

**OPERATING AGREEMENT**

**OF**

**AgXML, L.L.C.**

**OPERATING AGREEMENT  
OF  
AgXML, LLC**

**THIS OPERATING AGREEMENT** (including any attachments, exhibits or amendments hereto, hereafter referred to as the "Operating Agreement" or "Agreement") of **AgXML, LLC** (hereinafter referred to as the "Company" or "Organization") is made and entered into by and among those persons and entities executing this Operating Agreement as Members of the Company (whether one or more, and including any additional or substituted members, hereinafter collectively referred to as the "Members").

**WITNESSETH:**

**WHEREAS**, the Members desire to form a limited liability company under the laws of the State of Iowa.

**NOW, THEREFORE**, the Members hereby agree as follows:

**ARTICLE I. FORMATION AND TERM**

1.1 **Formation.** The Members agree to form, or cause to be formed, a limited liability company (hereinafter referred to as the "Company" or "Organization") pursuant to the Iowa Limited Liability Company Act by and upon the filing of Articles of Organization (the "Articles") in the form of EXHIBIT A attached hereto with the office of the Iowa Secretary of State. The duration of the Company shall be perpetual unless sooner dissolved: (i) by unanimous agreement of the Member(s); or (ii) by operation of law, judicial decree, or as otherwise provided in this Operating Agreement.

1.2 **Purpose.** The Organization consists of persons, firms, and companies in the grain industry and in the oilseed industry or in the industries serving and/or allied to such industries and which persons, firms, and companies wish to achieve efficiencies by establishing standards for the grain and oilseed industries in electronic commerce. Included in the foregoing will be the identification and definition of industry business processes, identification and definition of the business messages that support industry business processes, development of XML schemas to support the business messages, commitment from participating parties to integrate XML-based messaging into their business processes and the provision of a forum for understanding such processes. The activities of the Organization will not be carried on for the purpose of achieving or pursuing profit for the Organization.

1.3 **Adherence to Applicable Law.** At all times, it is the intention of the Organization, its Members and their respective representatives to observe and be in complete compliance with all applicable federal, state, and local laws, including but not limited to the anti-trust and unfair trade practice laws. To signify this intention, the anti-trust guidelines set forth in the attached Exhibit B shall be implemented and followed by all of the Organization's Members and their respective representatives at all times. No Member(s) or committee(s) shall have the authority or consent of the Organization to engage in any activity on behalf of the Organization

in contravention of any applicable law.

## **ARTICLE II. OFFICES**

2.1 Principal Office. The principal office of the Company in the State of Iowa shall be located at Suite 2000, 666 Grand Avenue, Des Moines, IA 50309-2510. The Company may have such other offices, either within or without the State of Iowa, as the Members may designate or as the business of the Company may from time to time require.

2.2 Registered Office. The registered office of the Company to be maintained in the State of Iowa as required by the Iowa Limited Liability Company Act, may, but need not, be identical with the principal office of the Company in the State of Iowa. The address of the initial registered office of the Company is Suite 2000, 666 Grand Avenue, Des Moines, Iowa 50309-2510, and the name of its initial registered agent at such address is Steven C. Schoenebaum. The registered office and the registered agent may be changed from time to time by action of the Members and by filing the prescribed form(s) with the Iowa Secretary of State.

## **ARTICLE III. MEMBERSHIP, MEMBERSHIP UNITS AND CAPITAL CONTRIBUTIONS**

3.1 Membership. Any person, firm or company in the grain industry and/or in the oilseed industry and/or in industries serving and/or allied to the grain and oilseed industries may be considered for membership in the Organization according to criteria to be developed from time to time by the Organization. Members in good standing are those Members which have complied fully with all obligations to the Organization, including but not necessarily limited to the full and timely payment of dues, assessments, adherence to all applicable law and the attached anti-trust guidelines, and which have not withdrawn or had their memberships suspended or terminated.

3.2 Membership Categories. Membership categories shall be Principal and Associate. The Management Committee of the Organization may authorize sub-categories of such memberships and/or additional membership categories.

3.2.1 Principal AgXML Membership. This category of membership is open to all enterprises engaged in the production, handling, or processing of grain or oilseeds and to all enterprises that provide electronic business products and services to the agricultural industry, including the grain and oilseed components thereof (e.g. e-marketplaces and e-hubs, etc.). Each Principal Member shall appoint and certify to the Organization a person to be its primary voting representative in the Organization and an alternate person to serve as its representative in the absence of the primary representative. Each Principal Member in good standing shall be entitled to one vote on all matters with respect to which a vote of the membership is taken. Such representatives will serve as the primary contact for all communications relative to the Organization. Authorized representatives of

Principal Members may vote, hold office and chair committees. Any Principal Member may change its representative(s) upon written notice to the Organization and its Management Committee.

