# FIFTH AMENDED AND RESTATED

# LIMITED LIABILITY COMPANY AGREEMENT

# OF

# HEDERA HASHGRAPH, LLC

Dated as of April 9, 2025

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

**OF**

**HEDERA HASHGRAPH, LLC**

**THIS FIFTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT** (this "**Agreement**") is entered into as of April 9, 2025, by and among the members of Hedera Hashgraph, LLC set forth in Schedule 1 attached hereto (each a "**Member**" and, collectively, the "**Members**") for the purpose of continuing Hedera Hashgraph, LLC (the "**Council**"), a limited liability company organized under the Delaware Limited liability company Act, 6 Del. C. § 18-101, et seq., as amended (the "**DLLCA**").

**WHEREAS**, the Council was formed as a limited liability company in accordance with the DLLCA on September 8, 2017;

**WHEREAS**, the Council has been formed for the purpose of acting as the governing body for a distributed public ledger based on the hashgraph consensus algorithm (the "**Hedera Network**");

**WHEREAS**, it is not the purpose of the Hedera Network to transmit and store personal data;

**WHEREAS**, the parties desire to admit the Entities identified on Schedule 1 hereto as Members from time to time and to amend the Fourth Amended and Restated Limited Liability Company Agreement of the Council, dated as of April 6, 2022, as set forth herein to provide for the foregoing; and

**WHEREAS**, the Members desire to continue the Council in accordance with the DLLCA and pursuant to the terms and conditions contained herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained 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
## ORGANIZATIONAL MATTERS

**Section 1.1 Continuation**. The Members hereby agree to continue the Council as a limited liability company under the DLLCA for the purposes and upon the terms and conditions hereinafter set forth. The rights and liabilities of the Members shall be as provided in the DLLCA, except as otherwise expressly provided herein. In the event of any inconsistency between any terms and conditions contained in this Agreement and any non-mandatory provisions of the DLLCA, the terms and conditions contained in this Agreement shall govern.

**Section 1.2 Name**. The name of the Council is Hedera Hashgraph, LLC. The Council may also conduct business at the same time under one or more fictitious names if the Board of Directors of the Council (the "**Board**") determines that such is in the best interests of the

Council. The Board may change the name of the Council, from time to time, in accordance with Applicable Law.

**Section 1.3 Places of Business**. The Council may maintain offices and places of business at such places within or outside the State of Delaware as the Board deems advisable.

**Section 1.4 Business Purpose**. The Council will engage in the business of maintaining the Hedera Network and various activities related to that business. The Council may also engage in any and all other lawful business, purpose or activity related thereto in which a limited liability company may be engaged under Applicable Law (including, without limitation, the DLLCA).

**Section 1.5 Certificate of Formation; Filings**.

(a) The Certificate has been filed with the Secretary of State of the State of Delaware, and the Council thus has been formed as a limited liability company subject to the provisions of the DLLCA.

(b) The Council hereby (i) confirms that the person who signed the Certificate as filed with the Secretary of State of the State of Delaware (the "**Organizer**") was an "authorized person" (as such phrase is used in the DLLCA) for the purposes of signing and so filing the Certificate at that time and (ii) agrees that the Council will indemnify the Organizer for, and hold the Organizer harmless from and against, all costs, expenses, claims, damages, liabilities, losses, and threatened, pending and completed actions, suits and proceedings (whether civil, criminal, administrative or investigative) incurred or suffered by or brought against the Organizer based upon, or arising out of or in connection with, any act taken by the Organizer in connection with forming the Council, including without limitation all fees and expenses incurred by the Organizer in connection with causing the Certificate to be filed in the office of the Secretary of State of the State of Delaware, all court costs, attorneys' fees and other costs relating in any way to the Organizer's defense and/or settlement of any such claim, action, suit or proceeding, and all judgments rendered against the Organizer in connection with any such claim, action, suit or proceeding.

**Section 1.6 Designated Agent for Service of Process**. So long as required by the DLLCA, the Council shall continuously maintain a registered office and a designated and duly qualified agent for service of process on the Council in the State of Delaware. As of the date of this Agreement, the registered agent is Capitol Services, Inc. and the registered office of the Council shall be at is c/o Capitol Services, Inc., 1785 South State Street, Suite B, Dover, DE 19901.

**Section 1.7 Term**. The term of the Council commenced on the date that the Certificate was filed with the Office of the Delaware Secretary of State and shall continue until the Council is dissolved in accordance with Article 10 ("*Dissolution, Liquidation, and Termination of the Council*"). Notwithstanding the dissolution of the Council, the existence of the Council shall continue for the purposes set forth in Article 10 until termination pursuant to this Agreement.

**Section 1.8 Board, Board Designees, and Officers as "Authorized Persons"**. The Board (as defined in Section 1.2), all individuals and entities (if any) designated by the Board from time to time as "authorized persons", and the officers, if any, of the Council, hereby are each designated an "authorized person" (as such phrase is used in the DLLCA) to execute, deliver and file any amendments and restatements of the Certificate and any other certificates and other documents and instruments necessary or desirable in order for the Council to comply with the laws of the State of Delaware or to qualify to do business in any jurisdiction in which the Board or an appropriate officer of the Council shall deem it desirable for the Council to conduct business or, whenever the Board or an appropriate officer of the Council shall deem it appropriate for the Council to cease doing business in any such jurisdiction and withdraw therefrom, to revoke any related appointments of agents or attorneys for service of process or surrender such qualification or authority to do business in such jurisdiction.

## ARTICLE 2
## DEFINITIONS

Capitalized words and phrases used and not otherwise defined elsewhere in this Agreement shall have the following meanings:

**Section 2.1** "**Act**" is defined in the Preamble.

**Section 2.2** "**Affiliate**" means (a) with respect to a specified Entity or person, any Entity or person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Entity or person or (b) with respect to a person, any member of the Immediate Family of such specified person. For purposes of this definition, "control," when used with respect to any specified Entity or person, shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such Entity, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise; and the terms "controlling" and "controlled" shall have correlative meanings.

**Section 2.3** "**Applicable Law**" means all applicable provisions of (a) constitutions, treaties, statutes, laws (including the common law), rules, regulations, decrees, ordinances, codes, proclamations, declarations or orders of any Governmental Authority; (b) any consents or approvals of any Governmental Authority; and (c) any orders, decisions, advisory or interpretative opinions, injunctions, judgments, awards, decrees of, or agreements with, any Governmental Authority.

**Section 2.4** "**Bankruptcy**" means, with respect to any Entity, the occurrence of any event described in Section 18-304 of the DLLCA with respect to such Entity.

**Section 2.5** "**Capital Contribution**" means, with respect to any Member, cash contributed to the Council by such Member at any time in accordance with Article 3, which may include the Initial Capital Contribution.

**Section 2.6** "**Cause**" means, with respect to any Member, any of the following: a violation of any Applicable Laws (including, for the avoidance of doubt, designation as a Specially Designated National and Blocked Person by the Office of Foreign Assets Control), a

material breach of this Agreement or the Hedera Node Policy: Hosting Terms & Deployment Guide ("**Hedera Node Policy**") as amended from time to time, a material breach of the Governing Member Joinder Agreement, a material breach of any Hedera Policies set forth on Exhibit B, or any Bankruptcy of a Member. A Member Change of Control will also be considered "Cause" if (a) such Member Change of Control was not reported by the Member to the Council within a period of time not later than seven (7) calendar days after becoming public information, or (b) the Board determines that such Member Change of Control qualifies as "Cause" within thirty (30) days of becoming aware of the Member Change of Control.

**Section 2.7** "**Certificate**" means the Certificate of Formation of the Council filed on September 8, 2017, under the DLLCA in the Office of the Secretary of State of the State of Delaware for the purpose of forming the Council as a Delaware limited liability company, as amended on June 20, 2018, and any duly authorized, executed and filed amendments or restatements thereof.

**Section 2.8** "**Council Change of Control**" means the sale, exclusive license or other disposition of all or substantially all the assets of the Council; any merger, consolidation or acquisition of the Council with, by or into another corporation, entity or person; or any change in the ownership of more than fifty percent (50%) of the Council, other than through the admission and withdrawal of Members in accordance with the provisions of Article 4 ("Members").

**Section 2.9** "**Code**" means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

**Section 2.10** "**Encumbrance**" means a pledge, alienation, mortgage, hypothecation, encumbrance or similar collateral assignment by any other means, whether for value or no value and whether voluntary or involuntary (including, without limitation, by operation of law or by judgment, levy, attachment, garnishment, bankruptcy or other legal or equitable proceedings).

**Section 2.11** "**Entity**" means and includes a partnership, a limited liability company, a joint venture, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof or any entity similar to any of the foregoing.

**Section 2.12** "**Governmental Authority**" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.

**Section 2.13** "**Interest**" means the entire ownership interest of a Member in the Council at any particular time, any and all rights to vote and otherwise participate in the Council's affairs, and the rights to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all of the terms and provisions of this Agreement.

**Section 2.14** "**Immediate Family**" means, and is limited to, an individual person's current spouse, parents, current parents-in-law, grandparents, children, siblings and

grandchildren and any trust, estate or other estate-planning vehicle, all of the beneficiaries or beneficial owners of which consist of such individual person and/or such person's current spouse, parents, current parents-in-law, grandparents, children, siblings or grandchildren.

**Section 2.15** "**Malfeasance**" means with respect to any Entity or person, any act or omission which constitutes fraud, bad faith, willful misconduct or gross negligence, whether in respect of the Council or otherwise.

**Section 2.16** "**Member Change of Control**" means the sale of all or substantially all the assets of a Member; any merger, consolidation or acquisition of a Member with, by or into another corporation, other than a merger, consolidation or acquisition effected for internal reorganization purposes, provided that, following such merger, consolidation or acquisition the direct or indirect owners of the outstanding voting securities of the Member immediately prior to such transaction have sufficient rights to direct or vote 50% or more of the outstanding voting securities of the surviving or acquiring entity following such transaction entity or person; or any change in the ownership of more than fifty percent (50%) of a Member.

**Section 2.17** "**Members**" means, collectively, the Entities designated as either the Original Member or the Governing Members, as reflected in the books and records of the Council, as amended from time to time, each in its capacity as a member of the Council.

**Section 2.18** "**Transfer**" means a sale, transfer, assignment, gift, bequest or disposition by any other means, whether for value or no value (and by merger, derivative interest or otherwise) and whether voluntary or involuntary (including, without limitation, by realization upon any Encumbrance or by operation of law or by judgment, levy, attachment, garnishment, bankruptcy or other legal or equitable proceedings). The term "Transferred" shall have a correlative meaning.

## ARTICLE 3
## CAPITAL CONTRIBUTIONS

**Section 3.1 General**. Except as otherwise required by law or pursuant to Sections 3.2 and 3.3, no Member shall be permitted or required to make any additional Capital Contributions to the Council. The Members' aggregate Capital Contributions shall be set forth at all times on the Council's books and records.

**Section 3.2 Initial Capital Contributions**. Each Member shall be deemed to have purchased its Interest for an initial in-kind contribution of services valued at US$100.00 (the "**Initial Contribution**") and other good and valuable consideration, the receipt of which is acknowledged by the addition of such Member to Schedule 1 upon the date of such Member's admission to the Council, which schedule shall be amended by the Secretary to reflect the admission of Members pursuant to this Agreement.

**Section 3.3 Additional Capital Contributions**. Upon the approval of at least eighty percent (80%) of the Members, the Members shall be required to make Capital Contributions to the Council on a pro rata basis in accordance with their respective Interests as and when necessary to satisfy extraordinary expenses or other similar liabilities of the Council. Notwithstanding anything else in this Agreement, any Member that has not approved such

additional Capital Contribution may immediately withdraw from the Council by providing the Chair with written notice thereof within five (5) days of any such approval of such additional Capital Contribution and, in connection with such withdrawal, shall not be required to make such additional Capital Contribution.

**Section 3.4 Member Capital**. Except as otherwise provided in this Agreement or with the prior written consent of the Board: (a) no Member shall demand or be entitled to receive a return of, or interest, on its Capital Contributions, and (b) no Member shall withdraw any portion of its Capital Contributions or receive any distributions from the Council as a return of capital on account of such Capital Contributions.

**Section 3.5 Member Loans**. No Member shall be required to make any loans or otherwise lend any funds to, act as a surety or endorser for, assume one or more specific obligations of, provide collateral for, or enter into other credit, guarantee, financing or refinancing arrangements with, the Council.

## ARTICLE 4
## MEMBERS

**Section 4.1 Classes of Interests**. The Council may establish classes of Interests from time to time with the approval of at least two-thirds of the Members. Each such class shall have the relative rights, powers, duties, and obligations specified with respect to such class. A schedule of all Members and classes of Interests shall be attached hereto on Schedule 1.

**Section 4.2 Original Member**. The Original Member is Swirlds Group, LLC. The Original Member shall have the same rights and responsibilities as every Governing Member of the Council, except as otherwise provided in this Agreement. The Original Member shall have one vote on all issues submitted for Member votes. The Original Member shall be a permanent Member of the Council and the nomination, term, renewal and other terms set forth in Section 4.3 shall not apply to the Original Member, unless specified; provided, however, that the Original Member shall be entitled to vote to elect Governing Members in the same fashion as any other Member.

