

LIMITED LIABILITY COMPANY AGREEMENT

OF

INCOMMON LLC

ARTICLE I THE COMPANY

1.01 Definitions.

The following terms shall have the meanings set forth herein (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

Act: The Delaware Limited Liability Company Act, as amended from time to time.

Agreement: This Limited Liability Company Agreement, as it may be further amended or supplemented from time to time.

Annual Meeting: As defined in Section 6.01.

Steering Committee: As defined in Section 6.01.

Capital Contribution: Any property (including cash) contributed to the Company by or on behalf of a Member.

Certificate: The Certificate of Formation, and any and all amendments thereto, filed on behalf of the Company with the Recording Office as required under the Act.

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

Company: InCommon , LLC.

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

Fiscal Year: As defined in Section 7.05.

Member: University Corporation for Advanced Internet Development, Inc. d/b/a Internet2 ("Internet2").

Membership Interest: As defined in Section 4.01.

Person: Any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate, or other entity or organization.

Recording Office: The office of the Secretary of State of the State of Delaware.

Related Party: With regard to a Member, officer, or other Person in question, any Person directly or indirectly controlling, controlled by, or under common control with the Person in question; if the Person in question is a corporation, any executive officer or director of the Person in question or of any corporation directly or indirectly controlling the Person in question. As used in this definition of “Related Party”, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

SC Member: Any member of the Steering Committee.

1.02 Title to Property. All property owned by the Company shall be owned by the Company as an entity and no Member shall have any ownership interest in such property in its individual name, and each Member’s interest in the Company shall be personal property for all purposes. At all times after the Effective Date, the Company shall hold title to all of its property in the name of the Company and not in the name of ~~any~~the Member.

1.03 Payments of Individual Obligations. The Company’s credit and assets shall be used ~~solely~~ for the benefit of the Company, and no asset of the Company shall be transferred or encumbered for, or in payment of, any individual obligation, of any SC Member or any other Person.

Commented [IL1]: The credit and assets cannot be used for the benefit of Internet2.

ARTICLE II GENERAL PROVISIONS

2.01 Ratification of Prior Acts

The Member of the Company hereby ratifies and approves all actions taken by the Company, its sole incorporator, and any officer prior to this Agreement.

2.02 Name of Company

The name under which the Company shall conduct its business is “InCommon, LLC”. The business of the Company may be conducted under any other name permitted by the Act that is selected by the Steering Committee, in its sole and absolute discretion. The Steering Committee promptly shall execute, file, and record any assumed or fictitious name certificates required by the laws of the State of Delaware or any state in which the Company conducts business.

2.03 Term

The term of the Company commenced on the date upon which the Certificate was duly filed with the Recording Office and shall continue until dissolved and liquidated. The existence of the Company as a separate legal entity shall continue until the Certificate’s cancellation.

2.04 Place of Business

The location of the principal place of business of the Company shall be as determined by the Steering Committee. The Steering Committee may change the principal place of business of the Company to such other place or places within the United States as the Steering Committee may from time to time determine, in its sole and absolute discretion, provided that the Steering Committee shall give written notice of the change to the Member within thirty (30) days after the effective date of the change and, if necessary, the Steering Committee shall amend the Certificate in accordance with the applicable requirements of the Act. The Steering Committee may, in its sole and absolute discretion, establish and maintain such other offices and additional places of business of the Company, either within or without the State of Delaware, as it deems appropriate.

2.05 Registered Office and Registered Agent

The location of the registered office and the name of the registered agent of the Company in the State of Delaware shall be as stated in the Certificate, as determined from time to time by the Steering Committee .

ARTICLE III PURPOSES AND POWERS

3.01 Purposes

The purposes of the Company shall include:

(a) to facilitate collaboration through the sharing of protected network-accessible resources by means of an agreed upon trust fabric;

[\(b\) research, develop, offer and implement trust and identity initiatives in the education and research communities](#)

~~(b)~~(c) to acquire, hold, own, operate, manage, finance, encumber, sell, or otherwise dispose of, assign, or otherwise use the Company Assets; and

~~(e)~~(d) to enter into any lawful transaction and engage in any lawful activities in furtherance of the foregoing purposes and as may be necessary, incidental or convenient to carry out the business of the Company as contemplated by this Agreement.

