



## NCA 13-200

### CLASSIFICATION: #17. ECONOMIC DEVELOPMENT

**A LAW OF THE MUSCOGEE (CREEK) NATION APPROVING AND AUTHORIZING THE PRINCIPAL CHIEF TO EXECUTE AND FILE THE ARTICLES OF ORGANIZATION WITH THE OFFICE OF THE SECRETARY OF THE NATION TO FORM "ONEFIRE HOLDING COMPANY, LLC" UNDER THE MUSCOGEE (CREEK) NATION LIMITED LIABILITY COMPANY ACT AND APPROVING THE OPERATING AGREEMENT FOR "ONEFIRE HOLDING COMPANY, LLC"**

**Be it enacted by the National Council of the Muscogee (Creek) Nation:**

**SECTION ONE. NEW LAW. The following new Law is hereby enacted:**

**Section 1-101. Findings. The National Council finds that:**

A. Article VI, Section 7 of the Muscogee Nation Constitution vests the National Council with the power to:

1. Promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of the citizens of the Muscogee (Creek) Nation; and
2. Create authorities with attendant powers to achieve objectives allowed within the scope of the Constitution.

B. To discharge its constitutional duties to promote the public welfare and economic advancement of the Muscogee people, the National Council may exercise its authority to create business enterprises wholly-owned by the Nation to engage in commercial activities and to manage and operate subsidiary business activities all separate from the daily affairs of the Nation's government and with the ability to enter into legally-binding contracts and commercial relationships without the need for formal governmental action by the Nation.

C. It is in the best economic interest of the Muscogee (Creek) Nation to organize a tribal business holding company to be formed as a limited liability company wholly-owned by the Nation, which shall be an instrumentality of the Nation, created for the purpose of engaging in economic development ventures and other activities in furtherance of the governmental objectives of the Nation and for the advancement of its members.

**SECTION TWO. PURPOSE.** The purpose of this Act is approve and authorize the Principal Chief to execute and file the Articles of Organization with the Office of the Secretary of the Nation to form "OneFire Holding Company, LLC" on behalf of the Nation under authority of the Muscogee (Creek) Nation Limited Liability Act and to approve the Operating Agreement for "OneFire Holding Company, LLC" to carry out the purposes set out in Section 1-101 of this Act.

**SECTION THREE. AUTHORIZATION.** The Principal Chief is authorized to execute and file with the Office of the Secretary of the Nation the Articles of Organization and any other necessary filings to establish and form "OneFire Holding Company, LLC", a wholly-owned limited liability company of the Nation, under the Muscogee (Creek) Nation Limited Liability Company Act. The "OneFire Holding Company, LLC" shall operate and function as an independent executive agency of the Nation.

**SECTION FOUR. APPROVAL OF THE OPERATING AGREEMENT.** The Muscogee (Creek) Nation approves the form of the Operating Agreement of "OneFire Holding Company, LLC" in the form and content substantially similar to the "Operating Agreement", attached hereto as Exhibit "1" in order to govern the affairs of the limited liability company and the conduct of its business and shall not be amended except by duly enacted legislation.

**ENACTED** by the Muscogee (Creek) National Council on this 24<sup>th</sup> day of August, 2013.

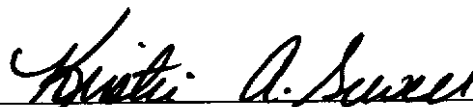
**IN WITNESS WHEREOF**, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



Samuel S. Alexander, Speaker  
National Council  
Muscogee (Creek) Nation

**CERTIFICATION**

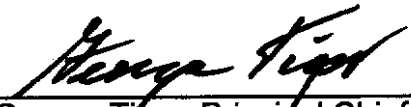
I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of Eighteen members with Sixteen members attending this meeting on the 24<sup>th</sup> day of August, 2013 and that the above is in conformity with the provisions therein adopted by a vote of 15 in favor, 0 against, and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.