**Section 4.3 Governing Members**.

(a) Number, Initial Appointment. The Council may issue up to thirty-nine (39) Interests to Members who will each participate in the Council's governance and operate a Node pursuant to Section 8.1 (each such Member, other than the Original Member, a "**Governing Member**"). Each Governing Member shall have one vote on all issues submitted for Member votes. One of the thirty-nine (39) Interests shall be reserved for the Original Member in all cases. The initial twenty-five (25) Governing Members were appointed by the Original Member for the term set forth opposite such initial Governing Member's name in Schedule 1. After April 6, 2022, Governing Members shall be elected to the Council by the Members as described herein.

(b) Member Terms. Subject to Sections 4.3(i), 4.3(j) and 4.3(k) and other than the terms of the initial thirty-nine (39) Governing Members set forth on Schedule 1, Members shall serve for terms of not less than three years (each a "**Term**") with each Governing Member's

Term to end on December 31 of the year in which the three-year anniversary of such Member's admission to the Council falls. For the avoidance of doubt, the Original Member shall not have a Term that ends and shall serve indefinitely. Each Governing Member may be re-elected for a second consecutive Term upon the approval of at least two-thirds of the Members obtained according to the procedure outlined in Section 4.3(d). No Governing Member shall serve for more than two Terms consecutively. For the avoidance of doubt, a Governing Member that has served two consecutive Terms shall be eligible for reelection to the Council on the three-year anniversary of the expiration of its second Term.

(c) Membership Criteria. After the appointment of the initial Governing Members, Governing Members shall be nominated in accordance with this clause (c). The Membership Committee of the Council (the "**Membership Committee**") will propose a set of objective qualifications and criteria for admission to the Council (the "**Membership Criteria**"), which shall be subject to approval by a majority of the Members. The Membership Committee of the Council shall use the Membership Criteria to evaluate Entities that have submitted applications to participate in the Council as Governing Members (such Entities, "**Nominees**") and submit such evaluations to the Council.

(d) Council Elections. The Chair (or Chair's designee) shall timely notify the current Members of any Nominees and fix the time, place, and manner of a vote on the admission of the Nominees to the Council (the "**Council Election**"), subject to Section 4.3(e). Such voting procedures shall be generally in accordance with Section 7.4 ("*Actions by the Members*"), subject to the provisions of this Section 4.3(d). Each Member shall have one (1) vote for every Governing Member vacancy (or upcoming vacancy) and may not vote more than once for any particular Nominee. For each Governing Member vacancy, the Nominee receiving the most votes shall be admitted to the Council; provided, however, that to be admitted a Nominee must receive the votes of at least a majority of the Members. If no Nominee receives the votes of at least a majority of the Members, the Chair (or Chair's designee) shall eliminate the applicant who received the lowest number of votes, and the Members shall vote again. This process may repeat as many times as necessary until either there are no more Nominees or the available Interests have been distributed. The total number of Governing Members can be any number (including zero) provided that the total number of Members, including the Original Member, shall not exceed thirty-nine (39).

(e) Voting Period, Notice Thereof. The Chair (or Chair's designee) is entitled to fix the time, place, and manner of a Council Election; provided, however, that electronic voting shall always be allowed; and provided further that each Member shall have at least fourteen (14) days from receipt of notice of a Council Election pursuant to Section 4.3(d) during which to cast its vote.

(f) Admission. Each Entity elected as a Governing Member pursuant to Section 4.3(d) shall execute, and be bound by the terms and conditions of, a Governing Member Joinder Agreement substantially in the form attached hereto as Exhibit A. The Term of each Governing Member shall begin on the first day that such Entity is listed as a Governing Member on the Council's website (such date, a Member's "**Admission Date**"); provided, however, that no Entity elected for admission to the Council may assume its role as a Governing Member unless one of the Governing Member positions is vacant. Upon admission to the Council, each Member

shall designate a primary representative to the Council (the "**Primary Council Representative**") and up to two alternative representative(s) to the Council (each, an "**Alternate Council Representative**" and, together, the "**Council Representatives**"). The Primary Council Representative shall be a natural person who is an employee, officer, or director of the designating Member or any of its Affiliates. The Alternate Council Representative(s) shall be natural persons who are employees, officers, directors, or authorized agents (as designated in writing and certified annually) of the designating Member or any of its Affiliates. Each Council Member may designate one or more additional natural persons who are employees, officers, directors, or authorized agents of the Council Member to participate in Council governance activities on a case-by-case basis as approved by the Council Chair (each, a "**Council Attendees**"); provided that the Council Chair shall determine the extent of access to Council meetings and materials for Council Attendees.

(g) Renewal Terms. At the end of a Governing Member's first Term within any consecutive six-year period, such Governing Member shall automatically be nominated for a subsequent three-year Term (a "**Renewal Term**"). The vote for a Governing Member's Renewal Term ("**Renewal Vote**") shall follow the procedure set forth in Sections 4.3(d) and 4.3(e), except that the approval of at least two-thirds of the Members shall be necessary to approve a Renewal Term. The Chair (or Chair's designee) may hold a Governing Member's Renewal Vote no more than six months in advance of the expiration of such Member's first Term.

(h) Expiration of Interests of Governing Members. On the final day of each Governing Member's Term that has not been renewed pursuant to Section 4.3(g), the Council shall purchase such Governing Member's Interest at the price equal to any Capital Contributions made by the Governing Member, if any amounts have been paid to the Council, and if no such Capital Contributions have been paid to the Council, the Council shall be deemed to have repurchased the Governing Member's Interest upon the Council's provision of written notice to the Governing Member acknowledging the expiration of such Governing Member's term.

(i) For-Cause Removal and Termination of Interests. Any Governing Member can be removed for Cause. If the Board finds that an event has occurred which constitutes Cause with respect to a Governing Member (each, a "**Breaching Member**"), the Board may call for the repurchase of such Breaching Member's Interest at the price equal to the Initial Capital Contribution plus any additional Capital Contributions. In such instance, the Chair (or Chair's designee) shall timely notify the current Members and fix the time, place, and manner of a vote on whether to retain the Breaching Member as a Member of the Council (a "**Retention Vote**"). The Retention Vote shall require the approval of at least two-thirds of the Members to retain the Member on the Council. If the Breaching Member fails to garner the requisite Retention Vote in support of its position on the Council, the Council shall be entitled to repurchase the Breaching Member's Interest at the price equal to the Initial Capital Contribution plus any additional Capital Contributions.

(j) Removal of Member; Termination of Interests. Any Governing Member can be removed from the Council in the event that at least two-thirds of the Members approve the removal of such Member. If such Member is removed, the Council will be deemed to have repurchased such Member's Interest upon (1) the Council's payment to the Governing Member in an amount equal to such Governing Member's Capital Contributions, if any amounts have

been paid to the Council; or (2) if no such Capital Contributions have been paid to the Council, upon the Council's provision of written notice to the Governing Member.

(k) Withdrawal. Any Member shall be entitled to withdraw from being a Member of the Council at any time by providing the Chair with 30 days' prior written notice thereof. Upon a Member's withdrawal, the Council will be deemed to have repurchased such Member's Interest upon (1) the Council's payment to the Member in an amount equal to such Member's Capital Contributions, if any amounts have been paid to the Council; or (2) if no such Capital Contributions have been paid to the Council, upon the Council's provision of written notice to the Member acknowledging the withdrawal.. Additionally, in the event that the holding of an Interest, the operation of a Node, or the transmission or storage of data on a Node would cause a Member to violate Applicable Laws, such Member shall be entitled to withdraw from the Council with immediate effect by providing written notice to the Chair.

(l) No Employment Relationship. Unless otherwise determined by the Board, a Governing Member, Council Representative, or Committee Member shall not be an employee of the Council, and neither the Council nor the Board shall be under any obligation to make such Governing Member, Council Representative, or Committee Member an employee or to participate in or continue any business relationship in the future with the Council or its respective Affiliates. No Governing Member, Council Representative, or Committee Member shall hold itself out as an employee or agent of the Council in any forum or for any purpose without the written consent of the Board. Unless otherwise determined by the Board, a Governing Member, Council Representative, or Committee Member shall not be treated as an "employee" of the Council for federal or applicable state or local income tax purposes, but rather as a "partner" of the Council. Except as otherwise specifically provided herein, no Governing Member, Council Representative, or Committee Member shall have any right to act for the Council or to bind the Council under agreements or arrangements with third parties.

**Section 4.4 Liability of the Members**. Except as otherwise required by any non-waivable provision of the DLLCA or other Applicable Law: (a) no Member shall be personally liable in any manner whatsoever for any debt, liability or other obligation of the Council, whether such debt, liability or other obligation arises in contract, tort, or otherwise (including, without limitation, with respect to any loans made by a Member); and (b) no Member shall in any event have any liability whatsoever in excess of the following (without duplication) (i) the amount of its Capital Contributions, (ii) the amount of any unconditional obligation of such Member to make additional Capital Contributions to the Council pursuant to this Agreement or other payments expressly required to be made by this Agreement, and (iii) the amount of any wrongful distribution to such Member, if, and only to the extent the return of such wrongful distribution is required by a non-waivable provision of the DLLCA.

**Section 4.5 Outside Activities of the Members**. Nothing herein contained shall prevent or prohibit the Members, Council Representatives, Committee Members, or any Affiliates of the Members from entering into, engaging in or conducting any other activity or performing for a fee any service; acting as a director, officer or employee of any corporation, as a trustee of any trust, as a general partner of any partnership, or as an administrative official of any other business entity; or receiving compensation for services to, or participating in profits derived from, the investments of any business, property, corporation, trust, partnership or other

entity, regardless of whether such activities are competitive with the Council (collectively, the "**Outside Activities**"). In addition, nothing herein shall require any Member, Council Representative, Committee Member, or any Affiliates of any Member to offer any interest in such Outside Activities to the Council or any other Member.

## ARTICLE 5
## TAX MATTERS

**Section 5.1 Tax Treatment**. The Council has elected to be treated as a corporation for U.S. federal and applicable state and local income tax purposes. Any change to the Council's corporate structure that would change the Council's status under U.S. federal tax law will require the approval of at least three-quarters of the Members.

**Section 5.2 Tax Payments**. The Council shall pay all taxes imposed on the Council.

## ARTICLE 6
## DISTRIBUTIONS

**Section 6.1 Distributions Upon Liquidation**. The Council shall make no distributions other than those made in conjunction with the final liquidation of the Council as provided in Article 10 ("*Dissolution, Liquidation, and Termination of the Council*") hereof.

**Section 6.2 Withholding**. The Council does not intend to make distributions other than in accordance with Section 6.1. In the event that a distribution is made, the Council may withhold distributions or portions thereof if the Board determines that it is required to do so by any applicable rule, regulation, or law, and each Member hereby authorizes the Council to withhold from or pay on behalf of or with respect to such Member any amount of federal, state, local or foreign taxes that the Board determines at its sole discretion that the Council is required to withhold or pay with respect to any amount distributed or allocable, if any, to such Member pursuant to this Agreement. Any amounts withheld pursuant to this Section 6.2 shall be treated as having been distributed to such Member.

**Section 6.3 Distributions in Kind**. No right is given to any Member to demand or receive property other than in cash and only to the extent provided in this Agreement.

**Section 6.4 Limitations on Distributions**. The Council does not intend to make distributions other than in accordance with Section 6.1. In the event that a distribution is made and notwithstanding anything to the contrary contained in this Agreement, neither the Council nor the Board, on behalf of the Council, shall be required to make a distribution to any Member on account of its Interest in the Council (as applicable) in violation of the DLLCA or other Applicable Laws. Notwithstanding anything in this Article 6 to the contrary, and in furtherance thereof, the Council may, from time to time, make payments to individual Members through a Council Member engagement program approved by the Members for the purpose of offsetting the costs incurred by Members who permit their employees and contractors to spend time on Council matters, which payments shall not be considered "distributions" to the Members.

## ARTICLE 7
## OPERATIONS

**Section 7.1 Board of Directors**.

(a) Board Size. The Council has established a Board of Directors, which shall consist of up to five (5) natural persons who shall have the right to vote on a per capita basis (each such person, a "**Director**" or "**Board Member**"), which shall include one natural person who shall serve on the Board as chairperson (the "**Board Chair**"). Board Members shall be selected in accordance with the provisions of Section 7.1(c).

(b) Board Authority. The Board shall generally advise the Council with respect to the management and operation of the Council and may make certain recommendations to the Council regarding actions that would be subject to the Members' consent. The Board shall also have the right to vote on matters and take actions as set forth herein. For the avoidance of doubt, no individual Board Member shall have authority to bind the Council unless pursuant to authority delegated by the Council or the Board. The specific powers of the Board include:

(i) appointing officers of the Council as set forth in Section 7.2;

(ii) approving Council policies ("**Hedera Policies**");

(iii) approving Council budgets;

(iv) employing, at the Council's expense, such agents or third parties in connection with the management or operation of the business of the Council as the Board shall deem appropriate; and

(v) the ability to update the list of Members set forth on Schedule 1 hereto in order to admit new Governing Members following any new issuance, redemption, repurchase or Transfer of Interests in accordance with this Agreement without the consent of or execution by the Members; and

(vi) establishing committees of the Board and delegating to Board committees such powers and authority otherwise vested in the Board;

(vii) such other actions the Directors deem necessary in connection with the proper governance of the Council.