3.02 Powers

The Company shall have the power to do any and all acts and things necessary, appropriate, advisable, or convenient for the furtherance and accomplishment of the purposes of the Company, including, without limitation, to engage in any kind of activity and to enter into and perform obligations of any kind necessary to or in connection with, or incidental to, the accomplishment of the purposes of the Company, so long as said activities and obligations may be lawfully engaged in or performed by a limited liability company under the Act.

3.03 Tax Classification

The Company shall be operated in a manner consistent with its classification as a disregarded entity for federal and state tax purposes.

ARTICLE IV MEMBERS

4.01 Membership Interests

Equity interests in the Company shall consist of the Membership Interests, which shall all be owned by Internet2.

4.02 Issuance of Membership Interests

No new Membership Interest shall be issued.

ARTICLE V CAPITAL

5.01 Liability of the Member and the Steering Committee

Except as otherwise provided in the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and neither the Member nor the SC Members shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member or a SC Member. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under the Act or this Agreement shall not be grounds for imposing personal liability on the Member or the SC Members for liabilities of the Company.

ARTICLE VI GOVERNANCE

6.01 Management of the Company by the Steering Committee

(a) Management by the Steering Committee. Except as otherwise provided for herein, the Member hereby unanimously agrees that the responsibility for management of the business and affairs of the Company shall be delegated to a group of individuals designated as the Steering Committee pursuant to Section 18-402 of the Act (the "Steering Committee"). The initial members of the Steering Committee shall be comprised of the individuals listed on Exhibit A hereto.

(b) Composition of Steering Committee; Appointment and Removal

(i) The Steering Committee shall at all times be composed of at least seven (7) and not more than thirteen (13) individuals (each individual referred to as a “SC Member”). At least one SC Member shall always be an employee, officer, or director of Internet2 (referred to as the “Internet2 Member”). The Steering Committee shall appoint a secretary of the Company (the “Secretary”). The Secretary shall also serve as the secretary of the Steering Committee and must be a SC Member. The Secretary, at the direction of the Steering Committee, shall prepare and distribute to each SC Member an agenda in advance of each meeting and shall prepare and distribute promptly to each SC Member written minutes of all meetings of the Steering Committee. The Secretary shall also be responsible for preparing and distributing to the SC Members any notices received by the Company or otherwise called for by this Agreement to be given by the Company. The Steering Committee may appoint officers of the Steering Committee in addition to the Secretary (including, but not limited to, a chair, and one or more vice chairs, ~~a treasurer and an assistant secretary~~) upon terms and conditions the Steering Committee deems necessary and appropriate.



Terms of Office. Any officer shall hold his or her respective office unless and until such officer is removed by the Steering Committee.

(ii) SC Members shall be divided into three classes, Class A, Class B, and Class C, as equal in number as possible. Each year, the terms of one of these groups of SC Members shall expire, such that the SC Members serve staggered terms and one-third of the SC Members' positions are subject to reelection. SC Members shall be elected for a three-year term, with the exception of the initial SC Members designated as Class A and Class B on Exhibit A, who shall serve for one-year and two-year terms, respectively. SC Members shall serve no more than two full consecutive three-year terms. When an SC Member is named to the Steering Committee to fill the unexpired term of a predecessor, the SC Member may serve out the unexpired term plus two full terms.

(iii) Each such SC Member shall serve until the expiration of his or her term or, if earlier, at such time as he or she resigns, retires, dies or is removed. Any SC Member may be removed with or without cause only by the Member. Upon the expiration of the SC Member's term or upon the resignation, retirement, death or removal of any SC Member, the Steering Committee shall nominate at least two replacement SC Members to fill each vacancy. The Member shall select from the nominees recommended by the Steering Committee an individual to serve as an SC Member. The Internet2 Member shall be nominated and selected by the Member.

(c) Meetings and Actions

(i) The Steering Committee shall meet (A) at least once each Fiscal Year (such annual meeting, the “Annual Meeting”); (B) at such other times as may be determined by the Steering Committee or the Member; or (C) upon the request of at least two SC Members or the ~~Operations Manager~~ Executive Director upon ten (10) days' notice to all SC Members. The Chair may call an emergency meeting of the Steering Committee to address any issue for which, in the sole discretion of the Chair, it is critical that the advice or decision of the Steering Committee be obtained in fewer than 10 days. Meetings may be held by telephone.