3.2.2 Associate AgXML Membership. This category of membership is open to all other persons, firms and companies with an interest in the grain and oilseed industries, except those that qualify for Principal Membership. These include, but are not limited to consultants, electronic business product and service providers not operating exclusively in the grain and oilseed industry, banks, parts and equipment suppliers, carriers, warehouses and non-chemical manufacturing organizations. Each Associate Member shall appoint and certify to the Organization a person to be its primary representative in the Organization and an alternate person to serve as its representative in the absence of the primary representative. Such representatives shall serve as the primary contact for all communications relative to the Organization. Any Associate Member may change its representative(s) upon written notice to the Organization and its Management Committee. Neither Members of this category nor their authorized representatives may vote, hold office or serve on the Management Committee of the Organization.

3.2.3 Application for AgXML Membership. Persons, firms, and companies may apply for membership to the Organization, and in order to be admitted as a Member in the Organization, an applicant must receive the approval of at least a simple majority of the Principal Members of the Organization.

3.3. Authorized Principal Membership Units. The aggregate number of Principal Membership Units which the Company is authorized to issue is One Million (1,000,000) units. All Principal Membership Units authorized to be issued shall have a par value of \$1.00 per Principal Membership Unit and be of a single class with identical rights.

3.4 Authorized Associate Membership Units. The aggregate number of Associate Membership Units which the Company is authorized to issue is Five Hundred Thousand (500,000) units. All Associate Membership Units authorized to be issued shall have a par value of \$1.00 per Associate Membership Unit and be of a single class with identical rights.

3.5 Membership Percentage. A Member's Membership Percentage shall be determined by dividing the total Membership Units owned by such Member by the total Membership Units owned by all Members in the same Membership category as such Member.

3.6 Capital Contributions. Capital contributions of the Members shall be in the form of annual dues, and if the Management Committee deems necessary, assessments to Members. The dues structure and assessment amounts shall be established from time to time by the Management Committee. Dues and assessments, including modifications thereto, shall be established upon the approval of sixty three percent (63%) of the Members of the Management Committee. Dues shall be payable upon receipt of the payment notification. Dues for new Members shall be pro rated in half if there are less than six months left in the due's year. Dues

are not refundable for any reason. In the event additional funds are needed in addition to dues to defray the cost of the Organization, the Management Committee will estimate the funds needed to pay the Organization's expenses for a period of not to exceed six months in advance, and each Member will be assessed its pro rata share of such expenses and is expected to pay in full such pro rata expense share upon receipt of the assessment notification. The Management Committee will designate a depository for the Organization's funds and authorize certain person(s) to sign checks or drafts and to otherwise make withdrawals for the purpose of paying the costs of the Organization.

Member shall not be subject to assessment nor shall a Member be personally liable for any of the debts or obligations of the Company or any of the losses of the Company beyond the Member's capital contributions and the Member's share of undistributed net profits of the Company.

3.7 Capital Accounts. A separate Capital Account shall be maintained for each Member. Each Member's Capital Account shall be increased by:

(a) The cumulative amount of cash and the net fair market value of any property that has been contributed to the capital of the Company by such Member (or such Member's predecessors in interest); and

(b) The cumulative amount of the Company's net profits, if any, that has been allocated to such Member (or such Member's predecessors in interest).

Each Member's Capital Account shall be decreased by:

(a) The cumulative amount of the Company's net losses, if any, that has been allocated to such Member (or such Member's predecessors in interest); and

(b) The cumulative amount of cash and the fair market value of all other property that has been distributed to such Member (or such Member's predecessors in interest).

3.8 General. No Member shall receive any interest, salary, or drawing with respect to such Member's capital contributions or Capital Account or for services rendered on behalf of the Company or otherwise in such Member's capacity as a Member of the Company, except as otherwise provided in this Operating Agreement.

3.9 Transfer of Membership. Membership in the Organization is transferable or assignable only upon the written approval of, and in compliance with, the conditions imposed by a sixty-three percent (63%) majority of the Organization's Principal Members in good standing.

## ARTICLE IV. PROFIT AND LOSS ALLOCATION

4.1 Net Profits and Net Losses. Net profits or net losses for any fiscal year shall be allocated among the Members in proportion to such Members' Membership Percentage.