(c) Composition and Rules of the Board.

(i) [RESERVED]

(ii) *Composition of Board*. The Board shall be composed as set forth in the Hedera Election Policy. The Directors shall be listed on Schedule 3 hereto.

(iii) *Nomination and Election of Directors*. Nomination and election of the Directors shall be as set forth in the Hedera Election Policy.

(iv) *Nomination and Election of the BoardChair*. The Directors shall elect a Board Chair pursuant to the Hedera Election Policy.

(v) *Board Member Terms*. The term of the Directors and the Board Chair shall be as set forth in the Hedera Election Policy.

(vi) *Board Member Resignation*. Board Member resignation shall be as set forth in the Hedera Election Policy.

(vii) *Removal and Replacement of Board Members*. Replacement and removal of Directors shall be as set forth in the Hedera Election Policy.

(viii) *No Employment Relationship*. Unless otherwise determined by the Board or as set forth in the Hedera Election Policy, no Director shall be an employee of the Council. Neither the Board nor the Council and its Affiliates shall be under any obligation to employ or continue any business relationship in the future with any Board Member. Unless otherwise determined by the Board or as set forth in the Hedera Election Policy, no Board Member shall be treated as an "employee" of the Council for federal or applicable state or local income tax purposes.

(d) Meetings of the Board; Notice of Meetings; Waiver of Notice.

(i) *Quarterly Board Meetings*. The Board shall meet quarterly, unless otherwise determined by the Board Chair. The Board may hold meetings within or outside the State of Delaware. The Board Chair or the Board Chair's designee shall give at least thirty (30) days' notice to each Board Member of quarterly Board meetings.

(ii) *Additional Board Meetings*. Other than the regular quarterly meetings, additional meetings of the Board may be called by the Board Chair or the Board Chair's designee by notice given to each Board Member at least seven (7) days before the meeting.

(iii) *Notice of Board Meetings*. Notice of Board meetings shall be given by the Board Chair or the Board Chair's designee to each other Board Member by overnight courier service, email or other electronic transmission, or personal delivery. Notices shall be deemed to have been given: if given by courier service, when deposited with a courier service for overnight delivery with charges therefor prepaid or duly provided for; if given email or other electronic transmission, at the time of sending; and if given by personal delivery, at the time of delivery. Notices given by personal delivery may be in writing or oral. Written notices shall be sent to a Board Member at the postal address, email address or address for other electronic transmission, designated by him or her for that purpose or, if none has been so designated, at his or her last known residence or business address, email address or address for other electronic transmission. Except to the extent required by applicable law, no notice of any meeting of the Board need state the purposes of the meeting.

(iv) *Waiver of Notice*. No notice of a meeting of the Board need be given to any Board Member who signs a written waiver thereof (whether before, during, or after the meeting) or who attends the meeting without protesting his or her lack of notice prior to or at the commencement of the meeting.

(v) *Quorum; Acts of the Board; Adjournments*. At all meetings of the Board, a majority of the Directors then in office shall constitute a quorum for the transaction of business; provided, however, that, when the number of Directors constituting the whole Board is only one Director, the number of Directors constituting a quorum for the transaction of business shall be one. Except as otherwise specifically provided in any other provision of this Agreement, the act of a majority of the Directors present at any meeting of the Board at which a quorum is present shall constitute the act of the Board. If a quorum shall not be present at any meeting of the Board, the Directors present at the meeting, though less than a quorum, may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

(vi) *Attendance by Telephone or Videoconference*. Board Members may participate in meetings of the Board by means of conference telephone, videoconference, or similar communications equipment by which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

(vii) *Action by Written Consent in Lieu of Meeting*. Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting and without prior notice if consented to or approved in writing by electronic transmission (which may include voting by electronic ballots) or by any other means permitted by law by at least five Directors; provided, however, that if there are less than five Directors, then any action taken without a meeting and without prior notice may be taken if written consents (which may be by electronic transmission, including electronic ballots) setting forth the action so taken are executed by all of the Directors in office. All such written consents in either case must set forth the action to be taken and be filed with the minutes of the proceedings of the Board.

(e) Responsibility for Filings. The Board shall be responsible for filing, or causing to be filed, all regulatory, tax and other reports, returns and other filings that the Council is required to file.

(f) Directors as Agents. To the extent of their powers provided in this Agreement, the Board Members are agents of the Council for the purpose of the Council's business, and the actions of the Board Members taken in accordance with such powers shall bind the Council. No Board Member acting alone (in his or her capacity as a Board Member) may bind the Council notwithstanding the last sentence of Section 402 of the DLLCA.

(g) Outside Activities of Board Members. If a Board nominee is engaged in Outside Activities that are competitive with the Council, such Board nominee shall notify the Chair of the general competitive nature of such Outside Activities promptly after his or her nomination and, in any event, prior to the Board election in which such nominee is a candidate. If a Board Member is not engaged in Outside Activities that are competitive with the Council prior to his or her election to the Board, he or she shall notify the Chair of the general competitive nature of any such activities prior to engaging in any such competitive Outside Activities while a Board Member. For the avoidance of doubt, there is no restriction on Board Members engaging in Outside Activities, regardless of whether such activities are competitive with the Council, and any Board Member involved in Outside Activities shall remain bound by the confidentiality obligation of Section 11.14 hereof in connection with such Outside Activities.

(h) Duties. Board Members shall have certain duties to the Council as set forth in Section 7.5(g)(1).

**Section 7.2 Officers**.

(a) Appointment of Officers. The Board may appoint and remove officers of the Council and may delegate to such officers such powers and authority otherwise vested in the Board, as the Board shall deem advisable; provided, however, that any such power or authority of the Board delegated to any officer of the Council shall remain concurrently vested in and exercisable by the Board also. The powers and authority delegated to each officer title shall be as set forth in Schedule 2. Officers shall include a Secretary and a Treasurer, but shall not include the Council Chair.

(b) Signatory Authority of Officers. Except when and to the extent the Board shall have provided otherwise in writing, the officers of the Council shall have the power and authority to execute and deliver instruments and other documents in the name and on behalf of the Council, and the execution and delivery in the name and on behalf of the Council of any instrument or other document by any two officers of the Council shall be necessary and sufficient to bind the Council with respect to such instrument or other document.

(c) Schedule of Officers. The officers of the Council appointed by the Board shall be listed on Schedule 2, with each person having the title set forth opposite his or her name.

**Section 7.3 Committees**. The Council may establish committees (each, a "**Committee**") as set forth in the Committee Policy. The Council may create additional Committees with the approval of a majority of the Members. Each Committee shall be structured and governed as provided in a charter to be approved by a majority of the Members. Amendments to Committee charters must be approved by a majority of the Members. The Committees shall provide recommendations to the Council but shall have no authority to bind the Council or the Members other than as provided in a Committee's duly adopted charter.

**Section 7.4 Actions by the Members**.

(a) Member Voting. Members shall vote on matters related to the Council on a per capita basis, with each Member having one (1) vote. Unless otherwise specified, the Council may act upon the approval of the majority of the Members; provided, that if a Council Member recuses or is recused from a vote pursuant to the Hedera Ethics & Integrity Policy, as may be amended from time to time, then the Council may act upon the approval of a majority of the non-recused Member(s).

(b) Quarterly Member Meetings. The Members shall meet at least quarterly, with meetings to be chaired by the Council Chair, who shall be elected by the Members and serve pursuant to the terms set forth in the Hedera Election Policy. Council meetings shall be attended by Council Representatives and, if applicable, Council Attendees and any guests invited by the Council Chair; provided that prior to provisioning access to any Council meeting or materials, the Council Chair must consult with the General Counsel to determine whether the guest is sufficiently bound by written confidentiality, compliance, and related obligations as determined

by the General Counsel. The Members may hold meetings within or outside the State of Delaware. The Council Chair or the Council Chair's designee shall give at least thirty (30) days' notice to each Member for quarterly Member meetings.

(c) Additional Member Meetings. Other than the regular quarterly meetings, the Council Chair, the Council Chair's designee, or a majority of the Members may also call additional meetings of the Members. If such an additional meeting is called by a majority of the Members, one of the Members calling such meeting shall inform the Council Chair or the Council Chair's designee, who shall provide at least ten (10) days' notice of the meeting to each of the Members.

(d) Notice for Member Meetings. Notices of meetings may be provided by overnight courier service, email or other electronic transmission, or personal delivery. Notices shall be deemed to have been given: if given by courier service, when deposited with a courier service for overnight delivery with charges therefor prepaid or duly provided for; if given email or other electronic transmission, at the time of sending; and if given by personal delivery, at the time of delivery. Notices given by personal delivery may be in writing or oral. Written notices shall be sent to a Member at the postal address, email address or address for other electronic transmission, designated by such Member for that purpose or, if none has been so designated, at such Member's last known residence or business address, email address or address for other electronic transmission. Except to the extent required by applicable law, no notice of any meeting of the Members need state the purposes of the meeting.

(e) Meeting Minutes. The Secretary of the Council (or the Secretary's designee) shall be responsible for the minutes of each meeting of the Members and such meeting minutes will be provided to the public no later than thirty (30) days after such meeting minutes are accepted by a majority of the Members.

(f) Waiver of Notice. No notice of a meeting of the Members need be given to any Member who signs a written waiver thereof (whether before, during or after the meeting) or who attends the meeting without protesting, prior to or at the commencement of the meeting, the lack of notice of the meeting to such Member.

(g) Quorum; Acts of the Members; Adjournments. At all meetings of the Members, the requisite number of Members that are required to pass any action contemplated at such meeting of the Members shall constitute quorum for the transaction of business. Notwithstanding the foregoing, the calculation of the required percentage to pass any action contemplated at a meeting shall be the percentage required to pass such action calculated on the basis of all Members and not the percentage required to pass such action calculated on the basis of Members then in attendance. By way of example, if the vote of twenty Members is required to pass an action and twenty Members are in attendance at a meeting, the vote of all twenty Members then present is required to pass such action. If a quorum shall not be present at any meeting of the Members, the Members present at the meeting, though less than a quorum, may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

(h) Attendance by Telephone or Videoconference. Members may participate in meetings of the Council by means of conference telephone, videoconference, or similar communications equipment by which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

(i) Action by Written Consent in Lieu of Meeting. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if notice with a written description of the proposed action is sent to all Members in accordance with Section 7.4(d) and, no sooner than seven (7) days after such notice is given, unless such notice period is waived by all Members in accordance with Section 7.4(f), written consents setting forth the action so taken are executed by the number of Members which would be required to pass such measure in the event that the Council held a meeting of the Members. Such written consents will be filed with the minutes of the proceedings of the Council.

(j) Council Change of Control. A Council Change of Control shall require the prior written consent of at least three-quarters of the current Members. Any liquidation in connection with such Council Change of Control shall be subject to Section 10.5.

**Section 7.5 Limitation on Liability and Indemnification of the Members and Employees**.

(a) No Fiduciary Duties. No Member, Council Representative, Committee Member, or Affiliates of any Member, nor the officers, members, directors, managers, shareholders, employees, partners or agents of any of the foregoing, or any employee or agent of the Council who is not a Director or Officer (listed on Schedule 2) shall owe any fiduciary duty to the Council or be liable to the Council or to any Member for any losses sustained or liabilities incurred as a result of any act or omission of such Member or such other Entity or person if (i) the act or failure to act of such Member or such other Entity or person was in good faith, within the scope of such Entity's or person's authority, and in a manner it believed to be in, or not contrary to, the best interests of the Council, and (ii) the conduct of such Member or such other Entity or person did not constitute Malfeasance.

(b) Indemnification. The Council shall indemnify and hold harmless the Members, Council Representatives, Committee Members,[1] the Council Chair, and all employees and agents of the Council (each, an "**Indemnitee**") to the full extent permitted by law from and against any and all losses, claims, demands, costs, damages, liabilities, joint and several, expenses of any nature (including attorneys' fees and disbursements), judgments, fines, settlements and other amounts of any nature whatsoever, known or unknown, liquid or illiquid (collectively, "**Losses**") arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative (collectively, "**Actions**"), in which the Indemnitee may be involved, or threatened to be involved as a party or otherwise, relating to the performance or nonperformance of any act concerning the activities of the Council, if (i) the Indemnitee acted in good faith, within the scope of such Indemnitee's authority, and in a manner it believed to be in, or not contrary to, the best interests of the Council, and (ii) the Indemnitee's conduct did not constitute Malfeasance. The termination of an action, suit or proceeding by judgment, order, settlement, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a

[1] Committee Members are defined in the Hedera Council Committee Policy.

presumption that the Indemnitee acted in a manner contrary to that specified in clauses (i) or (ii) above.