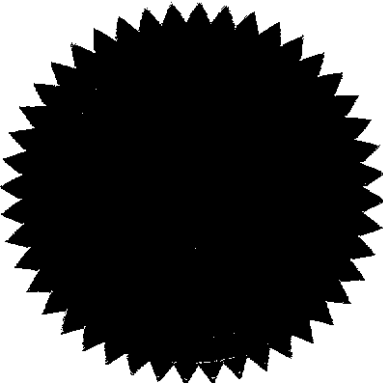


Kristie A. Sewell, Recording Secretary  
Muscogee (Creek) National Council

**APPROVAL**

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature on this 27<sup>th</sup> day of Aug, 2013 to the above Law, **NCA 13-200** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

  
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George Tiger, Principal Chief  
Muscogee (Creek) Nation



**ONEFIRE HOLDING COMPANY, LLC  
OPERATING AGREEMENT**

**ARTICLE I: DEFINITIONS**

**Definitions.** The terms set forth below in this Operating Agreement shall have the following meanings:

- A. "Act" shall mean the OneFire Holding Company, LLC Act.
- B. "Agreement" shall mean this Operating Agreement of the OneFire Holding Company, LLC.
- C. "Articles of Organization" shall mean documents filed with the Office of the Secretary of the Nation under Title 3, Section 2-2004 of the Nation's LLC Act.
- D. "Board" shall mean the Board of Directors of the Company established in accordance with this Agreement and applicable laws of the Nation.
- E. "Business" shall mean any trade, occupation, profession, operation or other activity regardless of whether engaged in for gain, profit, or livelihood.
- F. "Company" shall mean the OneFire Holding Company, LLC.
- G. "LLC" shall mean limited liability company(ies).
- H. "LLC Act" shall mean the Muscogee (Creek) Nation Limited Liability Company Act, codified in Chapter 2 of Title 3 of the Code of Laws for the Muscogee (Creek) Nation.
- I. "Manager" shall mean the Board of Directors of the Company established in accordance with this Agreement and applicable laws of the Nation.
- J. "Member" shall mean the Muscogee (Creek) Nation, a federally-recognized Indian tribe.
- K. "Nation" shall mean the Muscogee (Creek) Nation, a federally-recognized Indian tribe.

## **ARTICLE II: FORMATION UNDER THE NATION'S LLC ACT**

2.1 **Creation and Name of the Company.** The Principal Chief of the Nation is authorized to execute and file the Articles of Organization with the Office of the Secretary of the Nation to form a limited liability company, wholly-owned by the Nation, and in accordance with the Nation's LLC Act. The name of the Company created hereunder shall be, and is, OneFire Holding Company, LLC, and it shall operate and function as an independent executive agency of the Nation.

2.2. **Duration and Fiscal Year of Authority.** The Company shall have perpetual existence, which shall commence on the date the Act is adopted into law and upon the filing of the Articles of Organization. The initial fiscal year of the Company shall end on September 30, 2013, and thereafter the fiscal year of the Company shall commence on October 1 of each year and end on September 30 of the following year.

2.3. **Registered Office and Agent of the Company.**

- A. The registered office of the Company is the Muscogee (Creek) Nation Capitol Complex, Loop 56 & Hwy. 75 (P.O. Box 580), Muscogee Nation, Okmulgee, OK 74447.
- B. The registered agent of the Company shall at all times be the person holding the Office of the Secretary of the Nation but only for the duration of time that he or she remains in said office.

2.4. **Purpose, Authority and Limitations of the Company.**

- A. The purpose of the Company shall be to carry on and maintain various tribal business ventures and/or economic development projects for the benefit of the Muscogee (Creek) Nation and its citizens either through the Company itself or through any subsidiary of the Company, wholly-owned by the Nation or otherwise, subject to the limitations set forth in this Agreement and applicable law.
- B. Incident to the purpose set forth in Subsection A of this Section and subject to any approved business plan by the Board, and subject to the availability of funding, the Company shall be and is hereby authorized to:

(1) Adopt and use an official seal;

(2) Enter into agreements, contracts, joint ventures, partnerships, cooperative projects and/or other appropriate relationships with any federal, tribal, state, municipal or foreign government, or with any agency or authority of any such government, or with any person, partnership, corporation, or any other legal entity, and agree to any conditions attached to federal financial

assistance or contract subject to the terms of the Act;

- (3) Acquire personal property of any kind, including funds, securities and other intangible property or property rights, and to own and hold same in its own name, separate and apart from the property and assets of the Nation;
- (4) Sell, lease, exchange, transfer and/or assign personal property of any kind owned by the Company;
- (5) Lease property for use in the business of the Company for such periods as are authorized by law, and to hold and manage or to sublease the same;
- (6) Borrow or lend money, issue temporary or long-term evidence of indebtedness and repay the same, provided that no loans shall be made by the Company to any person who is an officer, director or employee of the Company, or to any person who is a member of such officer, director or employee's immediate family; and provided further that the notes and other obligations of the Company shall not be debts of the Nation and shall not create a lien or any other encumbrance on any property or assets of the Nation, and any such obligations shall so state on their face;
- (7) Pledge the assets and receipts of the Company as security for debts;
- (8) Employ personnel and establish the compensation, benefits and conditions of their employment, and delegate to such personnel such powers or duties as the Company may deem proper, subject to the terms of the Act;
- (9) Employ consultants, advisors, planners and other experts by written contract in accordance with tribal and federal law;
- (10) Invest such funds that are not required for immediate disbursements or obligations;
- (11) Open and maintain, in the name of the Company, accounts in any financial institution whose deposits are insured by an agency of the United States Government;
- (12) Engage in any lawful business or activity and exercise such further incidental powers not inconsistent with the purposes for which Company is created, as are commonly engaged in by tribal enterprises of this character and as the Board may deem necessary or appropriate to effectuate the purposes of the Company.

- (13) Purchase insurance from any stock or mutual company for any property or against any risk or hazards, and;
- (14) To form and organize subsidiary entities under the Nation's LLC Act.

### **ARTICLE III: MEMBER**

The Company is wholly-owned by the Muscogee (Creek) Nation as its sole Member.

### **ARTICLE IV: SOVEREIGN IMMUNITY; OTHER PRIVILEGES AND IMMUNITIES**

4.1 The Nation confers and extends to the Company sovereign immunity from suit in any forum to the same extent that the Nation enjoys the privilege of sovereign immunity on its own and for any other unincorporated instrumentality of the Nation operating as a function of the tribal government.

4.2 The Company and any subsidiary of the Company, in which the Company owns a majority interest, shall be considered instrumentalities of the Nation, and their officers and employees shall be considered officers and employees of the Nation, and shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Nation, including without limitation, to immunities from suit in federal, state and Tribal courts and from federal, state, and local taxation or regulation, except that:

4.2.1 The Company, by and through the Board, may specifically grant limited waivers of its sovereign immunity from suit for itself and for any other business entity in which the Company owns a majority interest under an approved operating agreement with such entity and consent to be sued in the Nation's courts or other court of competent jurisdiction pursuant the procedures and authorities set forth in the Board's policies and procedures or business plan; provided further, however, that:

(a) any such waiver or consent to be sued shall in no way extend to any action against the Nation, nor shall any such waiver or consent to be sued be deemed a waiver of any of the rights, privileges, and immunities of the Nation and its officers and employees;

(b) any recovery against the Company shall be limited to the assets of the Company (or to any such portion of the Company's assets as further limited by the waiver or consent to suit), and the Nation shall not be liable for the payment or performance of any of the obligations of the Company, and no recourse

shall be had against any assets, revenues, or holdings of the Nation in order to satisfy the obligations of the Company, including without limitation, assets of the Nation leased, loaned, or assigned to the Company for its use, without transfer of title;

(c) any waiver may be granted only by (i) a resolution adopted by the Board of the Company for the specific purpose of granting a waiver; (ii) the language of the waiver must be clear and explicit, and; (iii) the waiver must be contained in a written contract or agreement to which the Company or a business entity in which the Company owns a majority interest is a party, and;

(d) waivers of sovereign immunity must be specific and limited as to the duration, grantee, transaction, property or funds of the entity subject to the waiver, applicable forum, and applicable law.

4.2.2 The sovereign immunity of the Company shall not extend to actions against the Company by the Nation acting as a Member.

4.3 Neither the Company nor any person employed by it or acting on its behalf shall have the power or authority to waive the sovereign immunity of the Nation or to sell, convey, assign or encumber any real or personal property or other assets of the Nation.

4.4 The Board is authorized to grant a waiver of sovereign immunity of the Company, or a business entity in which the Company owns a majority interest, to a bonding company, surety, or other guarantor for the purpose of securing a contract. If such a waiver is granted for the Company, such waiver will be limited to assets of the Company. If such a waiver is granted for a business entity in which the Company owns a majority interest, such waiver will be limited to assets of that business entity. At no time shall any waiver of immunity granted in this provision apply to the Nation, its assets, or any elected officials, officers or employees of the Nation.

4.5 The Nation confers upon the Company, and any business in which the Company owns a majority interest, a waiver of sovereign immunity in order to sue and be sued in a United States District Court or any other court of competent jurisdiction for all matters relating to Small Business Administration programs including, but not limited to, 8(a) BD program participation, loans, and contract performance. At no time shall any waiver of immunity granted in this provision apply to the Nation, its assets, or any elected officials, officers or employees of the Nation.

## **ARTICLE V: BOARD OF DIRECTORS AND OFFICERS**

5.1 **Board of Directors.** The Company shall be governed by a three member Board of Directors to be the Manager of the Company and consisting of:



- A. One member of the Board shall be selected by the Principal Chief and one member to be selected by the National Council with no requirement of confirmation to be by Tribal Resolution. The third member of the Board will be selected by the other two members. Any member of the Board may be subject to removal for any reason applicable to a Civil Officer as defined in Title 31, Section 1-103 of the Nation's Code. The removal provisions and procedure applicable to a Civil Officer contained in Title 31 are hereby extended to Board members of the Company.
- B. At least the majority of the Board Members shall be citizens of the Nation in order to protect the interests of the Nation and to insure compliance with SBA 8(a) business-development requirements that Company business operations are owned/controlled/managed by the Nation.
- C. The term of the Board members shall be three years. The Board terms shall be staggered to guarantee Board continuity.
- D. To be eligible to serve on the Board, a person must possess the minimum following experience:
  - (1) A Bachelor's Degree plus field years of business management experience; or
  - (2) Five years executive management experience including, but not limited to, CFO, CEO and COO management experience; or
  - (3) An advanced degree plus years of business management experience equal to nine years.

5.2 Power and Duties of the Board. In addition to any other powers and duties of the Board of Directors provided for in this Agreement, and in furtherance of the purposes of the Company, the Board shall have the following powers and duties:

- A. Oversee and control the financial and business affairs of the Company and to be responsible for the fiscal affairs of the Board and all businesses and ventures under its management and to oversee and control the financial and business affairs of the Board and all businesses and ventures under its management through the establishment and implementation in accordance with generally accepted accounting principles of an administrative system that shall include, but not be limited to controlling, accounting and reporting disbursements, payroll, cost management and investments and establishing and maintaining bank accounts in the name of the Company, in any financial institution whose deposits are insured by an agency of the United States Government; provided that expenditures may be made only upon approval by (1) the Chairman of the Board or (2) another member of the Board who has

been designated by duly enacted resolution of the Board to approve the expenditure of funds, or (3) subject to the control and oversight of the Board, a CEO employed by the Board if so authorized by duly enacted resolution of the Board, provided that the Controller shall deliver all funds appropriated through the Muscogee (Creek) Nation pursuant to the Nation's Comprehensive Annual Budgets or special appropriations acts to the Company for its use in accordance with the Act and generally accepted accounting principles;

- B. Employ administrative staff to serve the Board;
- C. Employ a CEO who shall be primarily responsible for carrying out the day-to-day operations of any business venture authorized by a duly-adopted business plan, subject at all times to the oversight of the Board;
- D. Oversee, supervise, and control the activities of the CEO, provided the CEO shall have primary supervisory authority over all subordinate personnel including the authority to hire and fire such personnel;
- E. Adopt administrative and personnel policies and procedures for the Board's staff as well as for the CEO and his or her administrative and other staff operating businesses or ventures under any approved business plan, provided that said policies and procedures shall include, but not be limited to, provisions calculated to 1) prevent nepotism in the hiring of personnel and procurement of goods and services, and 2) assure that all contracting and procurement is conducted in a manner which is always consistent with the best interests of the Company;
- F. Review, evaluate, initiate and cause to be carried out business ventures, projects and/or commercial enterprises;
- G. Hold regular meetings of the Board, not less than once every month, for the conduct of business and to discharge its powers and duties hereunder;
- H. Delegate such authority to the CEO of Company as the Board deems appropriate, subject to any limitations imposed by the Act and this Agreement;
- I. On behalf of the Company, approve any contracts proposed by the CEO for the engagements of consultants, advisors, planners and/or other experts which the Board deems necessary or appropriate to carry out the purposes of the Company, provided that all such contracts shall be in writing, shall be approved by written resolution of the Board at a meeting duly called and held;
- J. Subject to any requirements and/or limitations imposed on the Board or the

Company under the provisions of the Act and this Agreement, take or perform any and all other actions, including without limitation approving contracts and agreements in the name of the Company, which the Board may deem necessary or appropriate in order for the Company to carry out its purposes and authority set forth in the Act, provided that any limitations imposed hereunder on the Company shall be limitations on the Board;

- K. Review, vote and adopt by resolution adopted as the Board of the Company limited waivers of sovereign immunity where the language of the waiver must be clear and explicit; and the waiver must be contained in a written contract or agreement to which the Company is a party; provided that any such waiver or consent to be sued shall in no way extend to any action against the Nation; nor shall any such waiver or consent to be sued be deemed a waiver of any of the rights, privileges, and immunities of the Nation and its officers and employees and;
- L. Perform any other actions required of the Board under the Act and this Agreement.

### 5.3 Meetings of the Board.

- A. The Board shall have one regular meeting each month, on a date and at a time which shall be fixed by the Board at its first monthly meeting which shall be held on a date and time, to be set by the Chairperson, not more than 30 days after the adoption of the Act. The date and time for the regular monthly meeting may be changed by the Board from time to time but only by way of written resolution adopted at any regular or special meeting of the Board.
- B. Special meetings of the Board may be called: 1) by the Chairman, by giving written or telephonic notice to the other Board members not less than 24 hours before the special meeting; or 2) by any three members of the Board, by giving the other Board members written or telephonic notice not less than 24 hours before the special meeting. In addition to the foregoing, written notice of special meetings shall be posted at least 24 hours before the special meeting within the Administration Building of the Capitol Complex in at least 2 prominent places as well as on at least 2 exterior doors of the Mound Building.
- C. No business shall be transacted by the Board except at a regular monthly or duly called special meeting at which a quorum has been established, which shall require the presence of at least two Board members. If a quorum is established at the beginning of any meeting but is lost during the course of a meeting, no action taken during the period when less than a quorum is present shall be valid.

D. The transaction of any Board business or action shall require a majority vote of Board members present at a meeting.

5.4 Officer:

The Company, by and through the Board, may employ one Chief Executive Officer, responsible for the day-to-day operational management of the Company's business ventures or economic development projects conducted in accordance with any approved business plan; provided, however, that the activities of any such CEO shall be subject to the control and oversight of the Board at all times in accordance with established policies and procedures adopted by the Board. Without specific authority from the Board, which must be set forth in a duly-adopted written resolution of the Board or by employment contract properly executed by the Board, such CEO shall not:

- (1) Borrow or pledge assets of the Company;
- (2) Sell, lease, assign or convey personal property of Company except that this provision shall not apply to the wares or products produced or offered for sale as an integral part of any of the business ventures of Company;
- (3) Enter into contract with a term exceeding 1 year or that requires the expenditure of more than Fifty Thousand Dollars \$50,000.00 of Company's funds;
- (4) Compromise any claim of or against the Company over Five Thousand Dollars \$5,000.00;
- (5) Enter into contracts with any other Indian Tribe or with any unit of federal, state or local government.

The CEO does not possess authority to enter into any agreement or contract waiving the sovereign immunity of the Company or any other business entity in which the Company maintains an ownership interest.

5.5 By-Laws. The Board may adopt and, from time to time, amend By-Laws of the Company, provided that such By-Laws and amendments shall be in writing and shall not be inconsistent with the Act or this Agreement. Copies of any By-Laws or amended By-Laws of the Board shall be delivered to the Office of the Principal Chief and the Office of the Speaker of the National Council no later than five days following adoption by the Board.

5.6 Records and Audits.

- A. Budget. The Board shall prepare an annual budget no later than September 15 of each fiscal year immediately succeeding, the fiscal year for which the budget has been prepared. The Budget shall not be a part of the Nation's Comprehensive Annual Budget (CAB) and the Company shall provide a copy of its annual budget to the Principal Chief and the National Council for informational purposes. If the Company needs additional funds other than those funds generated from existing businesses and ventures then the Company shall submit a budget and seek the appropriation of those funds from the National Council through separate legislation.
- B. Financials. The Board shall maintain complete, accurate books and records of the financial affairs of the Company and each of its businesses and ventures. The Company shall submit to the Principal Chief and the National Council quarterly financials. The Board shall also submit to the Principal Chief and the National Council a complete annual report, including financials, of the business and financial affairs of the Company and each of its businesses or ventures.
- C. Audits. The books and records of the Company shall be audited each year by an independent Certified Public Accountant in accordance with generally accepted auditing procedures. The Accountant may be the same Accountant utilized by the Nation for its independent audit, provided compensation is from the Company funds. Records and books shall be made available upon request by the National Council or Principal Chief.

## **ARTICLE VI: DISPOSITION OF PROFITS**

Within 120 days after the end of each fiscal year, the Board shall determine or cause to be determined the net profits of the Company for the fiscal year together with any accumulated surplus from all prior fiscal years. The Board shall determine or cause to be determined the amount thereof needed for reserves to meet the Company's obligations and to finance its activities, including without limitation the purchase, repair, maintenance or replacement of capital equipment and other assets of the Company and such funds shall be retained by the Company for use and expenditure for said purposes. The Company will be allowed to reinvest all profits for the first three (3) years of operation. After three (3) years, the net profits will be distributed in accordance with a Dividend Policy approved by the Member and incorporated into this Agreement.

## **ARTICLE VII: MISCELLANEOUS PROVISIONS**

### **7.1 Quarterly and Annual Reports.**

- A. The Company shall provide and maintain quarterly and annual reports on the status of business operations, finances, and other material matters affecting the Company. Executive Business Managers shall prepare monthly financial reports for submittal to the CEO who shall provide said monthly financial reports to the Board for review at the regular monthly meeting. The monthly financial reports shall also be available to the Principal Chiefs Office and the National Council Business & Government Committee.
- B. The Principal Chief shall convene on a quarterly and annual basis at a meeting with the Board, Executive Management, officials of the Principal Chief, the Business & Government Committee and other Committees of the National Council as designated by the Speaker of the National Council. There shall not, in the future, be monthly meetings of these parties with business boards and executive management; however, during the year one implementation transition period, business boards and executive management shall provide monthly financial status reports to the Business and Government Committee and the Principal Chief.

## 7.2 Insurance.

- A. The Company shall acquire and maintain at its own expense general liability insurance in the amount of at least one million dollars (\$1,000,000.00) per occurrence and five million dollars (\$5,000,000.00) in the aggregate for all activities on sites of the Company's business or ventures. Any and all buildings, improvements, and contents therein owned by the Company shall be insured against loss by fire, flood, theft, malicious mischief and other casualty; and the Company shall provide adequate workers compensation insurance coverage for all employees of the Board and/or the Company. The costs of all such insurance, to the extent that it relates to the sites, facilities and activities of the Company, shall be deemed a part of the Company's operating expenses.
- B. The Board is hereby authorized, in its discretion, to adopt a written resolution of the Board requiring an endorsement or other appropriate attachment or amendment to the policies of insurance described in subsection A of this Section setting forth the appropriate circumstances and/or conditions under which the insurer would be required or authorized to refrain from raising the defense of sovereign immunity against any claim asserted in a lawsuit or other judicial proceeding against the Company, the Board or any officer or employee of the Company or of any business or venture of the Company acting within the scope of his or her appointment or employment, but only to the extent that the claim is covered by the limits of the policy of insurance; provided that said defense shall be raised and maintained for all amounts of the claim(s) in excess of such limits of coverage. Provided further, however, nothing in this Section shall be construed as a waiver of the Nation's sovereign immunity from suit.

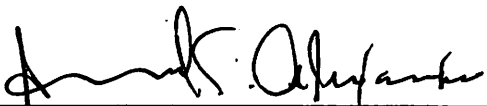
7.3. Severability. In the event any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, all other provisions hereof shall be deemed severable and be given full force and effect.

Approved this 27<sup>th</sup> day of August, 2013.

MUSCOGEE (CREEK) NATION, MEMBER

By:

  
\_\_\_\_\_  
George Tiger, Principal Chief

  
\_\_\_\_\_  
Samuel Alexander, Speaker  
National Council