4.2 Allocations in General. Except as otherwise provided in this Operating Agreement, all items of Company income, gain, loss, deduction, and any other allocations not otherwise provided for shall be allocated among the Members in the same proportions as they share net profits or net losses, as the case may be, for any fiscal year. For purposes of determining the net profits, net losses or any other items allocable to any period, net profits, net losses and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Members using any permissible method under Section 706 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder (the "Regulations").

4.3 Distributions of Cash. Cash distributions, if any, shall be made to the Members upon the approval of the Members holding a majority of the Membership Units. All cash distributions made to the Members shall be in accordance with their Membership Interests.

4.4 Allocations with Respect to Varying Interests. Allocations and distributions to persons who in any taxable year of the Company were Members for less than the entire taxable year, or whose Membership Percentage varied during any taxable year, shall be made in accordance with whatever reasonable method the Members may choose to implement the provisions of Sections 706(c) of the Code or similar successor provisions. In order to accomplish this result, the Members may elect not to allocate any net loss attributable to any portion of the Company's taxable year before such Member acquired such Member's interest in the Company.

4.5 Article IX. To the extent that this Article IV conflicts with Article IX of this Operating Agreement, the provisions of Article IX shall prevail.

## ARTICLE V. MEMBER MEETINGS

5.1 Annual Meeting. The annual meeting of the Members shall be held within one hundred twenty (120) days after the close of the fiscal year of the Company each year for the purpose of appointing or confirming the persons designated in Section 3.2.1 and 3.2.2 of this Operating Agreement and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day.

5.2 Regular Meetings. The Members or the Management Committee may, by resolution, prescribe the time and place for the holding of regular meetings and provide that the adoption of such resolution shall constitute notice of such regular meetings. If the Members do not prescribe the time and place for the holding of regular meetings, such regular meetings shall be held at the time and place specified by the Management Committee.

5.3 Special Meetings. Special meetings of the Members, for any purposes, unless otherwise provided by statute, may be called by the Management Committee, the President, or Principal Members holding no less than sixty-three percent (63%) of Principal Membership Units.

5.4 Place of Meeting. The persons calling the meeting may designate any place, either within or without the State of Iowa, as the place of meeting for any annual meeting or for any special meeting called by the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the registered office of the Company in the State of Iowa.

5.5 Telephonic Meeting. Members of the Company may participate in any meeting of the Members by means of conference telephone or similar communication if all persons participating in such meeting can hear one another for the entire discussion of the matter to be voted upon. Participating in a meeting pursuant to this Section shall constitute presence in person at such meeting.

5.6 Notice of Meeting. Notice shall be given for each annual or special meeting to each Member entitled to vote at such meeting stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called. Such notice shall be given not less than two (2) nor more than sixty (60) days before the date of the meeting in writing, unless oral notice is reasonable under the circumstances. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member's address as it appears on the membership list maintained by the Company, with postage thereon prepaid.

5.7 Quorum. At any meeting of the Members, Principal Members owning sixty-three percent (63%) of the Company's Principal Membership Units, represented at such meeting, shall constitute a quorum. If less than said percentage of Principal Members are represented at a meeting, a majority of the holders of the Principal Membership Units so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The Principal Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the subsequent withdrawal of Principal Members to leave less than a quorum.

5.8 Voting by Certain Members. Only Principal Members may vote at any regular or special meeting of the Company's Membership. Each Principal Member shall be entitled to one vote.

5.9 Manner of Acting. The act of a majority of Principal Members, present at a meeting at which a quorum is present, shall be the act of the Membership, except where otherwise provided in this Operating Agreement or by law.

5.10 Presumption of Assent. A Principal Member present at a meeting of the Members at which action on any matter is taken shall be presumed to have assented to the action taken,

unless the dissent of such Member shall be entered in the minutes of the meeting or unless such Member shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by certified mail to the secretary of the meeting immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Member who voted in favor of such action.

5.11 Informal Action of Members. Unless otherwise provided by law, any action required to be taken at a meeting of the Principal Members, or any other action which may be taken at a meeting of the Principal Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Principal Members entitled to vote with respect the subject matter thereof.

5.12 Open Meetings. Meetings of the membership shall be open to all Members of the Organization. Such Members may have multiple employees attend membership meetings. Others may attend membership meetings if requested by at least one Member and approved by a majority of the Principal Members present at a membership meeting at which a quorum is present.

5.13 Meeting Minutes Distribution. The Secretary shall make available the written minutes of each meeting of the membership no later than sixty (60) days after the date such meeting was held.

5.14 Meeting Attendance Fees. Both Members and observers may be charged a registration fee to attend meetings of the Company's membership or Management Committee. The Management Committee shall approve the structure and amounts of any such fees. In individual cases, the Company's President may waive payment of meeting registration fees for a particular meeting (e.g. to allow subject matter experts to participate in the development of a standard). Costs incurred to attend membership meetings are the responsibility of the attendee.