(c) Advancement of Expenses. Expenses incurred by an Indemnitee in defending any Action, subject to this Section 7.5 may, at the sole discretion of the Board, be advanced by the Council prior to the final disposition of such Action upon receipt by the Council of a written commitment by or on behalf of the Indemnitee to repay such amount if it shall be determined that such Indemnitee is not entitled to be indemnified as authorized in this Section 7.5. Any indemnification obligations of the Council arising under this Section 7.5 may, but shall not be required to, be satisfied first out of any Council assets. The Board shall give the Members timely written notice of any such Actions of which it becomes aware.

(d) Insurance. The Board, on behalf of the Council, may, but shall not be required to, cause the Council to purchase and maintain insurance, at the expense of the Council and, to the extent available, for the protection of Indemnitees against any liability incurred by such Entity or person in any such capacity or arising out of such Indemnitee's status as such, whether or not the Council has the power to indemnify such Indemnitee against such liability.

(e) The provisions of this Section 7.5 are for the benefit of the Indemnitees and shall not be deemed to create any rights for the benefit of any other Entity or person.

**Section 7.6 Fiduciary Duties, Exculpation, and Indemnification of the Directors and Officers**.

(a) Director and Officer Fiduciary Duties. Each Director and Officer (listed in Schedule 2) of the Council shall owe fiduciary duties consistent with the duties owed by directors and officers of corporations organized under the Delaware General Corporation Law ("DGCL") (assuming such corporation had in its certificate of incorporation and bylaws a provision eliminating the liabilities of directors and officers to the maximum extent permitted by Section 102(b)(7) of the DGCL). Such fiduciary duties are owed to the Council as a whole and not to any individual Member or group of Members.

(i) *Actions in Capacity as Council Representative or Committee Member.* In the case of an individual who serves as a Council Representative or Committee Member and also serves as a Director, the individual shall not, when acting in the individual's capacity as a Council Representative or Committee Member, owe any fiduciary duty to the Council or be liable to the Council or to any Member for any losses sustained or liabilities incurred as a result of any act or omission of such Council Representative, Committee Member or such other Entity or person if (i) the act or failure to act of such Council Representative or such other Entity or person was in good faith, within the scope of such Entity's or person's authority, and in a manner it believed to be in, or not contrary to, the best interests of the Council, and (ii) the conduct of such Member or such other Entity or person did not constitute Malfeasance.

(ii) *Actions in Capacity as Director or Officer.* In the case of an individual who serves as a Council Representative or Committee Member and also serves as a Director or Officer, the individual shall, when acting in the individual's capacity as a Director or Officer, owe fiduciary duties consistent with the duties owed by directors and officers of

corporations organized under the Delaware General Corporation Law ("DGCL") (assuming such corporation had in its certificate of incorporation and bylaws a provision eliminating the liabilities of directors and officers to the maximum extent permitted by Section 102(b)(7) of the DGCL).

(b) DGCL Section 102(b)(7) Exculpatory Provision. A Director or Officer of the Council shall not be personally liable to the Council for monetary damages for breach of fiduciary duty as a Director or Officer, except for liability: (a) for any breach of the Director's or Officer's duty of loyalty to the Council; (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law; or (c) for any transaction from which the Director or Officer derived an improper personal benefit.

(c) Indemnification. Each Director or Officer who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative, is or was a Director or Officer of the Council (including any constituent absorbed in a merger) shall be indemnified and held harmless by the Council to the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended, against all expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that the Council shall not indemnify any such person seeking indemnity in connection with a proceeding (or part thereof) was authorized by the Council.

(d) Advancement of Expenses. The Council shall pay all expenses including attorney's fees and costs incurred by such a Director or Officer in defending any such proceeding as they are incurred in advance of its final disposition; provided, however, that the payment of such expenses incurred by a Director or Officer in advance of the final disposition of such proceeding shall be made only upon delivery to the Council of an undertaking, by or on behalf of such Director or Officer, to repay all amounts so advanced if it should be determined ultimately that such Director or Officer is not entitled to be indemnified under this Section 7.6 or otherwise; and provided further that the Council shall not be required to advance any expenses to a person against whom the Council brings a claim, in a proceeding, for breach of the duty of loyalty to the Council, for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, or for any transaction from which such person derived an improper personal benefit.

(e) Non-exclusivity of Rights. The rights conferred on any Director or Officer in this Section 7.6 shall not be exclusive of any other right that such person may have or hereafter acquire under any Indemnification Agreement with the Council in the form attached hereto as Exhibit C; provided, that such Director or Officer executes an Undertaking Agreement in the form attached hereto as Exhibit D to repay all amounts so advanced if it should be determined ultimately that such Director or Officer is not entitled to be indemnified under this Section 7.6 or otherwise.

(f) Insurance. The Council shall maintain insurance, at its expense, to the extent it determines such to be reasonably available, to protect its Directors and Officers against any such expense, liability or loss, whether or not the Council would have the power to indemnify such person against such expense, liability or loss.

(g) Effect of Amendment. Any amendment, repeal or modification of any provision of this Section 7.6 by the Council shall be prospective only, and shall not adversely affect any right or protection conferred on a person pursuant to this Section 7.6 and existing at the time of such amendment, repeal or modification.

(h) Good Faith Standard. Notwithstanding any principles of law or equity, and notwithstanding any other provision of this Agreement, whenever in this Agreement the Board is permitted or required to make a decision (i) in its "sole discretion" or "discretion" or under a grant of similar authority or latitude, each Board Member shall be entitled to consider any such interests and factors as such Board Member desires and shall, to the fullest extent permitted by law, have no duty or obligation to give any consideration to any interest of or factors affecting the Council or any other Member, or (ii) in its "good faith" or under another express standard, such Board Member shall act under such express standard and shall not be subject to any other or different standard. To the maximum extent permitted by Applicable Law, any act or omission taken or suffered by the Board regarding any matter which this Agreement provides is in the Board's discretion or sole discretion shall be conclusively presumed for purposes of this Agreement not to constitute Malfeasance.

(i) Standing. Only Hedera Hashgraph, LLC and the Council Members (who are a Council Member at the time of bringing the action) shall have standing to pursue a fiduciary duty claim against Directors and Officers. For the avoidance of doubt, the following shall not have standing to pursue a fiduciary duty claim against Directors and Officers either directly or derivatively on behalf of Hedera Hashgraph, LLC: (1) Hedera Hashgraph, LLC's creditors, whether in bankruptcy or otherwise; or (2) an assignee of a Council Member as defined in 6 Del. C. § 18-1001 and 6 Del. C. § 18-1002 of the DLLCA.

**Section 7.7 Records and Reports**. Upon the request by a Member, the Council shall deliver to each Member:

(a) as soon as practicable, but in any event within forty-five (45) days after the end of each fiscal quarter of the Council, an income statement for such fiscal quarter and a balance sheet of the Council as of the end of such quarter, and a statement of cash flows for such quarter, such financial reports to be in reasonable detail, prepared in accordance with United States generally accepted accounting principles;

(b) as soon as practicable, but in any event within ninety (90) days after the end of each fiscal year of the Council, an income statement for such fiscal year and a balance sheet of the Council as of the end of such year, and a statement of cash flows for such year, such financial reports to be in reasonable detail, prepared in accordance with United States generally accepted accounting principles. To the extent determined by the Board, such financial reports may be audited and certified by an independent public accounting firm of nationally recognized standing selected by the Council;

(c) as soon as practicable, but in any event thirty (30) days prior to the end of each fiscal year, a budget plan for the next fiscal year, prepared on a monthly basis and, as soon as prepared, any other budgets or revised budgets prepared by the Council; and

(d) such other information relating to the financial condition, business, prospects, or corporate affairs of the Council as any Member may from time to time reasonably request; provided, however, that the Council shall not be obligated under this Section 7.6 to provide information (i) that the Council reasonably determines in good faith to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in a form acceptable to the Council); or (ii) the disclosure of which would adversely affect the attorney-client privilege between the Council and its counsel.

**Section 7.8 Inspection**. Upon the reasonable request of a Member with no fewer than fourteen (14) days' written notice, the Council shall permit such Member's designated Council Representatives, at such Member's expense, to visit and inspect the Council's properties and examine its books of account and records during normal business hours; provided, however, that the Council shall not be obligated pursuant to this Section 7.7 to provide access to any information that it reasonably and in good faith considers to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Council) or the disclosure of which would adversely affect the attorney-client privilege between the Council and its counsel. A Member shall be entitled to no more than two such visits in any calendar year.

## ARTICLE 8
## HEDERA NETWORK MATTERS

**Section 8.1 Node Hosting**. Each Member will host at least one server running the Hedera hashgraph consensus algorithm (each such server, a "**Node**") in accordance with the terms specified in the current Hedera Node Policy, as amended from time to time as set forth therein. Each Member will follow cybersecurity best practices in ensuring the security of each Node. The Council will provide each Member with the Node software, associated wallets, and standards for security. A Member may designate an Affiliate to host a Node on its behalf in satisfaction of this requirement; provided, however, that such Affiliate shall be responsible for complying with the Hedera Node Policy as if a party thereto; and, provided, further, that the Member will remain fully responsible for the acts and omissions of such Affiliate.

**Section 8.2 Network Pricing**. The Council, or its duly approved designee, shall be responsible for approving pricing plans for use of the Hedera Network.

**Section 8.3 Treasury Management**. Hbars, the cryptocurrency native to the Hedera Network ("**Hbars**"), may only be transferred out of a Hedera Treasury Account (as defined in the Hedera Node Policy) upon the approval of a majority of the Members. Such transfers shall be made in accordance with the procedures and protocols established by the Council in order to ensure decentralized control and the integrity of Hedera Treasury Accounts.

**Section 8.4 Network Management**. The Council is responsible for the maintenance of the Hedera Network, including the Hedera Network software. Any proposed modifications to the Hedera Network software require the approval by the Council and, if approved, shall be implemented by the Members in accordance with procedures and protocols established by the Council in order to ensure decentralized control and the integrity of the Hedera Network. Notwithstanding the foregoing, the total supply of Hbars may not be increased above fifty billion (50,000,000,000) Hbars without the unanimous consent of the Members.

## ARTICLE 9
## INTERESTS AND TRANSFERS OF INTERESTS

**Section 9.1 Member Transfers and Encumbrances**. To the fullest extent permitted by law, and except as provided in Section 9.2, no Member may Transfer or create an Encumbrance with respect to all or any portion of its Interest (or beneficial interest therein). If a Member Transfers all or any portion of its Interest (or any beneficial interest therein) pursuant to this Article 9, the transferee of such permitted Transfer, shall receive the Transferred Interest (or beneficial interest therein) subject to all terms and conditions applicable to the Transferred Interest prior to such Transfer. To the fullest extent permitted by law, any purported Transfer or Encumbrance which is not in accordance with, or subsequently violates, this Agreement shall be null and void.

**Section 9.2 Permitted Transfers**. Each Member may, with the consent of the Council or the Board, Transfer its Interest to an Affiliate of such Member, provided that such transferee shall sign a Governing Member Joinder Agreement substantially in the form set forth as Exhibit A. In such event, the Affiliate receiving such Transfer shall become a full Governing Member hereunder and the transferring Governing Member shall fully Transfer its Interest and shall have no other rights under this Agreement.

**Section 9.3 Further Restrictions**. Notwithstanding any contrary provision in this Agreement and to the fullest extent permitted by law, any otherwise permitted Transfer or Encumbrance shall be null and void (unless this provision is waived in writing by the Board) if:

(a) such Transfer or Encumbrance may require the registration of the subject Interest pursuant to any applicable federal or state securities laws;

(b) such Transfer or Encumbrance may subject the Council to regulation under the Investment Council Act of 1940, the Investment Advisers Act of 1940 (the "**Advisers Act**") or the Employee Retirement Income Security Act of 1974, each as amended;

(c) such Transfer or Encumbrance may result in a violation of Applicable Laws;

(d) if such Transfer or Encumbrance would affect the Company's existence or qualification as a limited liability company under the DLLCA;

(e) such Transfer or Encumbrance may be made to any Entity or person who may lack the legal right, power or capacity to own such Interest; or

(f) the Council does not receive written instruments (including, without limitation, copies of any instruments of Transfer or Encumbrance, the Governing Member Joinder Agreement, if applicable, and such transferee's consent to be bound by this Agreement as a Member) that are in form and substance satisfactory to the Board.

## ARTICLE 10
## DISSOLUTION, LIQUIDATION, AND TERMINATION OF THE COUNCIL

**Section 10.1 Limitations**. The Council may be dissolved, liquidated, and terminated and have its affairs wound up only pursuant to the provisions of this Article 10, and, to the fullest extent permitted by law, the parties hereto do hereby irrevocably waive any and all other rights they may have to seek a court decree of dissolution or to seek the appointment by the Court of a liquidator for the Council.

**Section 10.2 Exclusive Causes of Dissolution**. Notwithstanding the DLLCA, the following and only the following events shall cause the Council to be dissolved, liquidated, and terminated:

(a) The approval by at least three-quarters of the Members to dissolve the Council; or

(b) At any time there are no members of the Council, unless the business of the Council is continued in accordance with the DLLCA.

