding Registrable Securities covered by a registration statement, its officers, directors, employees, partners and agents, and each Person, if any, who controls such Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages, liabilities and expenses (including reasonable expenses of investigation and reasonable attorneys' fees and expenses) ("**Damages**") caused by or relating to any untrue statement or alleged untrue statement of a material fact contained in any registration statement or prospectus relating to the Registrable Securities (as amended or supplemented if the Company will have furnished any amendments or supplements thereto prior to the sale of any Registered Securities covered by such registration statement or prospectus) or any preliminary prospectus, or caused by or relating to any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such Damages are caused by or related to any such untrue statement or omission or alleged untrue statement or omission so made based upon information furnished in writing to the Company by such Holder or on such Holder's behalf expressly for use therein; *provided*, that with respect to any untrue statement or omission or alleged untrue statement or omission made in any preliminary prospectus, or in any prospectus, as the case may be, the indemnity agreement contained in this paragraph will not apply to the extent that any Damages result from the fact that a final prospectus (or such amended or supplemented prospectus, as the case may be) was not sent or given to the Person asserting any such Damages at or prior to the written confirmation of the sale of the Registrable Securities concerned to such Person if it is determined that the Company has provided such prospectus to such Holder and such Holder was required by law to have provided such Person with such final prospectus (or such amended or supplemented prospectus, as the case may be) and did not do so and such final prospectus (or such amended or supplemented prospectus, as the case may be) would have cured the defect giving rise to such Damages. The Company also agrees to indemnify any underwriters of the Registrable Securities, their officers and directors and each Person who controls such underwriters within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act on the same basis as that of the indemnification of the Holders provided in this Section 1.05.

Section 1.06. *Indemnification by Participating Holders*. Each Registering Holder holding Registrable Securities included in any registration statement shall, severally but not jointly, indemnify and hold harmless the Company, its officers, directors and agents and each Person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company to such Holder, but only (i) with respect to information furnished in writing by such Holder or on such Holder's behalf expressly for use in any registration statement or prospectus relating to the Registrable Securities, or any amendment or supplement thereto, or any preliminary prospectus or (ii) to the extent that any Damages result from the fact that a final prospectus (or such amended or supplemented prospectus, as the case may be) was not sent or given to the Person asserting any such Damages at or prior to the written confirmation of the sale of the Registrable Securities concerned to such Person if it is determined that such Holder was required by law to have provided such Person with such final prospectus (or such amended or supplemented prospectus, as the case may be) and did not do so and such final prospectus (or such amended or supplemented prospectus, as the case may be) would have cured the defect giving rise to such Damages. Each such Holder shall also indemnify and hold harmless underwriters of the Registrable Securities, their officers and directors and each Person who controls such underwriters within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act on substantially the same basis as that of the indemnification of the Company provided in this Section 1.06. As a condition to including Registrable Securities in any registration statement, the Company may require that it will have received an undertaking reasonably satisfactory to it from any underwriter to indemnify and hold it harmless to the extent customarily provided by underwriters with respect to similar securities. No Registering Holder will be liable under this Section 1.06 for any Damages in excess of the net proceeds realized by such Holder in the sale of Registrable Securities of such Holder to which such Damages relate.

Section 1.07. *Conduct of Indemnification Proceedings*. If any proceeding (including any governmental investigation) will be instituted involving any Person in respect of which indemnity may be sought, such Person (an "**Indemnified Party**") will promptly notify the Person against whom such indemnity may be sought (the "**Indemnifying Party**") in writing and the Indemnifying Party will assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Party, and will assume the payment of all fees and expenses; *provided*, that the failure of any Indemnified Party so to notify the Indemnifying Party will not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure to notify. In any such proceeding, any Indemnified Party will have the right to retain its own counsel, but the fees and expenses of such counsel will be at the expense of such Indemnified Party unless (i) the Indemnifying Party and the Indemnified Party will have mutually agreed to the retention of such counsel or (ii) in the reasonable judgment of such Indemnified Party representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that, in connection with any proceeding or related proceedings in the same jurisdiction, the Indemnifying Party will not be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) at any time for all such Indemnified Parties, and that all such fees and expenses will be reimbursed as they are incurred. In the case of any such separate firm for the Indemnified Parties, such firm will be

designated in writing by the Indemnified Parties. The Indemnifying Party will not be liable for any settlement of any proceeding effected without its written consent (which consent will not be unreasonably withheld), but if settled with such consent, or if there be a final judgment for the plaintiff, the Indemnifying Party will indemnify and hold harmless such Indemnified Parties from and against any loss or liability (to the extent stated above) by reason of such settlement or judgment. Without the prior written consent of the Indemnified Party (which consent will not be unreasonably withheld), no Indemnifying Party will effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement includes an unconditional release of such Indemnified Party from all liability arising out of such proceeding.

Section 1.08. *Contribution*. If the aforementioned indemnification is unavailable to the Indemnified Parties in respect of any Damages, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, will contribute to the amount paid or payable by such Indemnified Party as a result of such Damages (i) as between the Company and the Registering Holders holding Registrable Securities covered by a registration statement on the one hand and the underwriters on the other, in such proportion as is appropriate to reflect the relative benefits received by the Company and such Holders on the one hand and the underwriters on the other, from the offering of the Registrable Securities, or if such allocation is not permitted by applicable law, rule or regulation, in such proportion as is appropriate to reflect not only the relative benefits but also the relative fault of the Company and such Holders on the one hand and of such underwriters on the other in connection with the statements or omissions that resulted in such Damages, as well as any other relevant equitable considerations and (ii) as between the Company on the one hand and each such Holder on the other, in such proportion as is appropriate to reflect the relative fault of the Company and of each such Holder in connection with such statements or omissions, as well as any other relevant equitable considerations. The relative benefits received by the Company and such Holders on the one hand and such underwriters on the other will be deemed to be in the same proportion as the total proceeds from the offering (net of underwriting discounts and commissions but before deducting expenses) received by the Company and such Holders bear to the total underwriting discounts and commissions received by such underwriters, in each case as set forth in the table on the cover page of the prospectus. The relative fault of the Company and such Holders on the one hand and of such underwriters on the other will be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company and such Holders or by such underwriters. The relative fault of the Company on the one hand and of each such Holder on the other will be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Registering Holders agree that it would not be just and equitable if contribution pursuant to this Section 1.08 were determined by pro rata allocation (even if the

underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Party as a result of the Damages referred to in the immediately preceding paragraph will be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 1.08, no underwriter will be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any Damages that such underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission, and no Registering Holder will be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities of such Holder were offered to the public (less underwriters' discounts and commissions) exceeds the amount of any Damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. Each Registering Holder's obligation to contribute pursuant to this Section 1.08 shall be several in the proportion that the proceeds of the offering received by such Holder bears to the total proceeds of the offering received by all such Registering Holders and not joint.

Section 1.09. *Participation in Public Offering*. No Person may participate in any Public Offering unless such Person (a) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (b) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements and the provisions of this Agreement in respect of registration rights.

Section 1.10. *Rule 144 And Form S-3*. Commencing as soon as practicable after the consummation of the initial Public Offering, the Company will use its best efforts to ensure that the conditions to the availability of Rule 144 set forth in paragraph (c) thereof will be satisfied. Upon the request of any Holder, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements. The Company shall use its reasonable best efforts to cause all conditions to the availability of Form S-3 (or any successor form) under the Securities Act for the filing of registration statements under this Agreement to be met as soon as practicable after the consummation of the initial Public Offering.

Section 1.11. *No Transfer Of Registration Rights*. None of the rights of Holders hereunder will be assignable by any Holder to any Person acquiring securities in any Public Offering or pursuant to Rule 144.

Section 1.12. *Limitations Of Subsequent Registration Rights*. The Company agrees that it will not enter into any agreement with any holder or prospective holder of any securities of the Company (a) that would allow such holder or prospective holder to include such securities in any

Demand Registration or Piggyback Registration unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that their inclusion would not cause the number of the Registrable Securities to be sold by Registering Holders to be limited pursuant to Section 1.01(e) or 1.02(b), or (b) on terms otherwise more favorable than this Agreement.