Commented [CWH2]: May want Executive Director to be able to call a meeting as well.

Commented [IL3]: Removed the “except in the case of emergency” and added language regarding what to do in the event of an emergency.

Commented [IL4]: Member should retain access to minutes of the meetings.

Commented [IL5]: Of the approval of the minutes? Approval by who? Also, Bylaws requires posting of minutes to the Federation within 30 days from the meeting, so however long the approval process takes, it would have to be under 30 days.

(ii) The Steering Committee shall cause written minutes to be prepared of all actions taken by the Steering Committee at meetings and shall cause a copy thereof to be delivered to each SC Member and the Member within fifteen (15) days of the approval thereof.



(iii) No action may be taken at a meeting of the Steering Committee unless a quorum consisting of at least a majority of SC Members is present.

(iv) Each SC Member shall be entitled to cast one vote with respect to any decision made by the Steering Committee. Except as otherwise provided herein, any action to be taken by the Steering Committee shall require the vote of at least a majority of the Steering Committee at a meeting at which a quorum is present. Except as otherwise provided herein, approval or action by the Steering Committee shall constitute approval or action by the Company and shall be binding on the Member. Any action to be taken by the Steering Committee or a committee thereof may be taken without a meeting if all members of the Steering Committee or committee, as the case may be, consent thereto in writing.

(d) Committees. The Steering Committee may designate a subcommittee consisting of at least three SC Members, one individual who shall be the Internet2 Member. Any subcommittee, to the extent provided by the Steering Committee, shall have and may exercise all the power and authority of the Steering Committee. No action may be taken at a meeting of any subcommittee unless a quorum consisting of at least two SC Members is present. All actions of a subcommittee shall require the majority vote of the subcommittee members.

(e) Advisory Committees. Other committees not having and exercising the authority of the Steering Committee may be constituted and members thereof appointed by a resolution adopted by a majority of the Steering Committee present at a meeting of the Steering Committee at which a quorum is present. No action may be taken at a meeting of any advisory committee unless a quorum consisting of at least a majority of the members is present. All actions of an advisory committee shall require the majority vote of the advisory committee members.

(f) Telephone Meeting. Members of the Steering Committee or any committee thereof may participate in any meeting by means of conference telephones or similar communications if all members participating in such meeting can hear one another for the entire discussion of the matter(s) to be voted upon.

(g) Power and Authority of the Steering Committee. Except as otherwise provided for herein, the Steering Committee (acting on behalf of the Company), by its own action, or by action of a subcommittee of the Steering Committee, but not by delegation to officers or other employees of the Company, shall have the right, power and authority to manage the operations of the Company.

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

(i) Fiduciary Relationship. No SC Member shall be liable to the Company or its Member for monetary damages for breach of fiduciary duty as an SC Member or otherwise liable, responsible or accountable to the Company or its Member for monetary damages or otherwise for any acts performed, or for any failure to act; *provided, however*, that this provision shall not eliminate or limit the liability of an SC Member (i) for any breach of the SC Member's duty of loyalty to the Company or its Member, (ii) for acts or omissions which involve intentional misconduct or a knowing violation of law, or (iii) for any transaction from which the SC Member received any improper personal benefit.

(j) Reimbursement. All expenses incurred with respect to the organization, operation, and management of the Company shall be borne by the Company. No salary or fees for services shall be paid to the SC Members for their services as such; *provided, however*, that the Steering Committee may allow a reasonable fixed sum and expenses to be paid for attendance at regular and special meetings of the Steering Committee or committee thereof. The SC Members shall be entitled to reimbursement from the Company for direct expenses allocable to the organization, operation, and management of the Company. Nothing contained herein shall prevent an SC Member from serving the Company in any other capacity and receiving compensation therefor.

(k) No Individual Authority. Other than through actions taken by the Steering Committee, as set forth herein, no SC Member shall have the authority to bind the Company.