(c) Any dissolution of the Council other than as provided in this Section 10.2 shall be a dissolution in contravention of this Agreement. In no event shall any proceeds of a dissolution, liquidation, or termination of the Council be paid to the Governing Members or the Original Member.

**Section 10.3 Effect of Dissolution**. The dissolution of the Council shall be effective on the day on which the event described in Section 10.2 ("*Exclusive Causes*") occurs giving rise to the dissolution. Notwithstanding the foregoing, the Council shall not terminate until it has published all necessary procedures and effectuated all necessary changes in cryptographic controls required to enable the ongoing operation and evolution of the Hedera Network (which it shall do as timely as reasonably practicable), its affairs have been wound up and its assets have been distributed as provided in Section 10.5 ("*Liquidation*") of this Agreement and its Certificate has been cancelled by the filing of a certificate of cancellation with the office of the Delaware Secretary of State. Notwithstanding the dissolution of the Council, this Agreement shall continue to govern the business of the Council and the affairs of the Members prior to the termination of the Council.

**Section 10.4 No Recourse Upon Dissolution**. No Member shall have any recourse regarding its Capital Contribution (upon dissolution or otherwise) against any other Member.

**Section 10.5 Liquidation**. Upon dissolution of the Council, the Council shall not engage in any activity other than that which is necessary (1) to publish all necessary procedures and effectuate all necessary changes in cryptographic controls required to enable the ongoing operation and evolution of the Hedera Network and (2) to wind up the business in the following manner:

(a) Liquidator. The Board, or, if the Board is unable to do so, an Entity or person selected by a majority vote of the Members, shall act as the "**Liquidator**" of the Council. The Liquidator shall have full power and authority to sell, assign, and encumber any or all of the Council's assets and to wind up and liquidate the affairs of the Council in an orderly manner.

(b) Distribution of Proceeds Upon Dissolution. The Liquidator shall liquidate the assets of the Council and shall apply and distribute the proceeds as follows:

(i) First, to the satisfaction (whether by the payment or the making of reasonable provision for payment thereof) of the Council's debts and liabilities to its creditors (including Members, if applicable) and the expenses of liquidation (including sales commissions incident to any sales of assets of the Council);

(ii) Second, to the establishment of and additions to reserves that are determined by the Board in its sole discretion to be reasonably necessary for any contingent unforeseen liabilities or obligations of the Council; and

(iii) Thereafter, if approved by a majority of the Members, to an entity formed for charitable purposes and exempt from taxation under Section 501(c)(3) of the Code. In the absence of such approval, such proceeds shall be distributed as required by applicable law.

(c) Discretion of Liquidator. Notwithstanding Sections 10.5(a) and 10.5(b) of this Agreement, in the event that the Board determines that an immediate sale of all or any portion of the Council assets would cause undue loss, the Board, in order to avoid such loss to the extent not then prohibited by the DLLCA, may either defer liquidation of and withhold from distribution for a reasonable time any Council assets necessary to satisfy the Council's debts and obligations, or, subject to the priorities set forth in Sections 10.5(b) of this Agreement, distribute the Council assets in kind.

(d) Cancellation of Certificate. Upon completion of the Distribution of the assets of the Council as provided in Subsection (b) hereof, the Council shall be terminated and the Liquidator shall cause the cancellation of the Certificate in the State of Delaware and of all qualifications and registrations of the Council as a foreign limited liability company in jurisdictions other than the State of Delaware and shall take such other actions as may be necessary to terminate the Council.

(e) Survival of Rights, Duties and Obligations. Dissolution, liquidation, winding up or termination of the Council for any reason shall not release any party from any Losses which at the time of such dissolution, liquidation, winding up or termination already had accrued to any other party or which thereafter may accrue in respect of any act or omission prior to such dissolution, liquidation, winding up or termination. For the avoidance of doubt, none of the foregoing shall replace, diminish or otherwise adversely affect any Member's right to indemnification pursuant to Section 7.5.

## ARTICLE 11
## MISCELLANEOUS

**Section 11.1 Counsel**. THE COUNCIL HAS SELECTED PAUL HASTINGS LLP ("**COUNSEL**") AS LEGAL COUNSEL. EACH MEMBER ACKNOWLEDGES THAT THE COUNSEL DOES NOT REPRESENT ANY MEMBER IN ITS CAPACITY AS SUCH IN THE ABSENCE OF A CLEAR AND EXPLICIT WRITTEN AGREEMENT TO SUCH EFFECT BETWEEN SUCH MEMBER AND COUNSEL (AND THEN ONLY TO THE EXTENT SPECIALLY SET FORTH IN SUCH AGREEMENT), AND THAT ABSENT ANY SUCH AGREEMENT COUNSEL SHALL OWE NO DUTIES TO ANY MEMBER.

**Section 11.2 Appointment of Attorney-in-Fact**.

(a) Each Member by its execution of this Agreement, irrevocably constitutes and appoints the person holding the position of Secretary of the Council, for so long as he or she holds such position, as its true and lawful attorney-in-fact (and each person who holds the position of Secretary of the Council thereafter, for so long as he or she holds such position, as its true and lawful successor attorney-in-fact) with full power and authority in its name, place and stead to execute, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to carry out the provisions of this Agreement, including but not limited to:

(i) All certificates and other instruments (including counterparts of this Agreement), and all amendments thereto, which the Board deems appropriate to form, qualify, continue or otherwise operate the Council as a limited liability company (or other entity in which the Members will have limited liability comparable to that provided in the DLLCA), in the jurisdictions in which the Council may conduct business or in which such formation, qualification or continuation is, in the opinion of the Board, necessary or desirable to protect the limited liability of the Members.

(ii) All amendments to this Agreement adopted in accordance with the terms hereof, and all instruments which the Board deems appropriate to reflect a change or modification of the Council in accordance with the terms of this Agreement.

(iii) All conveyances of Council assets, and other instruments which the Board reasonably deems necessary in order to complete a dissolution and termination of the Council pursuant to this Agreement.

In the event the position of Secretary is vacant, the Board is authorized to designate a successor attorney-in-fact until such time as a new Secretary has been appointed.

(b) The appointment by all Members of the Secretary as attorney-in-fact (and if applicable, each person who holds the position of Secretary of the Council thereafter as successor attorney-in-fact) shall be deemed to be a power coupled with an interest, in recognition of the fact that each of the Members under this Agreement will be relying upon the power of such person(s) or Entity to act as contemplated by this Agreement in any filing and other action by it on behalf of the Council, and shall survive the incapacity of any Entity or person hereby

giving such power, and the Transfer or assignment of all or any portion of the Interest of such Entity in the Council, and shall not be affected by the subsequent incapacity of the principal.

**Section 11.3 Addition of Members**. Each additional Member shall become a signatory hereto by signing the Governing Member Joinder Agreement and such other instruments as the Board may determine. By so signing, each additional Member, as the case may be, shall be deemed to have adopted and to have agreed to be bound by all of the provisions of this Agreement.

**Section 11.4 Amendments**. The Board may only make amendments to this Agreement specifically authorized herein. All other amendments to this Agreement shall require Member approval.

(a) Schedule of Members. The Chair or the Secretary may update the Schedule of Members set forth at Schedule 1 hereto in order to reflect changes in the name, email address or mailing address of a Member; the admission, departure or substitution of Members; or the change in the Term of a Member (in each case occurring pursuant to this Agreement) and such amendments shall not require the consent of or notice to any Member.

(b) Hedera Policies. Hedera Council Policies, including those set forth in Exhibit B, may be amended as provided for therein. Any amendments to a Hedera Council Policy will take effect upon delivery of the amended Hedera Council Policy to the Members, subject to a reasonable period for Members to comply with any such modifications.

(c) Committees. The description of and terms applicable to Council Committees set forth in the Committee Policy may be amended as provided for therein.

(d) Distributions. Any amendment, modification or waiver to the distribution structure set forth in Article 6 ("Distributions") or Section 10.5(b) ("Distribution of Proceeds Upon Dissolution") shall require the unanimous consent of the Members.

(e) Member Terms and Renewals. Any amendment to Sections 4.3(b) ("*Member Terms*") and Section 4.3(g) ("*Renewal Terms*") shall require the unanimous consent of the Members.

(f) Network Pricing. [RESERVED]

(g) Counsel. The Secretary, upon direction of the Board or the Council's General Counsel, may update the law firm identified in Section 11.1 as legal counsel to the Council and such amendments shall not require the consent of any Member.

(h) Registered Agent. The Secretary may update the name of the Council's registered agent and address of the Council's registered office set forth Section 1.6 and such amendments shall not require the consent of any Member.

(i) Other Amendments. Other than as specifically provided herein, any amendment to the terms of this Agreement shall require the approval of at least two-thirds of the Members. For the avoidance of doubt, amendments to Sections 11.4(d) through 11.4(f) and the last sentence of

Section 8.4 ("*Network Management*") shall require the unanimous consent of the Members, and amendments to Sections 5.1 ("*Tax Treatment*"), 7.4(g) ("*Council Change of Control*") and 10.2 ("*Exclusive Causes of Dissolution*") shall require the approval of at least three-fourths of the Members.

(j) In making any amendments, there shall be prepared and filed by, or for, the Board such documents and certificates as may be required under the DLLCA and under the laws of any other jurisdiction applicable to the Council. The Board or Secretary shall furnish copies of any amendments to this Agreement to all Members, other than changes in Schedule 1 as provided in Clause (a) above.

**Section 11.5 Arbitration**.

(a) Any claim, dispute, or controversy of whatever nature arising out of or relating to this Agreement, including, without limitation, any action or claim based on tort, contract, or statute (including any claims of breach), or concerning the interpretation, effect, termination, validity, performance and/or breach of this Agreement ("**Claim**"), shall be resolved by final and binding arbitration ("**Arbitration**") before a single arbitrator (the "**Arbitrator**") selected from and administered by JAMS Inc. (the "**Administrator**") in accordance with its then existing arbitration rules or procedures regarding commercial or business disputes. Each party shall select one arbitrator, and the two arbitrators so selected shall choose a third arbitrator to act as the Arbitrator. The Arbitration shall be held in New York, NY.

(b) Depositions may be taken and full discovery may be obtained in any Arbitration commenced under this provision.

(c) The Arbitrator shall, within fifteen (15) calendar days after the conclusion of the Arbitration hearing, issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The Arbitrator shall be authorized to award compensatory damages, but shall not be authorized (i) to award non-economic damages, (ii) to award punitive damages, or (iii) to reform, modify or materially change this Agreement or any other agreements contemplated hereunder; provided, however, that the damage limitations described in parts (i) and (ii) of this sentence will not apply if such damages are statutorily imposed. The Arbitrator also shall be authorized to grant any temporary, preliminary or permanent equitable remedy or relief he or she deems just and equitable and within the scope of this Agreement, including, without limitation, an injunction or order for specific performance.

(d) Each party shall bear its own attorney's fees, costs, and disbursements arising out of the Arbitration, and shall pay an equal share of the fees and costs of the Administrator and the Arbitrator; provided, however, the Arbitrator shall be authorized to determine whether a party is substantially the prevailing party, and if so, to award to that substantially prevailing party reimbursement for its reasonable attorneys' fees, costs and disbursements (including, for example, expert witness fees and expenses, photocopy charges, travel expenses, etc.), and/or the fees and costs of the Administrator and the Arbitrator. Absent the filing of an application to correct or vacate the Arbitration award under Title 10 of the Delaware Code Sections 5713

through 5717, each party shall fully perform and satisfy the Arbitration award within fifteen (15) days of the service of the award.

(e) By agreeing to this binding Arbitration provision, the parties understand that they are waiving certain rights and protections which may otherwise be available if a Claim between the parties were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this Section 11.5, certain rights of appeal, and a right to invoke formal rules of procedure and evidence.

(f) EACH MEMBER HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF THIS AGREEMENT AND ANY RELATED AGREEMENTS AND DOCUMENTS.

**Section 11.6 Accounting and Fiscal Year**. Subject to Code Section 448, the books of the Council shall be kept on such method of accounting for tax and financial reporting purposes as may be determined by the Board. The fiscal year of the Council shall end on December 31 of each year, or on such other date permitted under the Code as the Board shall determine.

**Section 11.7 Entire Agreement**. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and fully supersedes any and all prior or contemporaneous agreements or understandings between the parties hereto pertaining to the subject matter hereof.

**Section 11.8 Further Assurances**. Each of the parties hereto does hereby covenant and agree on behalf of itself, its successors, and its assigns, without further consideration, to prepare, execute, acknowledge, file, record, publish, and deliver such other instruments, documents and statements, and to take such other action as may be required by law or reasonably necessary to effectively carry out the purposes of this Agreement.

**Section 11.9 Notices**. Any notice, consent, payment, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be (a) delivered personally to the person or Entity or to an officer of the person or Entity to whom the same is directed, or (b) sent by electronic mail or registered or certified mail, return receipt requested, postage prepaid, addressed as follows: if to the Council, to the Council at the address set forth in Section 1.3 hereof, or to such other address as the Council may from time to time specify by notice to the Members; if to a Member, to such Entity at the most recent address set forth in the Council's books and records, or to such other address as such Entity may from time to time specify by notice to the Council. Any such notice shall be deemed to be delivered, given and received for all purposes as of: (i) the date so delivered, if delivered personally, (ii) upon receipt, if sent by electronic mail, or (iii) on the date of receipt or refusal indicated on the return receipt, if sent by registered or certified mail, return receipt requested, postage and charges prepaid and properly addressed.

