

communication lines or services, services and other deliverables or materials of any kind to be provided by Bourse (or any applicable third party) as may be necessary or desirable for the operation of the BOX Market.

“*Tax Amount*” of a Member for a fiscal year or other period shall mean the product of (a) the Member’s Tax Rate for such fiscal year or other period, and (b) the Member’s Tax Amount Base for such fiscal year or other period, and shall be reduced by (c) any United States federal, state or local income tax credits allocated to the Member by BOX for such Fiscal Year or other period, all as estimated in good faith by the Board.

“*Tax Amount Base*” of a Member for a fiscal year or other period shall mean the taxable income (for U.S. federal income tax purposes) allocated to the Member by BOX for such fiscal year or other period; *provided* that such taxable income shall be computed (i) without regard to the application of Code § 704(c) with respect to any variation between the fair market value and tax basis of any assets at the time such assets were contributed to BOX and (ii) without regard to any taxable income or loss recognized by a Member in connection with the dissolution, initial public offering, sale of substantially all equity or assets of BOX or any similar event.

“*Tax Rate*” of a Member for a fiscal year or other period shall mean the highest effective marginal combined United States federal, state and local income tax rate applicable during such fiscal year to business entities of the same type as the Member that do business exclusively in the Commonwealth of Massachusetts, giving proper effect to the federal deduction for state and local income taxes and taking into account any special tax rates (such as special capital gains tax rates) applicable to any portion or portions of the Member’s Tax Amount Base.

“*Technical and Operational Services Agreement*” means that agreement or agreements to be entered into by the Bourse or an Affiliate of the Bourse and BOX, or its or their duly adopted and executed replacement agreement or agreements, as in effect from time to time relating to the System.

“*Total Votes*” has the meaning set forth in Section 4.3.

“*Trading*” means the availability of the System to authorized users for entering, modifying, and canceling orders concerning the BOX products.

“*Transferee*” has the meaning set forth in Section 8.2 hereof.

“*Transfer Notice*” has the meaning set forth in Section 8.2(a) hereof.

“*Transferring Member*” has the meaning set forth in Section 8.2 hereof.

“*Treasury Regulations*” means the regulations promulgated under the Code, as amended and in effect from time to time.

“*Units*” shall mean the units of interest in the ownership and profits and losses of BOX and such Member’s right to receive distributions in its capacity as a Member.

“*Unpermitted Deficit*” has the meaning set forth in Section 10.3 hereof.

## 1.2. Other Definitions

The words “include,” “includes,” and “including” where used in this agreement are deemed to be followed by the words “without limitation.”

Any reference to “Dollars” or “\$” in this Agreement refers to U.S. Dollars.

Except as otherwise provided in this Agreement or unless the context otherwise clearly requires, (a) terms used in this Agreement that are defined in the Act will have the meaning set forth in the Act; (b) all references in this Agreement to one gender also include, where appropriate, the other gender, the singular includes the plural and the plural includes the singular; and (c) references in this Agreement to the preamble, Sections, Schedules, and Exhibits shall be deemed to mean the preamble and sections of, and schedules and exhibits to, this Agreement.

## Article 2—Organization

2.1. *Formation of BOX.* Each of the Bourse, BSE and IB hereby (a) authorizes and ratifies the formation of BOX as a limited liability company under the Act, the execution of the Certificate and the filing of the Certificate in the Office of the Secretary of State of the State of Delaware and (b) agrees that the rights, duties and liabilities of the Members shall be as provided in the Act, except as otherwise provided herein. The name of BOX shall be Boston Options Exchange Group LLC. The principal place of business of BOX shall be located at 100 Franklin Street, Boston, MA 02110. The Board may, at any time, change the name or the principal place of business of BOX and shall give notice thereof to the Members.

2.2. *Registered Agent and Office.* The registered agent for service of process on BOX in the State of Delaware required to be maintained by § 18–104 of the Act shall be Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808 and the registered office of BOX in the State of Delaware shall be c/o Corporation Service Company at the same address. The Board may at any

time change the registered agent of BOX or the location of such registered office and shall give notice thereof to the Members.

2.3. *Term.* The legal existence of BOX shall be perpetual, unless BOX is sooner dissolved as a result of an event specified in the Act or pursuant to a provision of this Agreement.

2.4. *Interest of Members; Property of Company.* Units held by a Member shall be personal property for all purposes. All real and other property owned by BOX shall be deemed BOX property owned by BOX as an entity, and no Member, individually, shall own any such property. The name and mailing address of each initial Member and the number of Units held by each and the Percentage Interest represented thereby shall be as listed on *Schedule A* attached hereto. The Board shall be required to update said *Schedule A* from time to time as necessary to accurately reflect the information contained therein upon (i) the withdrawal of a Member, (ii) the admission of a new Member or (iii) any change in the number of Units owned by a Member, in each case pursuant to the terms and conditions specified in this Agreement.

## 2.5. The Units.

(a) Except as otherwise provided in this Agreement, all Units are identical to each other and accord the holders thereof the same obligations, rights and privileges as are accorded to each other holder thereof. Except as otherwise provided in this Agreement, BOX will not subdivide or combine any Units, or make or pay any distribution on any Units, or accord any other payment, benefit or preference to any Units, except by extending such subdivision, combination, distribution, payment, benefit or preference equally to all Units.

(b) Units have no par value. To the extent that any Units must be cancelled or any Units shall be issued, the amount of such Units shall be rounded to the nearest whole number, to the extent feasible, as determined by the Board.

2.6. *Intent.* It is the intent of the Members that BOX (a) shall always be operated in a manner consistent with its treatment as a partnership for United States federal income tax purposes (and, to the extent possible, for state income tax purposes within the United States), and (b) to the extent not inconsistent with the foregoing clause (a) shall not be operated or treated as a partnership for purposes of § 303 of the Federal Bankruptcy Code (11 U.S.C. § 303). Neither BOX nor any Member shall take any action inconsistent with the express intent of the parties hereto as set forth in the immediately preceding sentence.