## **ARTICLE VI. MANAGERS**

6.1 Management and General Powers. The business and affairs of the Company shall be managed by its Managers(collectively "Management Committee"). Except for situations in which the approval of the Members is expressly required by this Operating Agreement or by non-waivable provisions of applicable law, the Managers shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. The Managers may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Company, and such authority may be general or confined to specific instances.



6.2 Membership of the Management Committee. Each Principal Member's respective representative designated pursuant to Section 3.2.1 shall be a Member of the Organization's Management Committee. Each such individual shall be entitled to one vote on all matters with respect to which a vote of the Management Committee is taken.

6.3 Regular Meetings. A regular meeting of the Managers shall be held without other notice than this provision immediately after, and at the same place as, the annual meeting of Members. The Managers may provide, by resolution, the time and place, either within or without the State of Iowa, for the holding of additional regular meetings without other notice than such resolution.

6.4 Special Meetings. Special meetings of the Managers may be called by or at the request of any Company officer, the Executive Director (if one is appointed) or any two (2) Managers. The person or persons authorized to call special meetings of the Managers may fix any place, either within or without the State of Iowa, as the place for holding any special meeting of the Managers called by such person or persons.

6.5 Notice. Notice shall be given for any special meeting of the Managers to each Manager stating the date, time and place of the meeting. Such notice shall be given at least two (2) days prior thereto in writing, unless oral notice is reasonable under the circumstances. If mailed, such notice shall be deemed to be delivered on the earlier of five (5) days after deposit in the United States mail addressed to the Manager's address as shown on the Company records with postage thereon prepaid or upon receipt. The attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Managers need be specified in the notice or waiver of notice of such meeting.

6.6 Conduct of Meeting. All Managers, to the extent possible, shall personally attend regular and special meetings of the Managers. However, any Manager may participate in any regular or special meeting by any means of communication by which all Managers participating may simultaneously hear each other during the meeting. A Manager participating in a meeting by this means is deemed to be present in person at the meeting.

6.7 Quorum. A sixty-three (63%) percent majority of the number of the duly appointed and authorized Managers shall constitute a quorum for the transaction of business; provided, that if less than a majority of such number of Managers are present at said meeting, a majority of the Managers present may adjourn the meeting from time to time without further notice.

6.8 Manner of Acting. The act of the majority of the Managers, present at a meeting at which a quorum is present, shall be the act of the Managers, except where otherwise provided in this Operating Agreement or by law.

6.9 Presumption of Assent. A Manager who is present at a meeting of the Managers at which action on any matter is taken shall be presumed to have assented to the action taken unless the dissent of such Manager shall be entered in the minutes of the meeting or unless such Manager shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the secretary of the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Manager who voted in favor of such action.

6.10 Informal Action By Managers. Any action required to be taken at a meeting of the Managers, or any other action which may be taken at a meeting of the Managers, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Managers entitled to vote with respect to the subject matter thereof.

6.11 Limitation of Liability. A Manager of this Company shall not be personally liable to the Company or its Members for monetary damages for breach of fiduciary duty as a Manager, except for liability: (i) for any breach of the Manager's duty of loyalty to the Company or its Members; (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law; or (iii) for a transaction from which the Manager derived an improper personal benefit or a wrongful distribution in violation of Section 807 of the Iowa Limited Liability Company Act.

6.12 Managers and Members Have No Exclusive Duty to Company. No Manager shall be required to manage the Company as his/her sole and exclusive function and he/she (and any Manager and/or Member) may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Manager and/or Member or to the income or proceeds derived therefrom. Neither the Manager nor any Member shall incur any liability to the Company or to any of the Members as a result of engaging in such other business interests or activities.

6.13 Bank Accounts. The Managers may from time to time open bank accounts in the name of the Company.

6.14 Indemnity of the Managers, Employees and Other Agents. Subject to Section 6.11, and the Articles of Organization of the Company, the Company shall indemnify the Managers and make advances for expenses to the maximum extent permitted under the Iowa Limited Liability Company Act. The Company shall indemnify its employees and other agents who are not Managers to the fullest extent permitted by law, provided that such indemnification in any given situation is approved by Principal Members owning a majority of the Principal Membership Units.

6.15 Resignation. Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6.16 Vacancies. Any vacancy occurring for any reason in the number of Managers of the Company shall be filled by the alternate representative designated pursuant to Section 3.2.1 of this Operating Agreement. If for any reason such alternate cannot or does not serve, it is the responsibility of the Member to appoint and authorize, in accordance with Section 3.2.1 of this Operating Agreement, an individual to serve as the primary representative and an individual designated as the alternate.