**Section 11.10 Governing Law**. This Agreement shall be governed by and construed under the laws of the State of Delaware as applied to agreements among the residents of such state made and to be performed entirely within such state in accordance with the provisions of the DLLCA.

**Section 11.11 Certain Rules of Construction**. To the fullest extent permitted by law, the parties hereto intend that any ambiguities shall be resolved without reference to which party may have drafted this Agreement. All Article or Section titles or other captions in this Agreement are for convenience only, and they shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Unless the context otherwise requires: (a) a term has the meaning assigned to it; (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with then-applicable generally accepted accounting principles; (c) "or" is not exclusive; (d) words in the singular include the plural, and words in the plural include the singular; (e) provisions apply to successive events and transactions; (f) "herein," "hereof" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (g) all references to "clauses," "Sections" or "Articles" refer to clauses, Sections or Articles of this Agreement; and (h) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms.

**Section 11.12 Binding Effect**. Except as otherwise expressly provided herein, this Agreement shall be binding on and inure to the benefit of the Members, their heirs, executors, administrators, successors and all other Entities or persons hereafter holding, having or receiving an interest in the Council.

**Section 11.13 Severability**. In the event that any provision of this Agreement as applied to any party or to any circumstance, shall be adjudged by a court to be void, unenforceable or inoperative as a matter of law, then the same shall in no way affect any other provision in this Agreement, the application of such provision in any other circumstance or with respect to any other party, or the validity or enforceability of the Agreement as a whole, and this Agreement shall be construed and reformed in all respects as if any such invalid or unenforceable provision(s) were omitted in order to give effect to the intent and purposes of this Agreement.

**Section 11.14 Confidentiality**.

(a) Definition. "**Confidential Information**" shall mean with regard to Confidential Information of (i) the Council (ii) a Council Member, and (iii) a third party that has signed a non-disclosure agreement with the Council, information concerning the Council, the Hedera Network, or the status of matters under consideration by the Council that (x) if provided in tangible or electronic form, is marked as "Confidential," (y) if disclosed orally, is identified as "Confidential" at the time of disclosure, and (z) if made available in either tangible, electronic, or oral form, would be reasonably understood to be confidential or proprietary by its nature or context; and

(b) Maintenance of confidentiality. Each party hereto agrees that any Confidential Information received from (i) the Council, (ii) a Member, or (iii) a third party that has signed a Board-approved non-disclosure agreement with the Council shall be kept confidential and shall not be directly or indirectly disclosed or made accessible to any other person or Entity without the prior written consent of the disclosing party or as otherwise set forth below.

(c) Permitted use. The Council and each Member shall use Confidential Information solely for Council-related purposes. Each Member may disclose Confidential Information to its

respective employees, officers, directors, managers, attorneys, accountants, consultants, Affiliates and other agents (collectively, "**Covered Parties**") solely to the extent necessary for the administration of its Interest and performance as a Member hereunder, so long as such person or Entity has a legitimate business need to know such Confidential Information and such person or Entity is subject to obligations of confidentiality at least as stringent as those set forth in this Section 11.14. The Council may disclose Confidential Information to its Covered Parties and to the Members so long as such person or Entity has a legitimate Council-related business need to know such Confidential Information and such person or Entity is subject to obligations of confidentiality at least as stringent as those set forth in this Section 11.14. The Council and each Member shall promptly return or destroy all Confidential Information upon request of the disclosing party and in any event upon any termination of this Agreement and, with respect to a Member, upon such Member's departure from the Council (and, in both cases, certify to such return or destruction). Notwithstanding the foregoing, the Council and each Member may retain copies of the Confidential Information in accordance with applicable law, regulation or its internal rules and practice.

(d) Highly sensitive information. Notwithstanding the foregoing, the Council and each Member may, in its sole discretion, identify certain of its Confidential Information as highly sensitive due to the business, legal, or other nature of such information. With regard to the Council's Confidential Information, the Council may restrict access, in its sole discretion, to a limited number of specific Members and/or individual Covered Parties who may not disclose or otherwise share such information (including any summaries, analysis or notes based on or including any such information) with any individual not specified by the Council in writing to receive such information. With regard to a Member's Confidential Information, such Member may restrict access, in its sole discretion, solely to the Council and its Covered Parties and/or to specific Members and/or individual Covered Parties who may not disclose or otherwise share such information (including any summaries, analysis or notes based on or including any such information) with any individual not specified by the disclosing Member in writing to receive such information.

(e) Degree of care. The Council and each Member shall, and shall cause its respective Covered Parties to, safeguard the Confidential Information from unauthorized use, access or disclosure and protect the confidentiality of the Confidential Information with the same degree of care that it exercises with respect to its own information of like importance, but in no event less than a reasonable degree of care. The Council and each Member shall be responsible for any breach of the terms of this Agreement by any of its Covered Parties. Each Member agrees to promptly provide written notice to the Council of any breach of this Agreement, including but not limited to, any misuse of Confidential Information by the Member or any of the Member's Covered Parties. The Council agrees to promptly provide written notice to a Member of any breach of this Agreement with respect to such Member's Confidential Information, including but not limited to, any misuse of such Member's Confidential Information by the Council or any of the Council's Covered Parties.

(f) Non-prohibited disclosures. Notwithstanding the foregoing, Confidential Information does not include any information the recipient can document (i) was publicly available, or that subsequently becomes publicly available, through no wrongful act of disclosure hereunder by the Council, a Member, or its respective Covered Parties; (ii) was in the Council's

or a Member's possession prior to receipt of the same hereunder; (iii) was received from a person or Entity who was not under any obligation of confidentiality with respect to such information; (iv) that can be proven to have been independently developed by the Council or a Member without any use of or reference to the Council's or such Member's Confidential Information, as established by written documentation produced contemporaneously with the development of the information; or (v) with respect to the Council's Confidential Information, that is approved by the Council in writing for release or, with respect to a Member's Confidential Information, that is approved by such Member in writing for release; provided that, prior to disclosing such Confidential Information, a party shall promptly notify the Council and/or the applicable Member thereof, which notice shall include the basis upon which such party believes the information is required to be disclosed and such party shall reasonably cooperate with the Board to limit the extent of any disclosure. Further, notwithstanding Section 11.14(b), the Council or a Member may disclose Confidential Information to the extent required by Applicable Law. In no event shall the Council, a Member, or any of their respective Covered Parties oppose any action by the Council or a Member to obtain a protective order or other relief to prevent the disclosure of Confidential Information or to obtain reliable assurance that confidential treatment will be afforded to the Confidential Information.

(g) No license; no reverse engineering. The Council and each Member retains its entire right, title and interest in and to all its respective Confidential Information, and nothing in this Agreement, including, without limitation, any disclosure of Confidential Information hereunder will be construed as granting a license, assignment or other transfer of any such right, title and interest to the Council or a Member or any other person, except the limited right to review such Confidential Information solely for the Council-related purposes, nor shall this Agreement or any disclosure of Confidential Information hereunder be construed as granting any rights under any patent, copyright, trademark, trade secret, or other intellectual property right of the Council or a Member. The Council and each Member shall not, and shall cause its Covered Parties to not, (a) alter, maintain, enhance or otherwise modify any software included within the Confidential Information; (b) disassemble, decompile or reverse-engineer any such software; nor (c) otherwise take action to discover the equivalent of any such software.

(h) No warranty. Unless otherwise agreed by the Parties in a subsequent written agreement, the Council provides its Confidential Information solely on an "AS IS" basis and without warranty and is not liable for any damages arising out of use of such Confidential Information.

(i) Export controls. Confidential Information disclosed under this Agreement may be subject to export controls under the laws of the United States. Each Member will comply, and will cause its Covered Parties to comply, with such laws and agrees, and will cause its Covered Parties to agree, not to knowingly export, re-export or transfer any technical data acquired from the Council under this Agreement or any products or services utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval.

(j) Survival. The provisions of this Section 11.14 shall survive notwithstanding the forfeiture of an Interest from a Member in accordance with Section 4.3(h) ("*Expiration of Interests of Governing Members*") or Section 4.3(i) ("*For-Cause Removal and Termination of*

*Interests"*) or Section 4.3(j) ("*Removal of Member; Termination of Interests*") and Section 4.3(k) ("*Withdrawal*").

**Section 11.15 Consent to Use of Name and Logo**. Each Member hereby consents to the use and inclusion of its name and logo (i) on Schedule 1 hereto and any and all other notices or communications required or permitted to be given by the Council thereof and (ii) on the Council's website and in the Council's public announcements, press releases, and other marketing materials alongside the name and/or logos of the other Members for the sole purpose of identifying the Member as a past or present Member of the Council and/or operator of identified Hedera Network node(s) and for any other purpose as authorized in writing by the Member.

**Section 11.16 Copyright**.

(a) Definitions. The Council may, from time to time, produce documents or other works of authorship created in the course of or in connection with Council activities (including, without limitation, activities by Committees or other groups formed by the Council), excluding software ("**Documents**"). For the avoidance of doubt, source code, comments embedded within source code, and oral communications alone (including in any meetings, conference calls, or other live forums) are not "Documents." Members may contribute materials to the Council for inclusion in a Document (each, a "**Contribution**").

(b) Preexisting works. For any preexisting works in a Contribution, a Member grants to the Council a perpetual (for the duration of the applicable copyright), worldwide, non-exclusive, no-charge, royalty-free, copyright license, without any obligation for accounting to the Member, to reproduce, prepare derivative works of, publicly display, publicly perform, sublicense, and distribute copies of the preexisting works in the Contribution to the full extent of the Member's copyright interest in the Member's contribution to that Document.

(c) New works. For any new works in the Contribution, a Member assigns the new works in the Contribution to the Council and the Council grants the Member a perpetual (for the duration of the applicable copyright), worldwide, non-exclusive, no-charge, royalty-free, copyright license, without any obligation for accounting to the Council, to reproduce, prepare derivative works of, publicly display, publicly perform, sublicense, and distribute copies of the new works in the Contribution.

(d) Rights. To the fullest extent possible the Council shall own all copyright rights in all Documents.

**Section 11.17 Hedera Council Policies**. Each Member agrees to comply with all policies as approved by the Council or the Board. Any such policies, including those set forth on Exhibit B, and any modifications thereto, will take effect upon delivery to the Members, subject to a reasonable period for Members to comply with the policies or modifications thereto. The Secretary may authorize publication of any policy.

**Section 11.18 Counterparts**. This Agreement may be executed in any number of multiple counterparts, each of which shall be deemed to be an original copy and all of which shall constitute one agreement, binding on all parties hereto. A signed copy of this Agreement

delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**Section 11.19 Securities Law Matters**.

(a) Each Member understands that in addition to the restrictions on Transfer contained in this Agreement, such Member must bear the economic risks of the acquisition of its Interest for an indefinite period because the Interests have not been registered under the Securities Act of 1933, as amended, or under any applicable securities laws of any state or other jurisdiction and, therefore, may not be sold or otherwise Transferred unless they are registered under the Securities Act and any such other applicable securities laws or an exemption from such registration is available. Each Member agrees with all other Members that such Member will not sell or otherwise Transfer such Member's Interest in the Council unless such Interest has been so registered or in the opinion of Counsel, or of other counsel reasonably satisfactory to the Council, such an exemption is available.

(b) Each Member hereby represents that: (i) it is acquiring its Interest for its own account, and not with a view to resell or distribute the same or any part thereof; and (ii) no other person or Entity has any interest in its Interest or in the rights of the Member under this Agreement other than a spouse having a community property or similar interest under Applicable Law. Each Member also represents that it has the business and financial knowledge and experience necessary to acquire its Interest on the terms contemplated herein without the need for the investor protections provided by the registration requirements of the Securities Act of 1933, as amended.

(c) Each Member hereby represents that such Member is not subject to any law, regulation, rule of a self-regulatory body, judicial order, contract or other binding arrangement that would: (i) be violated in consequence of entering into of this Agreement; or (ii) impose upon the Council any material burden, restriction or obligation solely in consequence of the status or position (disregarding for this purpose any burden or obligation that consists solely of compliance with applicable tax laws). Each Member shall immediately notify the Council in the event that any representation set forth in the preceding sentence ceases to be accurate.

**Section 11.20 Survival**. The provisions of Sections 4.4 ("*Liability of the Members*"), 7.5 ("*Indemnification and Liability of the Members*"), 11.1 ("*Counsel*"), 11.2 ("*Appointment of Attorney-in-Fact*"), 11.5 ("*Arbitration*"), 11.8 ("*Further Assurances*"), 11.14 ("*Confidentiality*") and 11.15 ("*Consent to Use of Name*") (and this Section 11.20) (and any other provisions herein necessary for the effectiveness of the foregoing sections) shall survive the termination of the Council and/or the termination of this Agreement.