(l) Member Consent Required for Certain Actions. Notwithstanding any contrary provision in this Agreement, the following decisions and actions shall not be made or taken without the consent of the Member:

- (i) The sale or other disposition of substantially all of the Company's assets;
- (ii) An amendment to this Agreement;
- (iii) The admission of new Members;
- (iv) The dissolution, merger or combination of the Company;

(v) Approving any contract, agreement, or commitment (with the exception of an employment contract) with a value in excess of \$50200,000 or a term longer than six (6) months (or a group of related contracts, agreements and commitments with an aggregate value in excess of \$50200,000);



Commented [IL6]: We prefer to keep as is. Our risk assessment of entering a contract is based on the terms in the contract and the service InCommon is providing, not the dollar amount.

Commented [CWH7]: This isn't really Steering's concern. Recommend Member check with staff to verify volume.

(vi) Approving the choice of bank depositories and approving arrangements relating to signatories on bank accounts affirmative;

(vii) Approving the conveyance, sale, transfer, assignment, pledge, encumbrance, or disposal of, or the granting of a security interest in, any assets of the Company the fair market value of which may reasonably be expected to exceed \$25,000;

(viii) Approving the entry of the Company into any other partnership or joint venture;

(ix) Incurring indebtedness or loaning any sum or extending credit to any Person in an amount in excess of \$25,000, or for a period in excess of six (6) months;

(x) Guaranteeing any indebtedness of any other Person in any amount in excess of \$25,000 or for a period in excess of six (6) months, or guaranteeing any contractual obligations of any other Person with a value in excess of \$25,000 or for a period in excess of six (6) months;

(xi) Conducting litigation to which the Company is a party; or

(xii) Approving the acquisition approval of any business or a business division from any Person, whether by asset purchase, stock purchase, merger, or other business combination.

6.02 Officers

~~Operations Manager, Executive Director.~~ The Steering Committee shall appoint an ~~Operations Manager, Executive Director~~ of the Company (the “~~Operations Manager, Executive Director~~”) and the appointment shall be approved by the Member. Subject to the supervision and authority of the Steering Committee, the ~~Operations Manager, Executive Director~~ (i) shall be the chief executive officer of the Company, (ii) shall have responsibility and authority for management of the day-to-day operations of the Company, and (iii) may execute agreements and contracts on behalf of the Company; and (iv) may assign the authority to execute the agreements and contracts on behalf of the Company to the President and CEO, General Counsel, or Chief Financial Officer of the Member. ~~The Operations Manager, Executive Director shall be an employee of Internet2.~~



Commented [CWH8]: Could Ann be a part-time employee?

Commented [CWH9]: Could Ann be a part-time employee?

Commented [IL10]: No. Ann will come on as an employee in October.

6.03 Indemnification of the Member, SC Members, Officers and any Related Party

(a) Right of Indemnification. To the extent permitted by Section 18-108 of the Act, the Company shall indemnify and hold harmless any Member, SC Member, and officers (individually, in each case, an “Indemnitee”) to the fullest extent permitted by law from and against any and all losses, claims, demands, costs, damages, liabilities joint or several), expenses of any nature (including attorneys’ fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which the Indemnitee may be involved or threatened to be involved, as a party or otherwise, arising out of or incidental to the business or activities of or relating to the Company, regardless of whether the Indemnitee continues to be a Member, an SC Member, or an officer thereof at the time any such liability or expense is paid or incurred; provided, however, that this provision shall not eliminate or limit the liability of an Indemnitee (i) for any breach of the Indemnitee’s duty of loyalty to the Company or its Member, (ii) for acts or omissions which involve intentional misconduct or a knowing violation of law, or (iii) for any transaction from which the Indemnitee received any improper personal benefit.

(b) Advances of Expenses. Expenses incurred by an Indemnitee in defending any claim, demand, action, suit, or proceeding subject to this Section 6.03 may, from time to time, upon request by the Indemnitee, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall be determined in a judicial proceeding or a binding arbitration that such Indemnitee is not entitled to be indemnified as authorized in this Section 6.03.

(c) Other Rights. The indemnification provided by this Section 6.03 shall be in addition to any other rights to which an Indemnitee may be entitled under any agreement, vote of the Steering Committee as a matter of law or equity, or otherwise, both as to an action in the Indemnitee’s capacity as a Member, an SC Member, an officer or any Related Party thereof, and as to an action in another capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns, and administrators of the Indemnitee.



(d) Insurance. The Company on its own, or in cooperation with the Member, may purchase and maintain insurance on behalf of the Steering Committee and such other Persons as the Steering Committee shall determine against any liability that may be asserted against or expense that may be incurred by such Persons in connection with the offering of ~~interests~~ Membership Interests in the Company or the business or activities of the Company, regardless of whether the Company would

have the power to indemnify such Persons against such liability under the provisions of this Agreement.

(e) Effect of Interest in Transaction. An Indemnitee shall not be denied indemnification in whole or in part under this Section 6.03 or otherwise by reason of the fact that the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted or not expressly prohibited by the terms of this Agreement.

(f) No Third Party Rights. The provisions of this Section 6.03 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

6.04 Conflicts of Interest


The Company shall implement the Conflict of Interest Policy set forth in Exhibit B hereto, which may be amended solely by the Member.

ARTICLE VII ACCOUNTING

7.01 Bank Accounts

All funds of the Company shall be deposited in Member's name in such checking and savings accounts, time deposits, certificates of deposit or other accounts at such banks as shall be designated by the Member from time to time, and the Member shall arrange for the appropriate conduct of such account or accounts.

7.02 Books and Records

(a) The ~~Operations Manager~~Executive Director shall keep, or cause to be kept, accurate, full and complete books and accounts showing assets, liabilities, income, operations, transactions and the financial condition of the Company. Such books and accounts shall be prepared on the accrual basis of accounting. Any SC Member, the Member or its designee~~their respective designees~~ shall have access ~~thereto~~ to such books and accounts at any reasonable time during regular business hours and shall have the right to copy said records at its expense. 

7.03 Accounting Decisions

All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the Steering Committee.

7.04 Where Maintained

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

7.05 Fiscal Year

The fiscal year of the Company for financial, accounting, Federal, state and local income tax purposes shall be the same fiscal year as its Member.

ARTICLE VIII DISSOLUTION AND LIQUIDATION

8.01 Events Causing Dissolution

(a) The Company shall be dissolved and its affairs wound up upon the consent in writing to dissolve and wind up the affairs of the Company by its sole Member.

8.02 Cancellation of Certificate

Upon the dissolution of the Company, the Certificate shall be canceled in accordance with the provisions of Section 18-203 of the Act, and the Member (or any other person or entity responsible for winding up the affairs of the Company) shall promptly notify the Steering Committee of such dissolution.

8.03 Distributions Upon Dissolution

(a) Upon the dissolution of the Company, the Steering Committee (or any other person or entity responsible for winding up the affairs of the Company) shall proceed without any unnecessary delay to sell or otherwise liquidate the Company Assets and pay or make due provision for the payment of all debts, liabilities and obligations of the Company.

(b) The Steering Committee (or any other person or entity responsible for winding up the affairs of the Company) shall distribute the net liquidation proceeds and any other liquid assets of the Company after the payment of all debts, liabilities and obligations of the Company (including, without limitation, all amounts owing to a Member under this Agreement or under any agreement between the Company and a Member entered into by the Member other than in its capacity as a Member in the Company), the payment of expenses of liquidation of the Company, and the establishment of a reasonable reserve in an amount estimated by the Steering Committee to be sufficient to pay any amounts reasonably anticipated to be required to be paid by the Company, to its Member.

8.04 Reasonable Time for Winding Up

A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to Section 8.03 in order to minimize any losses otherwise attendant upon such a winding up.

**ARTICLE IX
AMENDMENTS**

9.01 This Agreement may only be amended by the consent of the Member.

**ARTICLE X
PARTICIPANTS**

10.01 The Company may permit Persons, who shall be designated as “Participants” or such other name as the Steering Committee may permit to become affiliated with the Company in order to help facilitate and advance the Company’s purposes. Such Participants may be designated into one or more classes with such rights and obligations, as provided for by agreement between the Company and such Participant(s). In no event shall such Participant(s) be (i) entitled to vote on any manner involving the affairs of the Company, (ii) entitled to any rights or privileges afforded to the Member, (iii) entitled to any rights or privileges not specifically provided for in the agreement between the Company and the Participant(s), or (iv) entitled to any interest in the Company or its assets.

The foregoing Updated Agreement was adopted by the Company's sole Member, Internet2, on December 10, 2005, 2015.

By: _____

Douglas E. Van HouwelingDavid Lambert, CEO

University Corporation for Advanced Internet Development, Inc.

EXHIBIT A
INCOMMON LLC
Steering Committee

Name	Class	<u>Term Expires</u>
Jerry Campbell, USC	A	12/31/2005
Lev Gonick, CWRU	A	12/31/2005
Susan Perry, Mt Holyoke, Mellon	A	12/31/2005
Clair Goldsmith, UT System	B	12/31/2006
Carrie Regenstein, U Wisconsin-Madison	B	12/31/2006
Mike Teets, OCLC	B	12/31/2006
Mark Luker, EDUCAUSE	C	12/31/2007
Tracy Mitrano, Cornell	C	12/31/2007
David Yakimischak, JSTOR	C	12/31/2007
Ken Klingenstein, Internet2	Internet2 Member	

EXHIBIT B
INCOMMON FEDERATION, LLC
CONFLICT OF INTEREST POLICY

ARTICLE I
PURPOSE

The purpose of the conflict of interest policy is to protect the interest of InCommon, LLC (the “Company”) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a member of the Steering Committee (each such member, an “SC Member,” and such Committee, the “Steering Committee”), a member of a subcommittee of the Steering Committee (a “subcommittee”), an officer of the Steering Committee, or an employee of the Company (each such member, officer, or employee, a “Company Individual”). This policy is intended to supplement but not replace any applicable federal or state laws governing conflicts of interest applicable to the Company.

ARTICLE II
DEFINITIONS

1. Interested Person

Any Company Individual who has a direct or indirect financial interest, as defined below, is an “Interested Person.”

2. Financial Interest

A Company Individual has a financial interest if he or she has, directly or indirectly, through business, investment or family --

- a. an ownership or investment interest in any entity with which the Company has a transaction or arrangement, or
- b. a compensation arrangement with any entity, except Internet2, or individual with which the Company has a transaction or arrangement, or
- c. a potential ownership or investment interest in, or compensation arrangement with, any entity, except Internet2, or individual with which the Company is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the Steering Committee or appropriate subcommittee decides that a conflict of interest exists.

ARTICLE III PROCEDURES

1. Duty to Disclose

In connection with any actual or possible conflict of interest, an Interested Person must disclose the existence of his or her financial interest and all material facts to the Steering Committee and/or subcommittee considering the proposed transaction or arrangement.

2. Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest and all material facts, and after any discussion with the Interested Person, he or she shall leave the Steering Committee or subcommittee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Steering Committee or subcommittee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest

- a. An Interested Person may make a presentation at the Steering Committee or subcommittee meeting, but after such presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.
- b. The Steering Committee or subcommittee, as the case may be, shall, if appropriate, appoint a disinterested SC Member, officer, or subcommittee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the Steering Committee or subcommittee shall determine whether the Company can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Steering Committee or subcommittee shall determine by a majority vote of its disinterested members whether the transaction or arrangement is in the Company's best interest and for its own benefit and whether the transaction is fair and reasonable to the Company and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

4. Violations of the Conflict of Interest Policy

- a. If the Steering Committee or subcommittee has reasonable cause to believe that a Company Individual has failed to disclose an actual or possible conflict of interest, it shall inform such person of the basis for such belief and afford him or her an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the response of the Company Individual and making such further investigation as may be warranted in the circumstances, the Steering Committee or subcommittee thereof determines that the Company Individual has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

ARTICLE IV
RECORDS OF PROCEEDINGS

The minutes of the Steering Committee and all subcommittees with Steering Committee-delegated powers shall contain --

1. the names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Steering Committee's or subcommittee's decision as to whether a conflict of interest in fact existed.
2. the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

ARTICLE V
COMPENSATION COMMITTEES

A voting member of any subcommittee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Company for services is precluded from voting on matters pertaining to that member's compensation.

ARTICLE VI
ANNUAL STATEMENTS

Each Company Individual shall annually sign a statement which affirms that such person: -

- a. has received a copy of the conflict of interest policy,
- b. has read and understands the policy, and
- c. has agreed to comply with the policy.