6.17 Right to Rely on the Managers. Any person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by any Manager as to:

- (a) The identity of any Manager or Member;
- (b) The existence or nonexistence of any fact or facts which constitute a condition precedent to acts on behalf of the Company by any Manager or which are in any other manner germane to the affairs of the Company;
- (c) The persons who are authorized to execute and deliver any instrument or document of the Company; or
- (d) Any act or failure to act by the Company or any other matter whatsoever involving the Company or any Member.

6.18 Attendance to Meetings. Meetings of the Management Committee shall be open to all Members of the Organization. Such Members may have multiple employees attend Management Committee meetings. Others may attend Management Committee meetings if requested by at least one Member and approved by a majority of the Management Committee Members present at a Management Committee meeting at which a quorum is present.

6.19 Committees. The Management Committee may designate from time to time one or more committees with such objectives and composition as the Management Committee may deem appropriate. Work by committees is advisory to the Management Committee. All committee proposals, recommendations and conclusions are not authorized on behalf of the Organization unless approved and adopted by the Management Committee.

6.20 Failure to Attend Meetings. In the event neither the primary voting representative nor the alternate voting representative of any Member attend a majority of Management Committee meetings over a period of six months, such Member may be disqualified by the Management Committee from voting on any issue or matter that was considered in whole or in part at the meetings at which such Member's representatives were absent.

## ARTICLE VII. OFFICERS

7.1 General Provisions. The elective offices of the Organization shall be a President, Vice President, Secretary and Treasurer, each of whom shall be elected annually by the Management Committee. The Management Committee may appoint an Executive Director to serve as the chief operating officer of the Organization.

### 7.2 Officer Powers and Duties

7.2.1 President. The President shall preside at all meetings of the membership and the Management Committee. He/she shall sign all contracts, deeds, mortgages and other instruments in writing that the Management Committee or the membership shall authorize to be executed.

7.2.2 Vice President. The Vice President shall act for the President when for any reason the President is unable to act and shall have such other additional duties and authority as are designated by the membership or the Management Committee.

7.2.3 Secretary. The Secretary shall keep a permanent record of the minutes of all meetings of the membership and the Management Committee and shall be responsible for issuing all notices of meetings and other notices required by law or pursuant to these operating rules. The Secretary shall keep a register of all persons who are Members in good standing of the Organization.

7.2.4 Treasurer. The Treasurer shall have general charge and custody of and be responsible for all funds of the Organization, except as otherwise directed by the membership or the Management Committee and shall supervise the receipt of all monies payable and deposit such monies in the name of the Organization in such banks as shall be designated by the Management Committee. The Treasurer shall be responsible for the collection of all dues and assessments, unless otherwise directed by the membership or the Management Committee. The Treasurer shall be the disbursing agent of the Organization's funds and shall render an annual accounting which shall include a report of expenditures of, and receipts by, the Organization of all corporate funds.

7.2.5 Executive Director. The Management Committee may engage an Executive Director to serve as the chief operating officer of the Organization. The Management Committee may authorize the Executive Director to perform such duties as the Management Committee deems advisable, including the duties ordinarily performed by the Organization's Treasurer.

7.3 Vacancies. Vacancies which occur in any of the offices of the Organization may be filled by such persons as are designated by the Management Committee.

## **ARTICLE VIII. SUSPENSION, REMOVAL, WITHDRAWAL, DEATH, INCOMPETENCY OR BANKRUPTCY OF A MEMBER**

8.1 Dissolution of the Member and Continuation of the Member's Business. The removal, death or dissolution, adjudication of incompetence or adjudication of bankruptcy of a Member shall not dissolve the Company unless such Member was the sole Member of the Company prior to such event.

8.2 Withdrawal of Membership. Any Member, by giving thirty (30) days written notice, may withdraw from the Company. Such withdrawal shall not relieve the withdrawing Member of any of its obligations to the Company incurred prior to the effective date of withdrawal. In the event a Member issues the written thirty (30)-day notice of withdrawal within ten (10) days of receipt of the first notification of a new assessment or additional dues, such Member may withdraw without any liability for such new assessment or additional dues.

8.3 Removal of a Member. Membership in the Company may be suspended or terminated for cause. Cause shall include: (1) the failure of any Member to comply with its obligations as a Member to the Company and under this Operating Agreement, including the failure to timely pay in full its dues and/or assessments when due; and/or (2) the failure to adhere to all applicable law and/or the failure to adhere to the attached antitrust guidelines; and/or (3) the decision of at least sixty-three percent (63%) of the Organization's Principal Members that the best interests of the Organization would be served by the suspension and termination.

## **ARTICLE IX. OWNERSHIP**

9.1 Ownership of Intellectual Property. Notwithstanding any other provision of this Operating Agreement, all ownership rights with respect to the intellectual property of the Organization, including, but not necessarily limited to, all patents, trademarks, copyrights, trade secrets, data definitions, data bases, standards, guidelines, schemas, diagrams, software, programs, designs, codes, e-mail addresses, telephone numbers, facsimiles, and other technology and information developed in connection with the Organization's Purpose ("Intellectual Property") shall be owned by the Organization and shall be considered assets of the Organization. Such ownership rights may be transferred or assigned only upon the approval of, and compliance with, the conditions imposed by sixty-three percent (63%) of the Organization's Members in good standing.

9.2 Member Intellectual Property. Each Member warrants that any Intellectual Property produced by that Member for the Organization and incorporated in any form into the Organization's Purpose is not subject to any claim of ownership by any other party. Each Member further warrants that any rights in Intellectual Property developed in connection with the Organization's Purpose either now held or later acquired by that Member shall be perpetually licensed to the Organization or its successors or assigns without any royalty, fee, or credit to the Member's Capital Account as described in Section 3.7 of this Agreement.

9.3 Intellectual Property Generated for the Organization. The Organization shall endeavor to obtain from any party generating Intellectual Property for the Organization an

agreement that such generated Intellectual Property shall, to the extent possible, be assigned or otherwise transferred to the Organization.

## **ARTICLE X. DISSOLUTION**

10. Upon dissolution of the Company, the liabilities of the Company shall be paid or otherwise provided for, and any remaining assets shall be distributed as provided in Article IV of this Operating Agreement.

## **ARTICLE XI. BOOKS AND RECORDS**

11.1 Books and Records. The books and records of the Company shall be kept at the principal office of the Company or at such other places, within or without the state of Iowa, as the Members shall from time to time determine.

11.2 Right of Inspection. Any Member of the Company shall have the right to examine at any reasonable time or times for any purpose, the books and records of account, minutes and records of Members and to make copies thereof. Such inspection may be made by any agent or attorney of the Member. Upon the written request of any Member of the Company, the Members shall mail to such Member the Company's most recent financial statements, showing in reasonable detail the Company's assets and liabilities and the results of the Company's operations.

## **ARTICLE XII. MISCELLANEOUS**

12.1 Return of Capital Contribution. A Member shall not have the right to demand the return of capital contribution.

12.2 Limitation of Fiduciary Obligations. None of the Members shall have any fiduciary obligation with respect to the Company or to any other Members to make business opportunities available to the Company or to any other Members.

12.3 Tax Matters Member. Rooster.com is hereby designated as the Company's "Tax Matters Member," as defined in Section 6231 of the Internal Revenue Code, and in such capacity is hereby authorized and empowered to act for and represent the Company and each of the Members before the Internal Revenue Service in any audit or examination of any Company tax return and before any court selected by said Rooster.com in consultation with the other Members, for judicial review of any adjustment assessed by the Internal Revenue Service. Rooster.com hereby accepts such designation. The Members specifically acknowledge, without limiting the general applicability of this section, that Rooster.com shall not be liable to the Company or its Members for any loss, damage, liability or expense suffered by the Company or its Members on account of any action taken or omitted to be taken by it in its capacity as "Tax Matters Member." Nothing in this section shall limit the ability of the Members to take any action in their individual capacities relating to tax audit matters that is left to the determination of an individual partner under Code Section 622.2 through Code Section 6232.

12.4 Applicable Law. This Operating Agreement and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Iowa.

12.5 Captions. Paragraphs, titles, or captions in no way define, limit, extend or describe the scope of this Operating Agreement nor the intent of any of its provisions.

12.6 Signatures. Any check, draft, contract, or other similar document shall be executed for the Company by the President or Treasurer.

12.7 Validity. If any provision of this Operating Agreement, or the application of such provision to any person or circumstance, shall be held invalid or unenforceable, the remainder of this Operating Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

12.8 Binding Effect. This Operating Agreement shall inure to and bind all Members, as well as their estates, heirs, personal representatives, successors and assigns.

12.9 Interpretation. As used herein, the masculine includes the feminine and neuter and the singular includes the plural.

12.10 Counterparts. This Operating Agreement or any certificate or amendment pursuant thereto may be executed in counterparts, all of which taken together shall be deemed one original agreement, and shall be binding upon all parties hereto notwithstanding that all parties are not signatory to the same counterpart.

12.11 Amendments. This Operating Agreement may be altered, amended, restated, or repealed and/or a new Operating Agreement may be adopted upon the approval of sixty-three percent (63%) of the Principal Members, after thirty (30) days written notice and opportunity for discussion of the proposed alteration, amendment, restatement, or repeal.

12.12 Voting of Interests. Subject always to the specific directions of the Members, any interest issued by any other legal entity which is owned or controlled by the Company may be voted at any meeting of such other entity by the President of the Company. Whenever, in the judgment of the Management Committee it is desirable for the Company to execute a proxy or give a consent in respect to any legal interest issued by any other entity and owned by the Company, such proxy or consent shall be executed in the name of the Company by the President of the Company without necessity of any authorization by the Members. Any person or persons designated in the manner above stated as the proxy or proxies of the Company shall have full right, power, and authority to vote the legal interest issued by such other entity and owned by the Company the same as if such legal interest might be voted by the Company.

12.13 Notices. Unless otherwise provided in this Operating Agreement, all notices under this Operating Agreement shall be in writing and shall be effective either upon personal

delivery or if sent by registered or certified mail, postage prepaid, addressed to the last known address of the party to whom such notice is to be given.

12.14 Waiver of Notice Whenever any notice is required to be given pursuant to the provisions of the Act, the Articles of Organization of the Company or this Operating Agreement, a waiver thereof, in writing, signed by the person or entity entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**RATIFICATION**

The undersigned, being a Member of **AgXML, LLC**, an Iowa limited liability company, by signing below, hereby evidences its adoption and ratification of the foregoing Operating Agreement and further ratifies, confirms and adopts such Operating Agreement as if the Articles of Organization attached hereto as EXHIBIT A had been filed with the office of the Iowa Secretary of State prior to the execution hereof.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
[Typed name of Member]

\_\_\_\_\_  
[Signature and title of persons signing on behalf of Member]

\_\_\_\_\_  
[Typed name and title of person signing on behalf of Member]

\_\_\_\_\_  
[Fiscal year of Member]



**EXHIBIT A**

**Articles of Organization**

## ARTICLES OF ORGANIZATION

OF

AgXML, L.L.C.

Pursuant to Section 301 of the Iowa Limited Liability Company Act, the undersigned person forms the limited liability company by adopting the following Articles of Organization for such limited liability company:

### ARTICLE I

The name of this limited liability company is AgXML, L.L.C.

### ARTICLE II

The street address of the initial registered office of this limited liability company in the State of Iowa is Suite 2000, 666 Grand Avenue, Des Moines, Iowa 50309-2510 and the name of its initial registered agent at such address is Steven C. Schoenebaum.

### ARTICLE III

The street address of the principal office of this limited liability company in the State of Iowa is Suite 2000, 666 Grand Avenue, Des Moines, Iowa 50309-2510.

### ARTICLE IV

The duration of this limited liability company shall be perpetual unless dissolved: (1) by the unanimous vote of all Members; (2) as provided in the operating agreement of the limited liability company or (3) as provided by operation of law.

### ARTICLE V

The management of the Company shall be vested in its managers who shall be selected in the manner described in the Operating Agreement of the Company. The members of the Company are not agents of the Company for the purpose of its business or affairs or otherwise. No manager's, member's, or any other person's act shall bind the Company except as may be expressly authorized by the Operating Agreement of the Company.

### ARTICLE VI

Membership interests in the limited liability company shall be evidenced by certificates of membership interest issued by the limited liability company. No member shall transfer a membership interest without the unanimous consent of the other members.

## ARTICLE VII

A manager of this limited liability company shall not be personally liable to the limited liability company or its members for monetary damages for breach of fiduciary duty as a manager, except for liability (i) for any breach of the manager's duty of loyalty to the limited liability company or its members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, (iii) for any transaction from which the manager derived an improper personal benefit, or (iv) for a wrongful distribution under Section 807 of the Iowa Limited Liability Company Act. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any manager of the limited liability company for or with respect to any acts or omissions of such manager occurring prior to such amendment or repeal. If Iowa law is hereafter changed to permit further elimination or limitation of the liability of managers for monetary damages to the limited liability company or its members, then the liability of a manager of this limited liability company shall be eliminated or limited to the full extent then permitted.

## ARTICLE VIII

This limited liability company shall indemnify a manager of this limited liability company, and each manager of this limited liability company who is serving or who has served, at the request of this limited liability company, as a manager, director, officer, partner, trustee, employee or agent of another limited liability company, corporation, partnership, joint venture, trust, other enterprise or employee benefit plan to the fullest extent possible against expenses, including attorneys' fees, judgments, penalties, fines, settlements and reasonable expenses, actually incurred by such manager or person relating to the conduct of such manager as a manager of this limited liability company or as a manager, director, officer, partner, trustee, employee or agent of another limited liability company, corporation, partnership, joint venture, trust, other enterprise or employee benefit plan, except that the mandatory indemnification required by this sentence shall not apply (i) to a breach of a manager's duty of loyalty to the limited liability company or its members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, (iii) for a transaction from which a manager derived an improper personal benefit, (iv) for a wrongful distribution under Section 807 of the Iowa Limited Liability Company Act, or (v) against judgments, penalties, fines, and settlements arising from any proceeding by or in the right of the limited liability company, or against expenses in any such case where such manager shall be adjudged liable to the limited liability company.

Any indemnification provided for in this Article (unless ordered by a court) shall be made by the limited liability company only as authorized in the specific case upon a determination that indemnification of the manager is proper in the circumstances because the manager had met the applicable standard of conduct set forth in this Article above. Such determination shall be made: (a) by the members by a majority vote of a quorum consisting of members who were not parties to such action, suit, or proceeding; or (b) by special legal counsel, selected by the members by vote as set forth in (a) above, or, if the requisite quorum of the members cannot be obtained therefor, by a majority vote of all members, in which members who are parties may participate.

The indemnification provided in this Article shall not be deemed exclusive of any other rights to which a person indemnified may be entitled under the operating agreement, by a vote of members, or disinterested managers or otherwise, both as to action in the official capacity of such person and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a manager and shall inure to the benefit of the heirs, executors, and administrators of such person.

ARTICLE IX

All conveyances and mortgages of and leases relating to real property made by the limited liability company shall be executed by a manager and shall be countersigned or attested to by another manager, and all releases of mortgages, liens, judgments, or other claims that are required by law to be made of record may be executed by any manager of the limited liability company.

Dated \_\_\_\_\_, 2001.

\_\_\_\_\_  
STEVEN C. SCHOENEBAUM

STATE OF IOWA                                    )  
  ) ss.  
COUNTY OF POLK                                )

On this \_\_\_\_ day of \_\_\_\_\_, 2001, before me, the undersigned, a Notary Public in and for said state, personally appeared Steven C. Schoenebaum, to me known to be the identical person named in and who executed the foregoing Articles of Organization, and acknowledged that (he/she) executed the same as (his/her) voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

**EXHIBIT B**

**Antitrust and Fair Trade Guidelines**

## AgXML, LLC

### ANTITRUST AND FAIR TRADE GUIDELINES

While some activities among competitors in the same industry are both legal and beneficial to the industry, group activities of competitors are inherently suspect under the antitrust laws. Agreements or combinations between or among competitors need not be formal to raise questions under antitrust laws, but may include any kind of understanding, formal or informal, secretive or public, under which each of the parties can reasonably expect that another will follow a particular course of action.

Each individual is responsible to see that topics which may give an appearance of an agreement that would violate the antitrust laws are not discussed at your meetings. It is the responsibility of each individual in the first instance to avoid raising improper subjects for discussion. This reminder has been prepared to assure that individuals in meetings are aware of this obligation.

The following "Do" and "Do Not" highlight only the most basic antitrust principles. Each party and every individual at every meeting related thereto should be thoroughly familiar with his/her responsibilities under the antitrust laws and should consult counsel in all cases involving specific situations, interpretations, or advice.

**DO NOT**, in fact, discuss or exchange information in person, electronically or by other means regarding:

- Individual company prices, price changes, price differentials, mark-ups, discounts, allowances, credit terms, etc., or data that bear on price (e.g., costs, production, capacity, inventories, sales).
- Industry pricing policies, price levels, price changes, differentials, etc.
- Changes in industry production, capacity or inventories.
- Bids on contracts for particular products; procedures for responding to bid invitations.
- Plans of individual companies concerning the design, production, distribution or marketing of particular products, including proposed territories or customers.
- Matters relating to actual or potential individual customers or suppliers that might have the effect of excluding them from any market or of influencing the business conduct of firms toward such suppliers or customers.

**DO NOT** discuss or exchange information regarding the above matters during social gatherings incidental to meetings, or by electronic mail, even in jest.

**DO** adhere to prepared agendas for all meetings and object when meeting minutes do not accurately reflect the matters which transpired.

**DO** understand the purpose and authority of the group.

**DO** consult with your company counsel and your company policy guidelines on all antitrust questions before attending meetings.

**DO** protest against any discussions or meeting activities which appear to violate the antitrust laws; disassociate yourself from any such discussions or activities and leave any meeting in which they continue.