(*Signature Page Follows*)

IN WITNESS WHEREOF, the undersigned, as attorney-in-fact for each Member pursuant to 11.2(a)(ii) of this Agreement, has duly executed this Agreement as of the day and year first above written.

By:

Kate Ball

Secretary of Hedera Hashgraph, LLC

**SCHEDULE OF MEMBERS**

*As of October 1, 2026*

| | Members | End of Term | Interest[1] |
|---|---|---|---|
| 1. | Swirlds Group, LLC | *(permanent member)* | 3.030% |
| 2. | Deutsche Telekom AG | Dec. 31, 2026 | 3.030% |
| 3. | DLA Piper Investments Limited | Dec. 31, 2026 | 3.030% |
| 4. | Magazine Luiza, S.A. | Dec. 31, 2026 | 3.030% |
| 5. | Tata Communications (America) Inc. | Dec. 31, 2026 | 3.030% |
| 6. | International Business Machines Corporation | Dec. 31, 2026 | 3.030% |
| 7. | Nomura Holdings, Inc. | Dec. 31, 2026 | 3.030% |
| 8. | Google, LLC | Dec. 31, 2026 | 3.030% |
| 9. | Wipro Limited | Dec. 31, 2026 | 3.030% |
| 10. | Mobile Telecommunications Company K.S.C.P. (d/b/a Zain Group) | Dec. 31, 2026 | 3.030% |
| 11. | LG Electronics, Inc. | Dec. 31, 2026 | 3.030% |
| 12. | Avery Dennison Atma GmbH | Dec. 31, 2027 | 3.030% |
| 13. | Dentons Rodyk & Davidson LLP | Dec. 31, 2027 | 3.030% |
| 14. | Australian Payments Plus Ltd. | Dec. 31, 2027 | 3.030% |
| 15. | Standard Bank Group Limited | Dec. 31, 2027 | 3.030% |
| 16. | Électricité de France S.A. (EDF) | Dec. 31, 2027 | 3.030% |
| 17. | Shinhan Bank | Dec. 31, 2027 | 3.030% |
| 18. | Chainlink Labs, Inc. | Dec. 31, 2027 | 3.030% |
| 19. | LSE Enterprise Ltd. | Dec. 31, 2027 | 3.030% |
| 20. | Indian Institute of Technology Madras | Dec. 31, 2027 | 3.030% |
| 21. | ServiceNow, Inc. | Dec. 31, 2027 | 3.030% |
| 22. | Ubisoft Inc. | Dec 31, 2028 | 3.030% |
| 23. | Aberdeen Asset Management plc | Dec. 31, 2028 | 3.030% |
| 24. | Dell Marketing LP | Dec. 31, 2026* | 3.030% |
| 25. | Mondelēz International, Inc. | Dec. 31, 2027* | 3.030% |
| 26. | BitGo, Inc. | Dec. 31, 2027* | 3.030% |
| 27. | Nairobi Securities Exchange Plc | Dec. 31, 2027* | 3.030% |
| 28. | Arrow Electronics, Inc. | Dec. 31, 2028* | 3.030% |

[1] As defined in Section 2.13 of the Hedera LLC Agreement.

| | | | |
|---|---|---|---|
| 29. | Blockchain for Energy, Inc. | Dec. 31, 2028* | 3.030% |
| 30. | Repsol, S.A. | Dec. 31, 2028* | 3.030% |
| 31. | Federal Express Corporation | Dec. 31, 2029* | 3.030% |
| 32. | McLaren Racing Ltd. | Dec. 31, 2029* | 3.030% |
| 33. | Accenture LLP | Dec. 31, 2029* | 3.030% |
| | | *Total* | 100% |

*(* = Member is eligible for a Renewal Term in accordance with Section 4.3(g))*

# HEDERA OFFICERS

*As of January 1, 2026*

**President – Tom Sylvester**

Responsibilities: The President will lead the implementation and execution of all Council-approved strategies and policies and maintain enterprise-grade network governance. The President will lead Hedera's executive team and be responsible for operational excellence. The President will report to Hedera's Board of Directors, work closely with Council Members and the Council's Chair, and collaborate with key Hedera ecosystem stakeholders.

**Chief Policy Officer – Nilmini Rubin**

Responsibilities: Lead and execute a global policy strategy for the organization. Work closely with consultants, executive team, RegCom, Council and the Board to lead Hedera's global policy strategy creation, action plans and engagement; develop partnerships with trade associations, organizations, and academic entities to identify and impact changes in global policy, law and regulation relevant to the Hedera ecosystem; develop strategic relationships for Hedera with government officials, politicians and thought leaders to influence public policy; engage in public speaking at government, industry and global events and write op-eds, blogs or articles for placement at influential venues; engage with Hedera Council members to identify and address regulatory issues and serve as a source of policy information for members.

**General Counsel – Gregory Schneider**

Responsibilities: Management and oversight of all legal matters relating to Hedera; shall exercise oversight of any external legal counsel; shall perform all duties customarily incident to the office of General Counsel and shall have such other powers and perform such other duties as may be prescribed by law, by this Agreement, or which may be assigned to him or her from time to time by the Board.

**Secretary – Kate Ball**

Responsibilities: Recording and distributing minutes of meetings of the Board and Council Members, which shall include results of votes and other actions taken; in general, the Secretary shall perform all duties customarily incident to the office of Secretary and such other duties as may be required by law, by this Agreement, or which may be assigned to him or her from time to time by the Board.

**Treasurer - David Clark-Joseph**

Responsibilities: Oversee the company's financial transactions and financial matters; maintain accurate and up-to-date financial records; act as the main point of contact for tax authorities, banks, other financial institutions, and service providers with whom the company is or seeks to do business; and perform all duties customarily incident to the office of Treasurer and shall have such other powers and perform such other duties as may be prescribed by law, by this Agreement, or which may be assigned from time to time by the Board.

# HEDERA ELECTED LEADERSHIP

*As of January 1, 2026*

## BOARD OF DIRECTORS

| Name | Term End Date |
|---|---|
| Bill Miller (Chair) | December 31, 2026 |
| Frank Wang | December 31, 2027 |
| Duncan Moir | December 31, 2026 |
| Deborah Barta | December 31, 2027 |
| Tom Sylvester | N/A (ex officio) |

## COUNCIL CHAIR

| Name | Term End Date |
|---|---|
| Mance Harmon | June 30, 2027 |

## COUNCIL COMMITTEES

| Committee | Representative | Council Member | Term End Date |
|---|---|---|---|
| **Technical Steering & Product ("TechCom")** | Leemon Baird (Chair) | Swirlds Group, LLC | December 31, 2026 |
| | Soosan Naderi | EDF | December 31, 2026 |
| | Tim Johnson | Australian Payments Plus | December 31, 2026 |
| **Coin Economics & Treasury Management ("CoinCom")** | Leemon Baird (Chair) | Swirlds Group, LLC. | December 31, 2026 |
| | Muhammed Zubair (Mz) Omarjee | Standard Bank | December 31, 2026 |
| | Tom Kirchmaier | London School of Economics | December 31, 2026 |
| **Network Utilization ("UseCom")** | Rob Allen (Chair) | Swirlds Group, LLC | December 31, 2026 |
| | Muhammed Zubair (Mz) Omarjee | Standard Bank | December 31, 2026 |
| | Xiang Xu | Mondelez | December 31, 2026 |
| **Membership ("MemCom")** | Simon Olson (Chair) | Magazine Luiza | December 31, 2026 |
| | David Frattura | Dell | December 31, 2026 |
| | Shuchi Rana | ServiceNow | December 31, 2026 |

*Exhibit A*

**HEDERA HASHGRAPH, LLC**

**GOVERNING MEMBER JOINDER AGREEMENT**

Pursuant to the Fifth Amended and Restated Limited Liability Company Agreement of Hedera Hashgraph, LLC, dated as of _____, 2025 and attached as Appendix A hereto (as may be amended from time to time and including the Exhibits attached thereto, the "**Hedera LLC Agreement**"), the undersigned (the "**Member**") hereby agrees to be bound by and to observe all of the terms and conditions of the Hedera LLC Agreement as set forth below.

In addition, Member acknowledges receipt of a copy of the Hedera LLC Agreement and represents that Member has read such Hedera LLC Agreement and had the opportunity to consult with counsel in connection therewith.

Member hereby (a) authorizes Hedera Hashgraph, LLC (the "**Council**") to attach this counterpart signature page to the Hedera LLC Agreement, and (b) agrees that any notice required or permitted by the Hedera LLC Agreement shall be given to Member at the address or e-mail listed below.

Member also hereby agrees:

(i) effective as of the date of its signature below, to be bound by the confidentiality obligations set forth in Section 11.14 of the Hedera LLC Agreement, and

(ii) effective as of the date Member is listed as a Governing Member on the Council's website (with such date to be jointly agreed by the Council and the Member) (the "**Admission Date**"), to become a party to the Hedera LLC Agreement as a Governing Member, and for all purposes of the Hedera LLC Agreement, the Member shall be included within the term "Governing Member" thereunder. Member shall comply with all obligations set forth in the Hedera LLC Agreement, including but not limited to the Initial Capital Contribution as set forth in Section 3.2 of the Hedera LLC Agreement and the obligation to host a Node in accordance with the terms specified in the current Hedera Node Policy as set forth in Section 8.1 of the Hedera LLC Agreement.

This Joinder Agreement may be executed and delivered by facsimile or electronic signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Hedera LLC Agreement.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties have executed this Joinder Agreement as of the date first agreed and accepted by the Council as written below.

| COUNCIL: | MEMBER: |
|---|---|
| **Hedera Hashgraph, LLC** | **[Member Name]** |
| By: _____ | By: _____ |
| Name: Tom Sylvester | Name: _____ |
| Title: General Counsel & Secretary | Title: _____ |
| Date: _____ | Address: _____ |
| | _____ |
| | _____ |
| | Email: _____ |
| | Date: _____ |
| | Authorized Primary Council Representative: |
| | _____ |

*Exhibit A*

*Appendix A*

**FIFTH AMENDED & RESTATED**

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**HEDERA HASHGRAPH, LLC**

[*Attached*]

2025.04.09

*Exhibit B*

# INDEX OF HEDERA COUNCIL POLICIES

| | |
|---|---|
| 1. | Anti-Corruption Policy |
| 2. | Antitrust Policy |
| 3. | Conflict of Interest Policy for Professional Service Firms |
| 4. | Economic Sanctions & Financial Crimes Policy |
| 5. | Transaction Signature Policy |
| 6. | Ethics & Integrity Policy |
| 7. | Market Integrity Policy |
| 8. | Node Policy |
| 9. | Whistleblower Policy |
| 10. | Committee Policy |
| 11. | Election Policy |

# INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (the "**Agreement**") is made and entered into as of _____, 2025 between Hedera Hashgraph, LLC, a Delaware limited liability company (the "**Council**"), and _____ ("**Indemnitee**").

**WITNESSETH THAT:**

**WHEREAS**, highly competent persons have become more reluctant to serve as board members or officers of limited liability companies or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

**WHEREAS**, the Council's Board of Directors ("**Board**") and the Council's members ("**Council Members**") have determined that, in order to attract and retain qualified individuals, the Council will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Council and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Council believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Council or the business enterprise itself. The Fifth Amended and Restated Limited Liability Company Agreement of Hedera Hashgraph, LLC, dated April 9, 2025, as may be amended from time to time ("**Operating Agreement**"), Section 7.6, requires indemnification of the officers and Board members of the Council, as allowed by Title 6, Ch. 18-108 of the Delaware Limited Liability Company Act (the "**Delaware Code**"). The Operating Agreement expressly provides that the indemnification provisions set forth therein are not exclusive, and thereby contemplates that contracts may be entered into between the Council and its Board members, officers, and other persons with respect to indemnification;

**WHEREAS**, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

**WHEREAS**, the Board and the Council Members have determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Council, Council Members, and other stakeholders and that the Council should act to assure such persons that there will be increased certainty of such protection in the future;

**WHEREAS**, it is reasonable, prudent and necessary for the Council contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Council free from undue concern that they will not be so indemnified;

**WHEREAS**, this Agreement is a supplement to and in furtherance of the Operating

Agreement and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

**WHEREAS**, Indemnitee does not regard the protection available under the Council's Operating Agreement and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or Board member without adequate protection, and the Council desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Council on the condition that he/she be so indemnified;

**NOW, THEREFORE**, in consideration of Indemnitee's agreement to serve as a Board member and/or officer from and after the date hereof, the parties hereto agree as follows:

1. Indemnity of Indemnitee. The Council hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof.

(a) Proceedings Other Than Proceedings by or in the Right of the Council. Indemnitee shall be entitled to the rights of indemnification provided in this Section l(a) if, by reason of his/her Corporate Status (as hereinafter defined), the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of the Council. Pursuant to this Section 1(a), Indemnitee shall be indemnified against all Expenses (as hereinafter defined), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him/her, or on his behalf, in connection with such Proceeding or any claim, issue or matter therein, if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Council, and with respect to any criminal Proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful.

