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**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
FINANCIAL DATA EXCHANGE, LLC**

Dated February 12, 2020

[As amended by the FDX Board of Directors on December 10, 2020 and March 16, 2021]

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**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
FINANCIAL DATA EXCHANGE, LLC
A Delaware Limited Liability Company**

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this “**Agreement**”) of Financial Data Exchange, LLC, a limited liability company organized pursuant to the provisions of the Delaware Act (the “**Company**”) is made and entered into as of February 12, 2020 (the “**Effective Date**”), by and between the Company and FS-ISAC, Inc., a Delaware non stock corporation, as the sole member (“**FS-ISAC**”).

R E C I T A L S

WHEREAS, the Company was originally formed as Initiative X, Inc. on March 14, 2017 and was converted into a limited liability company pursuant to and in accordance with the Delaware Act (defined below) on May 11, 2018, with FS-ISAC as the sole member thereof;

WHEREAS, the original limited liability company agreement was adopted on May 11, 2018 and was amended and restated on September 5, 2018, and amended further by the First Amendment thereto on May 15, 2019. This Agreement amends and restates all operating agreements and amendments of the Company and its Members as of the Effective Date hereof;

WHEREAS, FS-ISAC and the Company have determined that it is in the best interests of the Company and FS-ISAC for the Company to join with FS-ISAC as a means to best further the Company’s objectives to, among other things, identify, define and/or adopt a common, interoperable standard for secure consumer and business access to their financial records and enable collaboration between Members, industry partners and other parties;

WHEREAS, FS-ISAC and the Company have determined that FS-ISAC is best suited to provide the Company with infrastructure and support functions in order to enable the Company to further its stated mission;

WHEREAS, FS-ISAC, in collaboration with its members participating on the Data Aggregation Work Group and in furtherance of its non-profit, tax-exempt mission to disseminate best practices and other critical information to help the sector to mitigate risks and threats, has defined and published a common, interoperable standard for secure consumer and business access to their financial records, first in 2015 as the Durable Data API, version 1, and in 2017 as the Durable Data API, version 2 which was assigned to, and is being continued by, the Company as the FDX API (the “**FDX API**”);

WHEREAS, in furtherance of the foregoing, FS-ISAC and the Company have agreed that it is in their respective best interests for the Company to become a self-funding, wholly-owned subsidiary of FS-ISAC with an independent governance and operating model, subject to FS-ISAC approval of certain fundamental matters and the provision by FS-ISAC to the Company of certain services and functions as agreed by the parties;

WHEREAS, FS-ISAC desires to enter into this Agreement to provide for the management of the Company and set forth the rights and obligations of FS-ISAC and the Members generally; and

WHEREAS, this Agreement shall be transmitted to all Members following approval by the Board and each Member shall be deemed to approve and agree to abide by this Agreement (as amended and restated); provided, however, if any Member does not wish to abide by this amended and restated Agreement, any such Member may resign such Member's membership within 60 days following delivery of notice of the amended version of this Agreement and, in such event, the revisions shall not apply to such resigning Member during such period. Membership fees shall not be reimbursed for any resigning Member.

NOW THEREFORE, for and in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.01. *Defined Terms.*

“Account Aggregator Member” means a Member of the Company that meets the standards of an “Account Aggregator Member” as set forth herein. The definition of Account Aggregator Members shall include Persons that are generally engaged in the same type of business (collectively, but not individually) as Intuit, Yodlee, Plaid, Finicity and Fiserv are engaged as of the date of this Agreement. Account Aggregator Member shall also include such other Persons as the Board deems appropriate and whose business is materially and substantially engaged in the direct access and use of data from financial institutions and whose operations do not readily suggest that such Person be classified in a different membership category.

“Advisor” means legal, regulatory, accounting and other advisors and consultants (including auditors).

“Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person.

“Agents” means directors, officers, employees, partners, agents, counsel, advisors or other representatives of any Person.

“Applicable Law” means, with respect to any Person, any transnational, domestic or foreign federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

“Business Day” means a day, other than Saturday, Sunday or other day on which commercial banks in New York City, New York are authorized or required by Applicable Law to close.

“**Certificate of Formation**” means the Certificate of Formation of the Company, as filed with the Secretary of State of the State of Delaware, as the same may be amended from time to time.

“**Change of Control**” means a transaction (or series of related transactions) in which (i) any “person” or “group” (within the meaning of Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) becomes the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, of a sufficient number of shares of all classes of stock then outstanding of a Member ordinarily entitled to vote in the election of directors, empowering such “person” or “group” to elect a majority of the board of directors of such Member, who did not have such power before such transaction, or (ii) a Member sells or transfers all or substantially all of its assets to one or more third party(ies). The acquiring party referenced in clauses (i) and (ii) shall be referred to herein as the “**Surviving Entity**” and the acquired/selling party shall be referred to herein as the “**Acquired Party**.”

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Consumer Advocacy Group Member**” means a Member of the Company that meets the standards of a “Consumer Advocacy Group Member” as set forth herein. The definition of Consumer Advocacy Group Members shall include Persons that are generally engaged in the same type of consumer representation and practices (collectively, but not individually) as, for example, Consumer’s Union, National Consumer Law Center, and Center for Democracy and Technology are engaged as of the date of this Agreement. It being understood that such examples may or may not be current Members of the Company and that their membership alone, as applicable, does not act as an endorsement or approval by such organizations of the Company or any of its publications, programs or actions. Members approved as Consumer Advocacy Group Members shall, subject to their consent, be appointed to the Company’s CAG Advisory Board pursuant to Section 4.17 and shall elect one of its Members to have Observer Rights in accordance with Section 4.16.

“**Control**” with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “**Controlling**” and “**Controlled**” have correlative meanings.

“**Delaware Act**” means the Delaware Limited Liability Company Act, Title 6, §§ 18-101. *et seq.*, as amended from time to time.

“**Financial Industry Group Member**” means a Member of the Company that meets the standards of a “Financial Industry Group Member” as set forth herein. The definition of Financial Industry Group Members shall include Persons that are generally engaged in the same type of industry representation and practices (collectively, but not individually) as The Clearing House Payments Company LLC and Securities Industry and Financial Markets Association are engaged as of the date of this Agreement.

“**Financial Institution Member**” means a Member of the Company that (i) is a member of FS-ISAC and (ii) is also generally known as a “financial institution” that offers financial

products and services regulated by national, or state agencies or, in the case of Canadian financial institutions, federal or provincial agencies.

“Fiscal Year” means the Company’s fiscal year, which shall be the calendar year.

“General Member” means a Person, admitted as a Member, that the Company accepts as a Member in accordance with the Membership Agreement but that is not admitted as, or fails to qualify or continue to qualify as, a Financial Institution Member, Financial Industry Group Member, Consumer Advocacy Group Member, Permissioned Party Member, Account Aggregator Member or FS-ISAC. The Board may adopt and revise Eligibility Criteria that apply to Persons admitted as General Members.

“Governmental Authority” means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency or official, including any political subdivision thereof.

“Member” means each Financial Institution Member, Financial Industry Group Member, Consumer Advocacy Group Member, Permissioned Party Member, Account Aggregator Member, FS-ISAC or General Member that is a party to the Membership Agreement. For the avoidance of doubt, the Company is a “single member” limited liability company with FS-ISAC being the sole “member” pursuant to the Delaware Act. References to “Member” or “Membership” herein (or other similar terms) refers solely to the rights of a Person to participate in the Company pursuant to the terms and conditions of the Membership Agreement or, as applicable, to designate and participate on the Board in accordance with the terms hereof.

“Membership Agreement” means an agreement pursuant to which a Person becomes a Member, in such form as is approved and modified by the Board of Directors from time to time.

“Membership Group” means, with respect to each Member, such group (*i.e.*, Account Aggregator, Financial Industry Group, Consumer Advocacy Group, Financial Institution, Permissioned Party or General Member) that such Member was admitted (and continues to meet the criteria for) as a Member to the Company pursuant to such Member’s Membership Agreement.

“Observer Rights” means (i) the right to attend, at the discretion of the Board, meetings of the Company’s Board of Directors in a nonvoting, observer capacity (*i.e.*, observe and learn but not participate in the dialogue unless input is requested by a Board member or Company management), and (ii) the right to receive copies of all notices, minutes, consents, and other materials that the Company provides to all of its Board members at the same time and in the same manner as provided to such Board members; *provided, however*, that any Person with Observer Rights shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude any Person with Observer Rights from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest or is designated as Traffic Light Protocol Red (as defined in the Membership Agreement) or other similar confidential designation.

“**Permissioned Party Member**” means a Member of the Company that meets the standards of a “Permissioned Party Member” as set forth herein. Permissioned Party Members are Persons that are generally engaged in the same type of business (collectively, but not individually) as Fannie Mae, Xero, Quicken Loans, Fidelity and Experian are engaged as of the date of this Agreement. Permissioned Party Member shall also include such other Persons as the Board deems appropriate and whose business is materially and substantially engaged in the use of data from financial institutions and whose operations do not readily suggest that such Person be classified in a different membership category.

“**Permitted Transferee**” means any Controlled Affiliate of FS-ISAC for so long as such Controlled Affiliate remains a Controlled Affiliate of FS-ISAC.

“**Person**” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

“**Related Party Transaction**” means any transaction, arrangement, contract or agreement (including any modification, amendment or waiver thereto) between the Company or any of its Subsidiaries, on the one hand, and any Sustaining Member (or an Affiliate of a Sustaining Member) or FS-ISAC (or any Affiliate of FS-ISAC, other than the Company and its Subsidiaries), on the other hand; *provided*, that Related Party Transaction shall not include entry into, modification or amendment of any Membership Agreement.

“**Subsidiary**” means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at any time directly or indirectly owned by such Person.

“**Sustaining Member**” means the Members entitled to appoint and remove a Director and Alternate Directors to the Board in accordance with the terms hereof. The Sustaining Members, Directors and Alternate Directors are set forth on **Schedule A** (as amended from time to time without the need to amend this Agreement) maintained by the Secretary of the Company.

Section 1.02. *Other Defined Terms.*

Each of the following terms shall have the meanings defined in the Section indicated:

Defined Terms	Section
Acquired Party	Definition – Change of Control
Advisory Board	Section 4.17
Agreement	Preamble
Alternate Director	Section 4.04
Associated With	Section 4.02(d)
Board/Board of Directors	Section 4.01
Co-Chair	Section 4.03
Company	Preamble
Covered Person	Section 7.01(a)
Default Rule	Section 10.13

Defined Terms	Section
Director	Section 4.01
Eligibility Criteria	Section 3.01(b)
Executive Officer	Section 5.01(b)
FDX API	Preamble
FS-ISAC	Preamble
ISAC Director	Section 4.02(a)
Director	Section 4.02
Ineligible Member	Section 3.05
Liquidators	Section 9.01
Losses	Section 7.01(a)
Membership Dues	Section 3.03
Membership Termination Event	Section 3.05
Officers	Section 5.01(b)
Other Activity	Section 6.02(b)
President	Section 5.01(a)
Secretary	Section 4.15
Surviving Entity	Definition – Change of Control
Transfer	Section 2.11
Working Groups	Section 4.17

ARTICLE 2 FORMATION AND PURPOSE OF THE COMPANY

Section 2.01. *Formation of the Company.* The Certificate of Conversion and the Certificate of Formation for the Company were filed with the Secretary of State of the State of Delaware on May 11, 2018. FS-ISAC hereby agrees to continue the Company as a limited liability company pursuant to the Delaware Act, upon the terms and subject to the conditions of this Agreement. Effective upon the execution hereof, the rights, duties and obligations of FS-ISAC shall be as provided for in this Agreement and, except as herein otherwise expressly provided, in the Delaware Act.

Section 2.02. *Name.* The name of the Company is “Financial Data Exchange, LLC” or such other name as the Board of Directors shall approve. The Company and its Members may reference the Company as “FDX” for summary purposes.

Section 2.03. *Principal Place of Operations of the Company.* The principal place of operations of the Company shall be located at such place as shall be determined from time to time by the Board of Directors. The Company shall also have such additional offices as shall be determined from time to time by the Board of Directors. The Company shall initially use FS-ISAC’s mailing address for purposes of conducting business and/or reporting a “principal place of business” as follows:

Financial Data Exchange, LLC
c/o FS-ISAC, Inc.
12120 Sunset Hills Road, Suite 500

Reston, Virginia 20190
Attention: Managing Director [or other applicable contact Person]

Section 2.04. *Term.* The Company shall continue from its deemed date of formation under the Delaware Act until the dissolution of the Company in accordance with the provisions of this Agreement or as otherwise provided by Applicable Law.

Section 2.05. *Title to Company Property.* All property of the Company and its Subsidiaries, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company or its applicable Subsidiaries, as the case may be, and FS-ISAC shall not have any direct ownership interest in such property.

Section 2.06. *Filing of Certificates.* The Officers of the Company shall file and publish all such certificates, notices, statements or other instruments required by Applicable Law (a) to evidence the formation of the Company and (b) for the operation of the Company in all jurisdictions where the Company may elect from time to time to operate.

Section 2.07. *Limitation on Liability.* Except as required by the Delaware Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and FS-ISAC shall not be obligated for any such debt, obligation or liability of the Company solely by reason of being the sole member of the Company. Except as otherwise expressly required by Applicable Law or this Agreement, FS-ISAC shall have no liability to the Company or to the creditors of the Company.

Section 2.08. *Registered Office and Registered Agent.* The Company's registered office is c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808. Corporation Service Company is serving as the registered agent of the Company in Delaware. The registered office and registered agent may be changed from time to time pursuant to the terms of the Delaware Act as the Board of Directors may deem advisable. The Company shall designate a registered office and registered agent in such other jurisdictions as the Board of Directors may deem advisable.

Section 2.09. *Purpose of the Company.* The purpose of the Company (the "**Purpose**") shall be to identify, define and/or adopt a common, interoperable standard for secure consumer and business access to their financial records and to engage in any lawful act or activity related to the foregoing for which corporations that are organized as not-for-profit may be organized under the Delaware Act. The Company's objectives, as modified by the Board from time to time, will initially be to adopt or define (a) financial record use cases; (b) financial record data types; (c) financial data APIs; (d) financial API data security and financial API audit standards; (e) server, hub, and product qualification and certification standards; and (f) such other specifications, systems, or technical standards required to create, maintain, and promote this ecosystem as determined by the Board.

In furtherance of its Purpose, the Company shall (i) have and may exercise all of the powers now or hereafter conferred by Delaware law on limited liability companies formed under the Delaware Act and (ii) have the power to do any and all acts necessary, appropriate,

proper, advisable, incidental or convenient to or for the protection and benefit of the Company. In no event shall the Company have any authority to, or be used as a vehicle to, bring about or attempt to bring about any understanding or agreement, written or oral, formal or informal, express or implied, among Members with regard to prices, terms or conditions of sale, distribution, volume of production, exclusive dealing, territories or customers, or any other agreement or action that would violate any antitrust laws, rules or regulations. The scope of activities may be limited by budgetary constraints, trade regulations and antitrust constraints, and limitations on permitted activities of organizations exempt from income tax under Section 501(c)(6) of Code.

Section 2.10. *No Certificates.* FS-ISAC's sole membership interest in the Company shall not be represented by a certificate.

Section 2.11. *No Transferability.*

(a) FS-ISAC may not, voluntarily or involuntarily, directly or indirectly, assign, sell, dispose of, pledge, encumber, hypothecate or otherwise transfer (each, a "**Transfer**", and when used as a verb shall have the corresponding meaning) any of its sole membership interest in the Company, or agree or commit to do any of the foregoing, except a Transfer (i) to a Permitted Transferee or (ii) approved by the Board of Directors in accordance with Section 4.10. The Company shall not give effect on its books to any Transfer or purported Transfer to any Person other than a Transfer in accordance with the preceding sentence.

(b) FS-ISAC may at any time Transfer its interest to a Permitted Transferee without the consent of the Company, so long as such Permitted Transferee shall have executed a joinder agreement to this Agreement in form and substance reasonably acceptable to the Board of Directors. FS-ISAC must give prior written notice to the Board of Directors of any proposed Transfer to a Permitted Transferee and such other documentation reasonably requested by the Board of Directors to ensure compliance with the terms of this Agreement. If a Permitted Transferee at any time ceases to be a Controlled Affiliate of FS-ISAC, such Permitted Transferee shall Transfer (and FS-ISAC shall cause such Permitted Transferee to Transfer) the applicable interest back to FS-ISAC or to another Permitted Transferee.

Section 2.12. *Voting Rights of FS-ISAC.* Except as provided for in this Agreement, FS-ISAC shall have no other voting or approval rights under this Agreement or the Delaware Act, and all such other actions may be taken by the Board of Directors or Officers without any further consent or approval of FS-ISAC.

Section 2.13. *Records and Reports.* The Board of Directors shall cause the Company and its Subsidiaries to maintain an accurate list of its Members and to maintain records and accounts of all operations and expenditures of the Company and its Subsidiaries and such other books and records required to be maintained by the Company under the Delaware Act. Such books and records shall be maintained in accordance with United States generally accepted accounting principles.

ARTICLE 3 PARTICIPATION

Section 3.01. *Member Rights.*

(a) Members will be provided with the rights and obligations set forth in this Agreement and the Membership Agreements executed by such Members.

(b) A Person shall be eligible to become a Member to the extent that it (on its own or through an Affiliate) satisfies the criteria (the “**Eligibility Criteria**”): (i) set forth for such Member’s Membership Group in accordance with this Agreement, (ii) pays, on a timely basis, any applicable Membership Dues, and (iii) is accepted to become a Member by the Company.

(c) A Member shall be required to inform the Company within ten (10) Business Days if such Member ceases to satisfy the applicable Eligibility Criteria for the Membership Group for which such Member was admitted as a Member. If a Member ceases to satisfy the applicable Eligibility Criteria, then such Member shall automatically be deemed a General Member; provided, however, if such Member does not meet the applicable Eligibility Criteria for a General Member, then such failure shall constitute a Membership Termination Event for such Member as provided for in Section 3.05(a)(v).

Section 3.02. *Expected Membership.* It is the intent of the Company, consistent with the purpose of the Company as set forth in Section 2.09 and subject to Section 3.01(b), that any Person that meets applicable Eligibility Criteria that desires to execute a Membership Agreement shall be eligible to become a Member, unless the Company, in consultation with FS-ISAC, determines in good faith that permitting such Person to become a Member would reasonably be expected to result in a violation of Applicable Law by the Company, would reasonably be expected to result in liability to the Company or FS-ISAC or would reasonably be expected to create any franchise or reputational risk to the Company or FS-ISAC.

Section 3.03. *Membership Dues.*

(a) The Company may charge Members with annual or periodic dues in the manner adopted by the Board (“**Membership Dues**”) and based on such metrics or criteria as the Board of Directors determines appropriate from time to time, provided that Membership Dues shall be a fixed flat amount for all Sustaining Members for the calendar year 2018 which such Membership Dues have been substantially paid in full as of the date hereof.

(b) Membership Dues may be prorated for a Member’s first year of participation in the discretion of the Board of Directors. Except as set forth in the Membership Agreement, Membership Dues are non-refundable.

(c) The Company shall notify Members of the applicable Member Dues for each dues period and shall provide for the invoicing and collection of such Membership Dues. The Board shall establish policies and procedures for Member Dues notifications and payment terms.

(d) FS-ISAC staff may take whatever actions may be reasonably necessary with respect to any Member that is delinquent in paying required dues and/or assessments for a period of thirty (30) days or more.

Section 3.04. *Independence of Members.* The Company is not intended to be a joint venture. Each Member shall retain its independence in conducting its own business. No Member shall have any restrictions on its freedom to establish its own prices, terms or conditions of sale, distribution, product development, policies, volume of production, territories and consumers. Each Member shall be free to advertise and promote its products in any manner it deems appropriate, including without limitation, the right to promote its own products and services in any manner it deems appropriate.

Section 3.05. *Termination of Membership.* (a) A Member shall cease to be a Member in accordance with Section 3.05(d) and/or at the election of the Company upon the occurrence of any one of the following events (each such event a “**Membership Termination Event**” and such Member, an “**Ineligible Member**”):

- (i) the continuing failure by a Member to pay any Membership Dues within thirty (30) days after receiving written notification from the Company of such failure;
- (ii) any liquidation, dissolution or winding-up of the affairs of a Member;
- (iii) the merger, combination or Transfer of the Member, or the Transfer of a material portion of the Member’s business, to another entity (other than to an affiliate of Member, another Member or to an entity that meets applicable Eligibility Criteria);
- (iv) the breach by a Member of the Company’s Membership Agreement or other rules and procedures established by the Board from time to time by 2/3rds vote and such breach is incurable or is not otherwise cured within thirty (30) days after receiving written notice of such breach by the Company; or
- (v) the Board of Directors determines in good faith that the continued subscription of a Member would reasonably be expected to result in a violation of Applicable Law by the Company, would reasonably be expected to result in liability to the Company or FS-ISAC or would reasonably be expected to create any franchise or reputational risk to the Company or FS-ISAC.

(b) A Member may terminate its subscription as a Member at any time upon written notice by such Member to the Company.

(c) Upon the termination of a Member’s subscription, the terminated Member shall have no further liability to the Company with respect to Membership Dues; *provided*, the terminated Member shall remain liable to the Company with respect to any Membership Dues that have accrued and remain unpaid as of the date of such termination.

(d) Notwithstanding anything contained herein to the contrary, in the event that a Member engages in a Change of Control transaction:

(i) If the Surviving Entity is already a Member, then the membership of the Acquired Party shall automatically become that of a “Subsidiary” to the “Parent” Surviving Entity in accordance with the FDX Parent-Subsidiary Membership Policy upon the closing of the Change of Control transaction until the Company is otherwise notified by the Surviving Entity;

provided, however, in the event that the Acquired Party is a *Sustaining Member* at the close of the Change of Control transaction, such designation as “Sustaining Member” as well as all appointed Directors, Alternate Directors and other positions with the Company related to the Sustaining Member status of the Acquired Party shall remain in place until the next FDX Board meeting following the close of the Change of Control. At such Board meeting, if the Acquired Party desires to remain a “Sustaining Member” as a “Subsidiary” to the “Parent” Surviving Entity in accordance with the FDX Parent-Subsidiary Membership Policy, the Acquired Party shall request a Board vote to remain a Sustaining Member. The Board will then discuss and vote and, if approved by (a) more than one-half of the applicable Board Membership Group (with the Acquired Party abstaining) and (b) Two-Thirds or more of the entire Board (with the Acquired Party abstaining), then the Acquired Member shall (x) remain a Sustaining Member as a “Subsidiary” in accordance with the FDX Parent-Subsidiary Membership Policy and (b) fulfill the term applicable to the Acquired Party prior to the Change of Control transaction. If the motion fails, then the Acquired Party’s designation as “Sustaining Member” as well as all appointed Directors, Alternate Directors and other positions with the Company related to the Sustaining Member status of the Acquired Party shall be terminated and the seat(s) will remain vacant until filled by the Board in accordance with its nomination and election policies and procedures; or

(ii) If the Surviving Entity is NOT already a Member then the Surviving Entity shall have 10 business days to join the Company (during which time the membership status of the Acquired Party shall be put on hold and not vote or receive Company correspondences). If the Surviving Entity joins within such time period, the terms of Section 3.05(d)(i) shall apply. If the Surviving Entity does not join the Company in such time period, then the separate membership of the Acquired Party shall automatically terminate effective upon the closing of the Change of Control transaction and all participants in Working Groups or other positions with the Company on behalf of the Acquired Party shall automatically be removed from such positions.

ARTICLE 4 BOARD OF MANAGERS

Section 4.01. *Board of Directors.* The overall management and strategy of the Company shall be governed by, and all powers of the Company related thereto shall be exercised by, or under the direction of, a board of directors of the Company (the “**Board**” or “**Board of Directors**” and each director, a “**Director**”). Each Director shall be a “manager” of the Company under the Delaware Act but referred to herein as a “Director”. Except as expressly set forth in this Agreement or as authorized by the Board of Directors, FS-ISAC has no part in the management of the Company and has no authority to bind the Company.

Section 4.02. *Board.*

(a) The Board of Directors shall consist of representatives from the following organizational groups:

- (i) Seven (7) Financial Institution Member representatives;
- (ii) Four (4) Permitted Party Member representatives;

- (iii) Four (4) Account Aggregator Member representatives;
- (iv) One (1) representative named by FS-ISAC (the “**ISAC Director**”); and
- (v) Two (2) Financial Industry Group Member representatives.

Subject to receiving the vote of the Board required by Section 4.10(e), the Sustaining Members from each of the groups listed in 4.02(a)(i)-(iii) above may, by majority vote of the Sustaining Members in such Membership Group, appoint additional Sustaining Members with Board representation to such Members’ Membership Group; provided that (1) the votes of all such additional Directors are prorated such that collectively the vote of all Directors for such Membership Group do not exceed the number assigned for such Membership Group (*i.e.*, 7, 4, 4); (2) a quorum of Directors for any meeting shall be based on a majority vote of the entire Board, not a majority of individual Board members; and (3) such prorated votes are permitted by applicable law. The addition of any such additional Sustaining Members shall only require an amendment to **Schedule A**, with the prorated vote for each Director listed thereon. No discounts shall be applied to applicable membership fees due to a greater number of Board members for any given Membership Group. The Board shall adopt nomination, qualification and election procedures for such additional Directors in accordance with Section 4.10 hereof.

(b) The initial Members entitled to designate Directors to the Board, their representative Membership Group and the applicable Alternate Directors are as set forth on **Schedule A**. Directors and Alternate Directors may be removed and replaced by the Sustaining Member that appointed them in accordance with Section 4.09. Until the annual meeting of the Company in 2021, unless the Director is removed or voluntarily resigns pursuant to this Agreement, the initial Directors shall hold office until their respective successors are appointed. The Board of Directors shall establish policies and procedures with respect to the nomination and election of Directors by their respective Membership Group to become effective at the annual meeting of the Company in 2021.

(c) FS-ISAC shall have the right to appoint a Director. The initial FS-ISAC Director is set forth on **Schedule A**. FS-ISAC shall also have the right from time to time to designate an Alternate Director by giving written notice to the Board of Directors of the identity of such Alternate Director promptly after such appointment. The initial Alternate Director for FS-ISAC is set forth on **Schedule A**.

(d) At the time of his or her appointment or election and during his or her entire term, each Director must be Associated With the Sustaining Member that appointed such Director or FS-ISAC, as applicable. No Sustaining Member may be Associated With more than one Director. For purposes of this requirement, a Director is “**Associated With**” a Person if the Director is an employee, officer, partner, proprietor or director of such Person.

Section 4.03. *Chairperson.* The Board of Directors shall elect two Directors to serve as Co-Chairpersons of the Board of Directors (each a “**Co-Chair**”). One Co-Chair shall be elected from the Financial Institution Member representatives and the other Co-Chair shall be elected from either the Permitted Party Member representatives or the Account Aggregator Member representatives. The Co-Chairs shall be elected and replaced in accordance with the FDX Co-Chair Rotation Policy as amended from time to time.

Section 4.04. *Alternate Directors.* Each Sustaining Member that is Associated With a Director shall have the right from time to time to designate one alternate Director Associated With such Member (each, an “**Alternate Director**”) by giving written notice to the Board of Directors of the identity of such Alternate Director promptly after such appointment. The initial Alternate Directors are set forth on **Schedule A**. In the event that a Director Associated With a Member is unable to attend a meeting or in any other way participate or exercise authority as a Director (including because such Director believes it necessary to abstain with respect to a particular matter), such Member’s Alternate Director shall have the right to participate in such Director’s stead as if the Alternate Director were the Director. **Schedule A** may be updated by the Board of Directors from time to time, without the consent of FS-ISAC or notice to the Members, to reflect changes to the Directors and/or Alternate Directors appointed/removed by the applicable Sustaining Member in accordance with the terms of this Agreement.

Section 4.05. *Regular Meetings of the Board of Directors.* Regular meetings of the Board of Directors shall take place from time to time as determined by the Board of Directors, but not less frequently than once per quarter in each Fiscal Year, at the offices of the Company or at such other location as may be agreed upon by the Board of Directors. The presence at a meeting of the Board of Directors of members of the Board of Directors holding a majority of the votes available to be cast shall be required to constitute a quorum. Written notice of every meeting of the Board of Directors, shall be given to each Director at least ten (10) Business Days prior to the date of each such regular meeting. Such notice shall include an agenda and any appropriate background information then available regarding the matters to be acted upon. The matters conducted at any regular meeting shall be limited to the items set forth in the agenda; *provided*, that any proposed resolutions may be amended as determined by the Board of Directors at such regular meeting. The Board of Directors shall schedule its regular meetings using good faith efforts to accommodate any scheduling conflicts of the Directors. Notice of a regular meeting need not be given to any Director who signs a waiver of notice or a consent to holding the regular meeting or a consent in lieu of regular meeting or an approval of the minutes of a regular meeting, whether before or after the regular meeting, or who attends the regular meeting without protesting, prior thereto or at its commencement, the lack of notice. Attendance at any regular meeting in person or pursuant to Section 4.07 shall constitute waiver of the notice requirements set forth in this Section 4.05. The members of the Board of Directors shall have the right to vote at a regular meeting by proxy pursuant to Section 18-404(d) of the Delaware Act. If a Director or Alternate Director is unable to attend a regular meeting of the Board of Directors, then such Director may designate an individual Associated With the Member with which such Director is affiliated to attend such meeting as a proxy, and such Director shall provide written notice (with e-mail being sufficient) to the Company prior to such regular meeting that it is exercising its right to designate a proxy and specifying the name of such proxy.

Section 4.06. *Special Meetings.* Special meetings of the Board of Directors may be called by either Co-Chair (or both) or a majority of the Board from time to time as he/she/they deem(s) necessary or appropriate. Written notice of special meetings of the Board of Directors shall be given to each Director at least ten (10) Business Days prior to the date of each such special meeting, unless either Co-Chair (or both) determines that a shorter notice is appropriate under the circumstances. Such notice shall include an agenda, any proposed resolutions and appropriate background information regarding the matters to be acted upon. The quorum

provisions applicable to a regular meeting of the Board of Directors shall apply with the same force and effect in determining whether a quorum is constituted at a special meeting of the Board of Directors. The matters conducted at any special meeting shall be limited to the items set forth in the agenda; *provided*, that any proposed resolutions may be amended as determined by the Board of Directors at such special meeting. The Board of Directors shall schedule its special meetings using good faith efforts to accommodate any scheduling conflicts of the Directors. Notice of a special meeting need not be given to any Director who signs a waiver of notice or a consent to holding the special meeting or a consent in lieu of special meeting or an approval of the minutes of a special meeting, whether before or after the special meeting, or who attends the special meeting without protesting, prior thereto or at its commencement, the lack of notice. Attendance at any special meeting in person or pursuant to Section 4.07 shall constitute waiver of the notice requirement set forth in this Section 4.06. The members of the Board of Directors shall have the right to vote at a special meeting by proxy pursuant to Section 18-404(d) of the Delaware Act. If a Director or Alternate Director is unable to attend a special meeting of the Board of Directors, then such Director may designate an individual Associated With the Member with which such Director is affiliated to attend such meeting as a proxy, and such Director shall provide written notice (with e-mail being sufficient) to the Company prior to such special meeting that it is exercising its right to designate a proxy and specifying the name of such proxy.

Section 4.07. *Meeting by Video or Telephone Conference of Directors.* The Directors may participate in or conduct a meeting of the Board of Directors by means of video, telephone or internet conference equipment or similar communications equipment by which all Directors may simultaneously speak with and hear each other during the meeting. Participation by a Director pursuant to this Section 4.07 shall constitute presence in person at such meeting.

Section 4.08. *Manner of Acting.* Except as otherwise specified herein, the vote of a majority of the Directors present and casting a vote at any meeting at which there is a quorum shall be required for Board of Directors actions.

Section 4.09. *Resignation and Removal of Directors.* A Director may resign at any time upon written notice to the Company. The resignation of a Director shall not affect the rights of the Sustaining Member that designated such Director. The resignation of any Director shall take effect upon receipt of notice thereof by the Company or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

- (a) A Director may be removed, with or without cause, at any time by the Sustaining Member that designated such Director.
- (b) The Board of Directors shall have the right to remove any Director for cause.
- (c) A Director shall be deemed to resign if the Director ceases to be Associated With the Sustaining Member that appointed such Director.
- (d) In the event that a vacancy is created on the Board of Directors due to the resignation or removal of a Director, a new Director may be appointed by the Sustaining

Member that appointed such Director. If the Sustaining Member that designated the Director that resigned or was removed suffered a Membership Termination Event, then the remaining Sustaining Members of the applicable Membership Group shall elect a replacement Sustaining Member who shall then designate a replacement Director. Such replaced Director shall finish the term of the removed Director and shall be up for re-election upon the same timing and conditions of the removed Director. At any time that a Membership Group described in Sections 4.02(a)(i)-(iii) represented on the Board is less than number assigned for such Membership Group (*i.e.*, 7, 4, 4), the Directors' votes in such Membership Groups shall be *pro-rated* upwards such that the number of Director votes assigned for such Membership Groups shall equal the number assigned to such Membership Group (*i.e.*, 7, 4, 4).

In the event the Board of Directors increases the number of Directors, the Board of Directors shall determine the method of appointing such new Directors. **Schedule A** shall be updated from time to time to reflect changes to the Directors and Alternate Directors. The **Schedule A** maintained by the Secretary of the Company shall be deemed the current list of the Company's Sustaining Members, Directors and Alternate Directors without any need to amend the version attached hereto.

Section 4.10. *Actions Requiring the Approval of Two-Thirds of the Board of Directors.*

Notwithstanding anything that may be deemed to the contrary in this Agreement, the Company shall not take, and shall not cause or permit any of the Company's Subsidiaries to take, or commit to take, any of the following actions without the prior approval of 2/3rds of the Board of Directors (*i.e.*, 2/3rds of the voting percentage of those present at a duly called meeting where a quorum is present or 2/3rds by written consent pursuant to Section 4.12):

- (a) appointment and removal of the Executive Officers, as well as determination of the compensation of the Executive Officers (if any);
- (b) approval of the annual operating budget, including the initial annual operating budget, and any material deviation from any such budget;
- (c) approval of all policies and procedures for the Company and its Members, including, without limitation, the operating rules, antitrust policy, technical, privacy, intellectual property rights policy, confidentiality and other policies and procedures to be used in connection with the operation of the Company and material deviations from those policies and procedures;
- (d) changing the Company's general purposes;
- (e) (i) increasing or decreasing the number of Sustaining Members; (ii) increasing or decreasing the number of representatives from any Membership Group on the Board of Directors; and/or (iii) granting or terminating Observer Rights;
- (f) changes to the Membership Dues;
- (g) any liquidation, dissolution or winding-up of the affairs of the Company or any of its Subsidiaries;

- (h) the commencement of any bankruptcy, insolvency, reorganization or similar proceeding under any state or federal laws;
- (i) any Related Party Transaction;
- (j) any amendment, waiver or modification of this Agreement or the organizational documents of the Company or any of its Subsidiaries;
- (k) any merger or consolidation of the Company or any of its Subsidiaries with or into any other entity (whether by amalgamation, consolidation, recapitalization, reorganization, spin-off or other similar combination or otherwise);
- (l) any acquisition or purchase (whether of stock or assets) in a transaction or series of related transactions of any material property and assets;
- (m) any sale, license or disposition of any material property or assets, whether tangible or intangible, of the Company or any of its Subsidiaries;
- (n) approving or amending the nomination, qualification and election procedures for electing and/or selecting Membership Group Sustaining Member representation on the Board;
- (o) amending any Eligibility Criteria or the definitions and/or qualifications of any Membership Group;
- (p) appointment of the independent auditor of the Company;
- (q) engaging any outside legal counsel for the benefit of the Company other than those currently engaged by the Company;
- (r) removal of a Director for cause;
- (s) removal of a Member other than pursuant to a Membership Termination Event;
- (t) approval of a Transfer of any of FS-ISAC's membership interest in the Company other than to a Permitted Transferee;
- (u) changing or removing the Company's outside general and/or antitrust counsel;
- (v) change in the registered office and registered agent;
- (w) approving material changes and/or new versions to the FDX API;
- (x) any issuance of membership interests or securities convertible into membership interests of the Company or the incurrence of any indebtedness; and
- (y) any public announcement, press release, promotional materials or statements intended to be shared with the general public not previously approved pursuant to a communications plan or, in the reasonable opinion of the Managing Director and both Co-Chairpersons, is not urgently required to be disseminated without Board approval.

Section 4.11. *Actions Requiring the Approval of FS-ISAC.* Notwithstanding anything that may be deemed to the contrary in this Agreement and subject to the approval by the Board of Directors pursuant to Section 4.10, the Company shall not take, and shall not cause or permit any of the Company's Subsidiaries to take, or commit to take, any of the following actions without the prior approval of the ISAC Director, it being understood and agreed that FS-ISAC will consider all recommendations and requests for approval in good faith and will not unreasonably withhold, condition or delay any request for consent:

- (a) any amendment, waiver or modification of this Agreement or the organizational documents of the Company or any of its Subsidiaries;
- (b) any merger or consolidation of the Company or any of its Subsidiaries with or into any other entity (whether by amalgamation, consolidation, recapitalization, reorganization, spin-off or other similar combination or otherwise);
- (c) any acquisition or purchase (whether of stock or assets) in a transaction or series of related transactions of any material property and assets;
- (d) any sale or disposition of any material property or assets of the Company or any of its Subsidiaries;
- (e) any issuance of equity or securities convertible into equity of the Company or the incurrence of any indebtedness;
- (f) approval of the Company's annual budget, beginning with the 2019 annual budget, including Membership Dues; and
- (g) approval of any matter that FS-ISAC in its reasonable discretion believes would be materially adverse to FS-ISAC.

Section 4.12. *Action by Directors Without Meeting.*

- (a) Any action required or permitted by Applicable Law or by this Agreement to be taken by the Board of Directors may be taken by written consent, without a meeting, if the action is evidenced by one or more written consents describing the action taken and is signed by the Directors having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Directors entitled to vote thereon were present and voted.
- (b) Any action taken under this Section 4.12 shall be effective when the Directors required to approve such action have signed the consent, unless the consent specifies a different effective date.

Section 4.13. *Minutes and Consents.* The decisions and resolutions of each meeting of the Board of Directors shall be reported in minutes. The minutes and the written consents of the Board of Directors shall be filed in the minute book of the Company at the principal place of operations of the Company.

Section 4.14. *Compensation of Directors.* Directors shall not be entitled to compensation from the Company for any of their services; *provided*, that upon determination of the Board of Directors, the Company may reimburse the Directors for their reasonable out-of-pocket expenses incurred in connection with attending meetings of the Board of Directors.

Section 4.15. *Secretary.* The Board of Directors shall designate from time to time a Director to serve as the secretary of the Board of Directors (the “**Secretary**”). The Secretary shall keep minutes of all meetings of the Board of Directors and perform such other duties as may from time to time be prescribed by the Board of Directors. In the absence of the Secretary at a Board of Directors meeting, the Board of Directors may appoint any person to act as secretary of such meeting.

Section 4.16. *Observers.* The Board of Directors may provide Observer Rights in accordance with Section 4.10(e) to any Advisor or any other Person as determined by the Board of Directors to attend any meeting of the Board of Directors as non-voting observers who adhere to the Observer Rights standards set forth herein or otherwise adopted by the Board of Directors.

Section 4.17. *Committees; Working Groups.* From time to time the Board of Directors may designate one or more committees or working groups (collectively, “**Working Groups**”), with such composition as the Board of Directors determines. Any such Working Group shall have and may exercise the powers and authority provided in the resolution of the Board of Directors designating such Working Group; *provided* that no Working Group may be authorized to approve any matter requiring approval of the Board of Directors pursuant to Section 4.10 or pursuant to any other express provision in this Agreement. Each Working Group shall keep regular minutes of its meetings and report the same to the Board of Directors when requested. Unless the Board of Directors otherwise provides, each Working Group designated by the Board of Directors may make, alter and repeal rules for the conduct of its business in the manner set forth in its charter; *provided*, however, the Board retains the right to make, alter and repeal any such rules and to amend the charters of any Working Group. The Board of Directors may appoint (or disband) one or more advisory boards to advise and assist the Board of Directors (the “**Advisory Boards**”). The Advisory Boards shall not have any authority to manage the Company and shall not have fiduciary duties to the Company unless otherwise set forth in the Advisory Board’s charter as approved by the Board of Directors.

ARTICLE 5 OFFICERS

Section 5.01. *Appointment of Officers.* The Board of Directors shall appoint the Executive Officers of the Company in accordance with this Section 5.01 and Section 4.10(a).

(a) The Board of Directors shall recruit and appoint one or more individuals to lead the day-to-day operations of the Company (a “**President**” or “**Managing Director**”). The President/Managing Director shall serve as an ex officio non-voting member of the Board of Directors, but shall not be subject to the term limits applicable to Directors. The President/Managing Director may engage Agents and employees who shall have such authority and perform such duties as may be prescribed by the President/Managing Director, subject to the

oversight of the Board of Directors. The President/Managing Director may remove any Agent or employee at any time with or without cause.

(b) The day-to-day operations of the Company shall be overseen and implemented by the President/Managing Director, Co-Chairs, Secretary and Treasurer (in each case, to the extent such positions are then filled) (collectively, the “**Executive Officers**”) and such other officers as the Board of Directors or Executive Officers may from time to time determine (such other officers and the Executive Officers, collectively, the “**Officers**”). Each Officer shall hold office until removal or a successor shall have been duly elected or appointed and shall have qualified or until such Officer’s death, resignation or removal in the manner provided in this Agreement. Any one Person may hold more than one office. The authority and responsibility of the Officers shall include, but shall not be limited to, the carrying out of the Company’s operations and affairs on a day-to-day basis and such other duties as the Board of Directors (or the Executive Officers, as applicable) may from time to time delegate to them. Unless the Board of Directors otherwise decides, if the title is one commonly used for officers of a corporation formed under the Delaware General Corporation Law, the assignment of such title shall constitute the delegation to such Officer of the authority and duties that are normally associated with that office (subject in all respects to the terms, conditions and limitations set forth herein).

Section 5.02. *Removal of Officer.* An Officer may be removed as an Officer as permitted pursuant to any employment or other agreement between the Officer and the Company or, in the absence of such agreement or in the event such agreement does not address removal, an Executive Officer may be removed by the Board of Directors pursuant to Section 4.10(a).

Section 5.03. *Actions Requiring Approvals.* No Officer shall have authority to take or cause or commit the Company or any of its Subsidiaries to take any of the actions described in Section 4.10 or in any other express provision in this Agreement requiring approval of the Board of Directors without obtaining the approvals described therein.

Section 5.04. *Duties of Officers Generally.* The Officers, in the performance of their duties as such, shall owe to the Company duties of loyalty and due care of the type owed by the officers of a corporation to such corporation and its equity holders under the laws of the State of Delaware.

ARTICLE 6 LIMITATIONS ON AUTHORITY OF THE SOLE MEMBER; DUTIES OF THE SOLE MEMBER

Section 6.01. *Limitation of Authority.* (a) FS-ISAC is not an Agent of the Company and does not have any authority to act on behalf of the Company, execute any instrument in connection with the carrying on of the Company’s operations and affairs, or otherwise bind the Company in any matter, unless expressly authorized to do so by the Board of Directors.

(b) Each Director, acting solely in his or her capacity as a Director, is not an Agent of the Company and does not have any authority to act on behalf of the Company, execute any instrument in connection with the carrying on of the Company’s operations and affairs, or

otherwise bind the Company in any manner, unless expressly authorized to do so by the Board of Directors.

(c) Each Officer, to the extent of the power and authority delegated to such Officer by the Board of Directors or as otherwise set forth herein, is an Agent of the Company for the purpose of its operations and affairs. The act of any Officer, including, but not limited to, the execution in the name of the Company of any instrument for apparently carrying on in the usual way the operations and affairs of the Company, shall bind the Company, unless the Officer so acting has, in fact, no authority to act for the Company in the particular matter.

(d) If FS-ISAC, a Director or an Officer takes any action or binds the Company in violation of this Section 6.01, or any other provision of this Agreement, FS-ISAC, such Director or Officer shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company and its Directors harmless with respect to the loss and expense (including, without limitation, attorneys' fees and disbursements).

Section 6.02. *Elimination of Fiduciary Duties of Directors; Corporate Opportunity Waiver.*

(a) This Agreement is not intended to, and does not, create or impose any fiduciary duty on any Director or any of their respective Affiliates. Pursuant to Section 18-1101 of the Delaware Act, any fiduciary duties of a Director to the Company or FS-ISAC that would otherwise apply at law or in equity are hereby eliminated to the fullest extent permitted under the Delaware Act and any other Applicable Law; *provided*, that the foregoing will not be deemed to eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(b) In no event shall a Director be liable to the Company, any Subsidiary of the Company or to any other Director by virtue of the fact that such Director fails to bring an opportunity to the attention of the Company or any of its Subsidiaries or presents an opportunity to an Affiliate of such Director rather than, or in addition to, presenting such opportunity to the Company. Without limiting the generality of the foregoing, the Company expressly acknowledges and agrees that (i) no Director will be prohibited by virtue of his or her service on the Board of Directors from pursuing and engaging in any relationships, ventures, agreements or arrangements with, or ownership of, Persons engaged in the same or a similar purpose conducted by the Company and its Subsidiaries, either directly or through Affiliates (an “**Other Activity**”) and (ii) nothing contained herein shall limit, prohibit or restrict any current or former Director from serving on the board of directors or other governing body or Working Group of any Other Activity.

Section 6.03. *Miscellaneous.* The rights and authority conferred in this ARTICLE 6 shall not be exclusive of any other right which any Person may otherwise have or hereafter acquire. Neither the amendment of this ARTICLE 6, nor, to the fullest extent permitted by the Delaware Act, any modification of law, shall eliminate or reduce the effect of this ARTICLE 6 in respect of any acts or omissions occurring prior to such amendment or modification.

ARTICLE 7
INDEMNITY OF THE DIRECTORS, FS-ISAC AND OFFICERS

Section 7.01. *Indemnification by the Company.*

(a) To the fullest extent permitted by Applicable Law, the Company shall indemnify each Covered Person for all losses, damages, liabilities, deficiencies, claims, interest, awards, judgment, penalties, costs and expenses (including reasonable attorneys' fees, costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (collectively, "**Losses**") incurred by such Covered Person by reason of (i) any claim or demand made by any third party arising out of or resulting from any act or omission on the part of the Company, including the breach or failure to perform any agreement or covenant made by the Company and (ii) any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any Losses incurred by such Covered Person by reason of gross negligence, bad faith or intentional misconduct with respect to such acts or omissions; *provided*, that any indemnity under this Section 7.01 shall be provided out of and to the extent of Company assets only, and no other Covered Person shall have any personal liability on account thereof. As used in this Agreement, "**Covered Person**" means FS-ISAC, any Affiliate of FS-ISAC, any officer, director or employee of any of the foregoing, each Director, each Officer and any other Person who serves as an employee or Agent of the Company.

(b) (i) In the event that any claim, demand, action, suit or proceeding shall be instituted or asserted or any Losses shall arise in respect of which indemnity may be sought by a Covered Person pursuant to this Section 7.01, such Covered Person shall promptly notify the Company thereof in writing. The failure to provide notice, however, shall not release the Company from any of its obligations hereunder except to the extent that the Company is actually prejudiced by such failure.

(ii) The Company shall have the right, exercisable subject to the approval of the Board of Directors (excluding any Director with a conflict of interest in the matter), to participate in and control the defense of any such claim, demand, action, suit or proceeding and, in connection therewith, to retain counsel reasonably satisfactory to each Covered Person, at the Company's expense, to represent each Covered Person and any others the Company may designate in such claim, demand, action, suit or proceeding. The Company shall keep the Covered Person advised of the status of such claim, demand, action, suit or proceeding and the defense thereof and shall consider in good faith recommendations made by the Covered Person with respect thereto.

(iii) In any such claim, demand, action, suit or proceeding, any Covered Person shall have the right to retain its own counsel at its own expense; *provided*, that the fees and expenses of such Covered Person's counsel shall be at the expense of the Company if (A) the Board of Directors and such Covered Person shall have mutually agreed to the retention of such counsel, (B) the Company shall have failed, within a reasonable time after having been notified of the existence of an indemnified claim, to assume the defense of such indemnified claim or (C) the named parties to any such claim, demand, action, suit or proceeding (including any

impleaded parties) include both the Company and such Covered Person and representation of both parties by the same counsel would be inappropriate in the judgment of the Covered Person (as evidenced by written advice of counsel) due to actual or potential differing interests between them and the Company shall have failed, within a reasonable time after having been notified of the Covered Person's objection under this Section 7.01(b)(iii) to such joint representation, to retain counsel for such Covered Person reasonably satisfactory to such Covered Person. It is understood that the Company shall not, in respect of the legal expenses of any Covered Person, in connection with any claim, demand, action, suit or proceeding or related claims, demands, actions, suits or proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel reasonably satisfactory to the Company) for all such Covered Persons and that all such fees and expenses shall be reimbursed as they are incurred; *provided*, that if there exists or is reasonably likely to exist a conflict of interest that would make it inappropriate in the judgment of a Covered Person (as evidenced by written advice of counsel) for the same counsel to represent such Covered Person and any other Covered Person, then such Covered Person shall be entitled to retain its own counsel, in each jurisdiction for which the Covered Person reasonably determines counsel is required, at the expense of the Company.

(iv) The Company shall not be liable for any settlement of any claim, demand, action, suit or proceeding effected without its written consent (which consent shall not be unreasonably withheld or delayed). The Company shall not affect any settlement of any pending or threatened claim, demand, action, suit or proceeding in respect of which any Covered Person is seeking indemnification hereunder without the prior written consent of each such Covered Person (which consent shall not be unreasonably withheld or delayed), unless such settlement includes an unconditional release of each such Covered Person from all liability and claims that are the subject matter of such claim, demand, action, suit or proceeding.

(v) As necessary or useful to the defending party in effecting the foregoing procedures, the parties shall cooperate in the execution and delivery of agreements, instruments and other documents and in the provision of access to witnesses, documents and property (including access to perform interviews, physical investigations or other activities).

(vi) No amendment or repeal of any of the provisions of this Agreement shall limit or eliminate the benefits provided to Covered Persons under this ARTICLE 7.

Section 7.02. *Advancement of Expenses.* To the fullest extent permitted by Applicable Law, expenses (including legal fees) actually and reasonably incurred by a Covered Person in defending any third-party claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such third-party claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined by the Board of Directors that the Covered Person is not entitled to be indemnified therefor as authorized in this ARTICLE 7.

Section 7.03. *Insurance.* The Company will maintain, on its own or through FS-ISAC, D&O liability insurance in an amount and under terms to be determined by the Board. The Company may also purchase and maintain such additional insurance as the Board deems appropriate on behalf of any Person who is or was a Covered Person of the Company or any of

its Subsidiaries, or is or was serving at the request of the Company or any of its Subsidiaries as a manager, officer, director, employee or Agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise against any Losses incurred by such Person in any such capacity or arising out of his or her status as such, whether or not the Company or any of its Subsidiaries would have the power to indemnify such Person against such liability under the Delaware Act.

ARTICLE 8 DISSOLUTION, CESSATION AND TERMINATION

Section 8.01. *Dissolution.*

(a) Except as otherwise set forth in this ARTICLE 8, the Company is intended to have perpetual existence. FS-ISAC may not withdraw as the sole member of the Company except in connection with a transfer of its sole membership interest in the Company to a Permitted Transferee or that is approved by the Board of Directors in accordance with Section 4.10 of this Agreement.

(b) To the extent permitted by law, neither Section 18-801 of the Delaware Act, nor any other provision of the Delaware Act or any other law, shall apply to the Company so as to produce dissolution of the Company except as contemplated in this Section 8.01.

(c) The Company shall be dissolved only upon the occurrence of the first to occur of the following events: (i) judicial dissolution of the Company pursuant to Section 18-802 of the Delaware Act; or (ii) a decision to dissolve the Company taken in accordance with Section 4.10 of this Agreement.

Section 8.02. *Effect of Dissolution.* Upon dissolution, the Company shall continue solely for the purposes of winding-up its affairs in an orderly manner, liquidating its assets, and satisfying or making reasonable provisions for the satisfaction of the claims of its creditors, and neither FS-ISAC nor the Board of Directors (or any member thereof) shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding-up of the Company's operations and affairs; *provided*, that all covenants contained in this Agreement and obligations provided for in this Agreement shall continue to be fully binding upon FS-ISAC until such time as the property or the proceeds from the sale thereof have been distributed pursuant to ARTICLE 9 and the Company has terminated.

ARTICLE 9 WINDING UP, LIQUIDATION, DISTRIBUTION OF ASSETS

Section 9.01. *Accounting in Connection with Dissolution.*

(a) Upon dissolution, the Board of Directors, or the Persons selected by the Board of Directors (as applicable, the "**Liquidators**"), shall diligently proceed to wind up the affairs of the Company. The costs of liquidation shall be borne as an expense of the Company. Until final distribution in accordance with Section 9.01(b)(iv), the Liquidators shall continue to operate the assets of the Company with all of the power and authority of the Board of Directors.

- (b) The Liquidators shall:
- (i) prepare accounts of the Company and its assets and liabilities;
 - (ii) transfer or otherwise liquidate all of the Company's assets;
 - (iii) discharge all liabilities of the Company, including liabilities to FS-ISAC as a creditor, to the extent otherwise permitted by Applicable Law and establish such reserves as may be reasonably necessary to provide for contingencies or liabilities of the Company; and
 - (iv) after discharging all of the Company's liabilities, distribute the remaining assets of the Company, either in cash or in kind to FS-ISAC.

Notwithstanding the foregoing, if the Company is exempt from Federal taxation pursuant to Section 501(a) of the Code (or other applicable provision) at the time of any such liquidation, dissolution or winding-up of the Company's affairs, then the Board shall make such distribution in a manner which the Board believes is consistent with such tax exempt status and the applicable requirements of Section 501(c) of the Code and any related regulations.

(c) A reasonable time shall be allowed for the orderly winding-up of the operations and affairs of the Company and the liquidation of its assets pursuant to this Section 9.01 in order to minimize any losses otherwise attendant upon such winding-up.

Section 9.02. *Termination; Certificate of Cancellation.* On completion of the payment or discharge of all debts, liabilities and obligations (or establishment of adequate provisions therefor) and distribution of all remaining Company assets as provided herein, the Company is terminated (and the Company shall not be terminated prior to such time), and the Board of Directors (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 Company. The Company shall be deemed to continue in existence for all purposes of this Agreement until it is terminated pursuant to this Section 9.02.

Section 9.03. *Termination of Agreement upon Dissolution; Survival.* All provisions of this Agreement shall terminate upon termination of the Company, except as expressly provided otherwise herein (it being agreed that this Section 9.03 shall survive the termination of the Company).

ARTICLE 10 GENERAL PROVISIONS

Section 10.01. *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the conflicts of laws rules of such state.

Section 10.02. *Jurisdiction.* The parties hereby agree that any 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 transactions contemplated hereby shall be brought in any federal or state court located in the State of Delaware, and each of the parties hereby irrevocably 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 that 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. 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 that service of process on such party as provided in Section 10.10 shall be deemed effective service of process on such party.

Section 10.03. *WAIVER OF JURY TRIAL.* EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 10.04. *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 10.05. *Headings, Exhibits and Interpretation.* The words “hereof,” “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. References to this Agreement means this Agreement, together with all Exhibits and Schedules hereto. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. All references to dollars or “\$” shall be references to US dollars.

Section 10.06. *Rights and Remedies Cumulative; Specific Enforcement.*

(a) The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

(b) Each party hereto acknowledges that the remedies at law of the other party for a breach or threatened breach of this Agreement would be inadequate and, in recognition of this fact, any party to this Agreement, without posting any bond, and in addition to all other remedies that may be available, shall be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy that may then be available in any federal or state court located in the State of Delaware, in addition to any other remedy to which they are entitled at law or in equity.

Section 10.07. *Successors and Assigns.* All covenants and agreements contained in this Agreement shall bind and inure to the benefit of the Company and FS-ISAC and each of 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.

Section 10.08. *Creditors.* None of the provisions of this Agreement shall be for the benefit of, or enforceable by, any creditors of the Company or any of its Affiliates or by any Person not a party hereto. No creditor of the Company or any of its Subsidiaries shall have any right, under Section 18-502(b) of the Delaware Act or otherwise, to enforce any obligation of FS-ISAC to make any contribution to the Company, other than as set forth herein.

Section 10.09. *Counterparts; Effectiveness.* This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Section 10.10. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission and e-mail transmission, so long as a receipt of such e-mail is requested and received) and shall be given,

if to FS-ISAC, to:

FS-ISAC, Inc.
12120 Sunset Hills Road, Suite 500
Reston, VA 20190
Attention: Administration Telephone
No.: (877) 612-2622
E-mail: admin@fs-isac.com

if to the Company, to:

Financial Data Exchange, LLC
c/o FS-ISAC, Inc.
12120 Sunset Hills Road, Suite 500
Reston, VA 20190
Attention: Managing Director
E-mail: admin@financialdataexchange.org

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other party hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 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 10.11. *Waiver; Amendment.*

(a) No provision of this Agreement may be amended, waived or otherwise modified except by an instrument in writing executed by the Company, with approval of the Board of Directors, and FS-ISAC in accordance with Sections 4.10 and 4.11, respectively, of this Agreement. Any party may waive any provision of this Agreement with respect to itself by an instrument in writing executed by the party against whom the waiver is to be effective.

(b) The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

Section 10.12. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority in a final and non-appealable judgment to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original economic intent of the parties as closely as possible in an acceptable manner so that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 10.13. *General Statutory Override.* To the extent permitted by Applicable Law, the provisions of this Agreement shall govern over all provisions of the Delaware Act which would apply but for (and inconsistently with) this Agreement. For each question (a) with respect to which the Delaware Act provides a rule (the “**Default Rule**”), but permits a limited liability company’s operating agreement to provide a different rule and (b) which is expressly addressed by this Agreement, the Default Rule shall not apply to the Company.

Section 10.14. *Fees and Expenses.* All costs and expenses incurred in connection with the preparation of this Agreement, or any amendment or waiver hereof, and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 10.15. *Cost Sharing Agreement.* The Company and FS-ISAC shall as promptly as practicable after the date hereof determine the nature, scope and other terms of the support to be provided by FS-ISAC to the Company and shall enter into an agreement setting forth the parties’ respective obligations. FS-ISAC and the Company agree that the support FS-ISAC shall provide to the Company shall include (i) employment and compensation of all personnel

and related matters (including payroll and provision of benefits) allocated to Company, (ii) Member administration (including new Member enrollment, billing and collection of dues), (iii) public and media relations, (iv) general administrative functions, (v) information technology and technology infrastructure, (vi) facilities and (vii) such other support as is agreed to between FS-ISAC and the Company.

Section 10.16. *Third Party Beneficiaries.* The Members are intended third-party beneficiaries of this Agreement and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

Section 10.17. *Entire Agreement.* This Agreement and the Membership Agreement (including the Exhibits (such as the FDX Intellectual Property Rights Agreement) and Schedules thereto) contain the entire agreement among the parties with respect to the matters described herein and therein, and supersede all prior agreements and understandings, written or oral, with respect thereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date set forth on the first page of this Agreement.

FINANCIAL DATA EXCHANGE, LLC

By: _____
Name:
Title:

FS-ISAC, INC.

By: _____
Name:
Title:

SCHEDULE A*

**Financial Data Exchange, LLC Limited Liability Company Agreement List of
Sustaining Members, Directors and Alternate Directors**

For a current list of the Company's Sustaining Members, Directors and Alternate Directors, please contact the Secretary of the Company. The Schedule A maintained by the Secretary of the Company shall be deemed the current list of the Company's Sustaining Members, Directors and Alternate Directors.