(b) Proceedings by or in the Right of the Council. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of his/her Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Council. Pursuant to this Section 1(b), Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee, or on the Indemnitee's behalf, in connection with such Proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Council; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged to be liable to the Council unless and to the extent that the Court of Chancery of the State of Delaware shall determine that such indemnification may be made.

(c) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his/her Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he/she shall be indemnified to the maximum extent permitted by

law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by him/her or on his/her behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Council shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him/her or on his/her behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

(d) Indemnification of Affiliated Entity. If (i) Indemnitee is or was affiliated with a corporation, limited liability company, limited liability partnership or other entity that is a Council Member (including any entity controlled by, controlling or under common control with such an entity) (an "**Affiliated Entity**"), and (ii) the Affiliated Entity is, or is threatened to be made, a party to or a participant in any Proceeding relating to or arising by reason of Affiliated Entity's position as a Council Member, or Affiliated Entity's appointment of or affiliation with Indemnitee, including, without limitation, any alleged misappropriation of a Council asset or corporate opportunity, any claim of misappropriation or infringement of intellectual property relating to the Council, any alleged false or misleading statement or omission made by the Council (or on its behalf) or its employees or agents, or any allegation of inappropriate control or influence over the Council or its Council Members, officers, equity holders or debt holders, then the Affiliated Entity will be entitled to indemnification hereunder for Expenses to the same extent as Indemnitee, and the terms of this Agreement as they relate to procedures for indemnification of Indemnitee and advancement of Expenses shall apply to any such indemnification of Affiliated Entity.

2. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Council shall and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him/her or on his/her behalf if, by reason of his/her Corporate Status, he/she is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Council), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Council's obligations pursuant to this Agreement shall be that the Council shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful.

3. Contribution.

(a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Council is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Council shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment and the Council hereby waives and relinquishes any right of contribution it may have against Indemnitee. The Council shall not enter into any settlement of any action, suit or

proceeding in which the Council is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Council set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Council is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Council shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Council and all officers, Board members or employees of the Council, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Council and all officers, Board members or employees of the Council other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the transaction or events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Council and all officers, Board members or employees of the Council, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Council hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, Board members, or employees of the Council, other than Indemnitee, who may be jointly liable with Indemnitee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Council, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Council and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding and/or (ii) the relative fault of the Council (and its Board members, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status, a witness, or is made (or asked) to respond to discovery requests, in any Proceeding to which Indemnitee is

not a party, he/she shall be indemnified against all Expenses actually and reasonably incurred by him/her or on his/her behalf in connection therewith.

5. Selection of Counsel and Advancement of Expenses. The Council shall select, with the reasonable approval of Indemnitee, counsel to defend any claims against Indemnitee in any Proceeding to which Indemnitee is a party and represent Indemnitee in any Proceeding to which Indemnitee is not a party ("**Company Counsel**"). If Company Counsel has a conflict of interest that prevents it from representing Indemnitee, the Council shall select, with the reasonable approval of Indemnitee, other counsel without a conflict of interest to represent Indemnitee. It shall be the discretion of the Board to waive this provision. If the Board waives this provision of this Agreement, the Council shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within thirty (30) days after the receipt by the Council of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free.

6. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the Delaware Code and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Council a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Council shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Council, or to provide such a request in a timely fashion, shall not relieve the Council of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Council.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the Board (1) by a majority vote of the  (as defined as defined in Section 13 of this Agreement) Board Members, even though less than a quorum, (2) by a committee of Disinterested Board Members designated by a majority vote of the Disinterested Board Members, even though less than a quorum, (3) if there are no Disinterested Board Members or if the Disinterested Board Members so direct, by independent legal counsel in a written opinion to

the Board, a copy of which shall be delivered to the Indemnitee, or (4) by a majority vote of the Board. For purposes hereof, Disinterested Board Members are those members of the Board who are not parties to the action, suit or proceeding in respect of which indemnification is sought by Indemnitee.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(c). The Independent Counsel shall be selected by the Board. Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Council a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "**Independent Counsel**" as defined in Section 13 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Council or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by the Indemnitee to the Council's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Council shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Council shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Neither the failure of the Council (including by its Board or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Council (including by its Board or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(e) Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise (as hereinafter defined), including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public

accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any Board member, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of Hedera. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(f) If the person, persons or entity empowered or selected under Section 6 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by Hedera of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such sixty (60) day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto.

(g) Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, Board member, or Council Member shall act reasonably and in good faith in making a determination regarding the Indemnitee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by Hedera (irrespective of the determination as to Indemnitee's entitlement to indemnification) and Hedera hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(h) Hedera acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such action, suit or proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(i) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in

good faith and in a manner which he/she reasonably believed to be in or not opposed to the best interests of Hedera or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his/her conduct was unlawful.

7. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) of this Agreement within ninety (90) days after receipt by Hedera of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by Hedera of a written request therefor, or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, of Indemnitee's entitlement to such indemnification. Indemnitee shall commence such proceeding seeking an adjudication within one hundred eighty (180) days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 7(a). Hedera shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 6(b).

(c) If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is entitled to indemnification, Hedera shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of his/her rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by Hedera, Hedera shall pay on his/her behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 13 of this Agreement) actually and reasonably incurred by him in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(e) Hedera shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that Hedera is bound by all the provisions of this Agreement. Hedera shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by Hedera of a

written request therefore) advance, to the extent not prohibited by law, such expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from Hedera under this Agreement or under any directors' and officers' liability insurance policies maintained by Hedera, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

8. Non-Exclusivity; Survival of Rights; Insurance; Primacy of Indemnification; Subrogation.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Operating Agreement, a vote of the Board, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the Delaware Code, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Operating Agreement and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that Hedera maintains an insurance policy or policies providing liability insurance for Board members, officers, employees, or agents or fiduciaries of Hedera or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person serves at the request of Hedera, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any Board member, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, Hedera has directors' and officers' liability insurance in effect, Hedera shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. Hedera shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) If applicable, Hedera hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of expenses and/or insurance provided by _____[3] and certain of its affiliates (collectively, the "**Affiliated**

[3] Insert name of Council Member with whom Indemnitee is affiliated, if applicable.

**Entity Indemnitors**"). Hedera hereby agrees (i) that it is the indemnitor of first resort as between it and the Affiliated Entity Indemnitors (i.e., its obligations to Indemnitee are primary and any obligation of the Affiliated Entity Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and Operating Agreement (or any other agreement between Hedera and Indemnitee), without regard to any rights Indemnitee may have against the Affiliated Entity Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Affiliated Entity Indemnitors from any and all claims against the Affiliated Entity Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. Hedera further agrees that no advancement or payment by the Affiliated Entity Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from Hedera shall affect the foregoing and the Affiliated Entity Indemnitors 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 Indemnitee against Hedera. Hedera and Indemnitee agree that the Affiliated Entity Indemnitors are express third party beneficiaries of the terms of this Section 8(c).

(d) In the event of any payment under this Agreement, Hedera shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable Hedera to bring suit to enforce such rights.

(e) Hedera shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(f) Hedera's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of Hedera as a Board member, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

9. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, Hedera shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision, provided, that the foregoing shall not affect the rights of Indemnitee or the Fund Indemnitors set forth in Section 8(c) above; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of Hedera within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law; or

(c) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against Hedera or its Board members, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation, or (ii) Hedera provides the indemnification, in its sole discretion, pursuant to the powers vested in Hedera under applicable law.

10. Duration of Agreement. All agreements and obligations of Hedera contained herein shall continue during the period Indemnitee is an officer or Board member of Hedera (or is or was serving at the request of Hedera as a Board member, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, and shall continue thereafter so long as Indemnitee shall be subject to any Proceeding (or any proceeding commenced under Section 7 hereof) by reason of his/her Corporate Status, whether or not he/she is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of Hedera), assigns, spouses, heirs, executors and personal and legal representatives.

11. Security. To the extent requested by Indemnitee and approved by the Board, Hedera may at any time and from time to time provide security to Indemnitee for Hedera's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.

12. Enforcement.

(a) Hedera expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve as an officer or Board member of Hedera, and Hedera acknowledges that Indemnitee is relying upon this Agreement in serving as an officer or Board member of Hedera.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) Hedera shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the Indemnitee's rights to receive advancement of expenses under this Agreement.

13. Definitions. For purposes of this Agreement:

(a) "**Corporate Status**" describes the status of a person who is or was a Board member, officer, employee, agent or fiduciary of Hedera or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the express written request of Hedera.

(b) "**Disinterested Board Member**" means a Hedera Board member who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(c) "**Enterprise**" shall mean Hedera and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request of Hedera as a Board member, officer, employee, agent or fiduciary.

(d) "**Expenses**" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding and any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, including without limitation the premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(e) "**Independent Counsel**" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent (i) Hedera or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either Hedera or Indemnitee in an action to determine Indemnitee's rights under this Agreement. Hedera agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(f) "**Proceeding**" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of Hedera or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of his or her Corporate

Status, by reason of any action taken by him/her or of any inaction on his/her part while acting in his or her Corporate Status; in each case whether or not he/she is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his/her rights under this Agreement.

14. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Further, the invalidity or unenforceability of any provision hereof as to either Indemitee or Affiliated Entity shall in no way affect the validity or enforceability of any provision hereof as to the other. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice By Indemnitee. Indemnitee agrees promptly to notify Hedera in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify Hedera shall not relieve Hedera of any obligation which it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices Hedera.

17. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

(a) To Indemnitee at the address set forth below Indemnitee signature hereto.

(b) To Hedera at:

legal@hedera.com, with a copy to:

Hedera Hashgraph, LLC
10845 W Griffith Peak Drive, Suite 200
Las Vegas, NV 89135

Attention: Legal

or to such other address as may have been furnished to Indemnitee by Hedera or to Hedera by Indemnitee, as the case may be.

18. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

19. Governing Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Hedera and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "**Delaware Court**"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum. The prevailing party in any dispute arising out of or relating to this agreement shall be entitled to an award of its reasonable attorneys' fees and costs, including expert witness fees.

***SIGNATURE PAGE TO FOLLOW***

IN WITNESS WHEREOF, the parties hereto have executed this Indemnification Agreement on and as of the day and year first above written.

**Hedera Hashgraph, LLC**

By:_____

Name:

Title:

Date:

By:_____

Name:

Title:

Date:

**INDEMNITEE**

By:_____

Name: _____

Date:

Address: _____

_____

_____

_____

# UNDERTAKING TO REPAY INDEMNIFICATION EXPENSES

This UNDERTAKING TO REPAY INDEMNIFICATION EXPENSES (this "**Undertaking**") is by _____ ("**Indemnitee**"), in favor of Hedera Hashgraph, LLC, a Delaware limited liability company (the "**Council**").

## RECITALS

**WHEREAS**, Indemnitee is serving as a [director/officer] of the Council and may be subject to claims, suits, or proceedings arising from such service;

**WHEREAS**, the Council has agreed, subject to certain limitations, to advance legal fees and indemnify Indemnitee in accordance with its Fifth Amended and Restated Limited Liability Company Agreement, and applicable Delaware law;

**WHEREAS**, Section 7.6 of the Fifth Amended and Restated Limited Liability Company Agreement permits the the Council to advance expenses incurred in defending any action, suit, or proceeding, provided that Indemnitee undertakes to repay such amounts if it is ultimately determined that Indemnitee is not entitled to indemnification;

## ADVANCEMENT UNDERTAKING

**NOW, THEREFORE**, for and in consideration of the foregoing and intending to be legally bound, Indemnitee agrees as follows:

1. **Advancement of Expenses.** The Council shall advance to Indemnitee all reasonable expenses (including attorneys' fees and costs) incurred in connection with any actual or threatened claim, action, suit, or proceeding (whether civil, criminal, administrative, or investigative) arising from Indemnitee's service as a [director/officer] of the Council, to the fullest extent permitted by law.

2. **Repayment Obligation.** Indemnitee agrees that, if it is ultimately determined by a final, non-appealable judgment of a court of competent jurisdiction or arbitral tribunal that Indemnitee is not entitled to indemnification under the Council's Fifth Amended and Restated Limited Liability Company Agreement, or applicable law, Indemnitee shall timely repay all amounts advanced by the Council.

3. **Cooperation.** Indemnitee agrees to cooperate fully with the Council in the defense of any proceeding for which expenses are advanced.

4. **No Presumption of Entitlement.** The execution of this Undertaking shall not be construed as a presumption that Indemnitee is entitled to indemnification in connection with any particular proceeding.

5. **Governing Law.** This Undertaking shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles.

6. **Miscellaneous.** (a) This Undertaking shall be binding upon and inure to the benefit of the successors, assigns, heirs, and personal representatives of Indemnitee. (b) If any provision of this Undertaking is found to be invalid or unenforceable, the remaining provisions shall remain in full force and effect. (c) This Undertaking may be executed in counterparts and delivered electronically.

IN WITNESS WHEREOF, Indemnitee has executed this Undertaking.

**[Director/Officer Name]**

_____

Date:

Accepted and Agreed:

**Hedera Hashgraph, LLC**

By: _____
Name: Authorized Signatory

Title:

Date: