

**OPERATING AGREEMENT OF**  
**STAR COMMUNICATIONS, L.L.C.**  
**A MISSOURI LIMITED LIABILITY COMPANY**

**ARTICLE I**  
**Definitions**

1.01 *Definitions.* The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

(a) "*Articles of Organization*" shall mean the Articles of Organization of the Company as filed with the Secretary of State of Missouri as the same may be amended from time to time.

(b) "*Assignee*" means a Person to whom a Membership Interest has been Transferred who has not been admitted as Member. An Assignee shall only be entitled to be allocated the share of Profits and Losses, and to receive the distributions to which the transferring Member would otherwise have been entitled with respect to the transferred Membership Interest. An Assignee shall not be entitled to participate in the management or affairs of the Company or vote on, consent to, or otherwise participate in any decision or action of the Members.

(c) "*Affiliate*" of any Person refers to any entity which directly or indirectly, Controls, is Controlled by, or is under common Control with, such Person.

(d) "*Capital Account*" means, with respect to each Member of Assignee, the Capital Account maintained for such Person in accordance with the following provisions.

(i) To each Person's Capital Account there shall be credited such Person's Capital Contributions, such Person's distributive share of Profits, and the amount of any Company liabilities assumed by such Person or which are secured by any Property distributed to such Person.

(ii) To each Person's Capital Account there shall be debited the amount of cash and the fair market value of any Property distributed to such Person pursuant to any provision of this Agreement, such Person's

distributive share of Losses, and the amount of any liabilities of such Person assumed by the Company or which are secured by any Property contributed by such Person to the Company.

(iii) In the event any Membership Interest is Transferred in accordance with the terms of this Agreement, the transferee, whether such transferee is a Member or Assignee, shall succeed to the Capital Account to the transferor to the extent it relates to the transferred Membership Interest.

(iv) In determining the amount of any liability for purposes of Sections 1.01(d)(i) and 1.01(d)(ii) hereof, there shall be taken into account IRC Section 752(c) and any other applicable provisions of the IRC and Regulations.

The foregoing provisions and the other provisions of this Operating Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Managing Member shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Regulations, such modification may be made provided that it is not likely to have a material effect on the amounts distributed to any Person pursuant to Article XII hereof upon the dissolution of the Company.

(e) "*Capital Contribution*" means, with respect to any Member, the amount of money and the fair market value of any Property (other than money) contributed to the Company with respect to the interest in the Company held by such Member. The principal amount of a promissory note which is not readily traded on any established securities market and which is contributed to the Company by the maker of the note (or a Member related to the maker of the note within the meaning of Regulations Section 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any person until the Company makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with the Regulations Section 1.704-1Z(b)(2)(iv)(d)(2).

(f) "*Company*" means **STAR COMMUNICATIONS, L.L.C.**

(g) "*Control*" (including any derivation of the work "Control") as used with respect to any Person means the possession, directly or indirectly, of stock or other equity interests, representing more than fifty percent (50%) of the voting power of such Person.

(h) "*Entity*" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, real estate investment trust, cooperative or association, estate of other association or business entity or any foreign trust, or foreign business organization.

(i) "*Fiscal Year*" shall mean the Company's fiscal year which shall be the calendar year.

(j) "*IRC*" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(k) "*Majority of the Profits Interests*" means Profits Interests, whether held by one or more Members, which when taken together, exceed fifty percent (50%) of all of the Profits Interest in the Company.

(l) "*Managing Member(s)*" shall mean the Person or Persons designated in Section 6.01 hereof and their successors.

(m) "*Member*" shall mean each of the parties who executes this Operating Agreement as a member and each of the parties who may hereafter become a Member.

(n) "*Membership Interest*" shall mean a Member's entire interest in the Company including the Member's interest in Profits, Losses, and distributions and a Member's right to vote on, consent to, or otherwise participate in the management of the business and affairs of the Company.

(o) "*Missouri Act*" shall mean the Missouri Limited Liability Company Act, Section 347.010 Mo. Rev. Stat., ex seq.

(p) "*Operating Agreement*" shall mean this Operating Agreement as originally executed and as amended from time to time.

(q) "*Person*" shall mean any individual or Entity, and the heirs, executors and assigns of such Person where the context so requires, and, unless the context otherwise requires the singular shall include the plural, and the masculine gender shall include the feminine and the neuter and vice versa.

(r) "*Prime Contract*" means a contract between the Company and third party calling for the performance of construction management, engineering, design services and/or related services.

(s) "*Profits and Losses*" means, for each Fiscal Year, an amount equal to the Company's taxable income or loss for such Fiscal Year, determined in accordance with Code Section 703(a)(for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing profits or Losses pursuant to this Section 1.01(s) shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this Section 1.01(s) shall be subtracted from such taxable income or loss;

(t) "*Profits Interest*" means a Member's interest in the Profits of the Company as specified in Article VIII of this Operating Agreement.

(u) "*Property*" means all real and personal Property acquired by the Company and any improvements thereto and shall include both tangible and intangible property.

(v) "*Regulations*" means the Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of such succeeding regulations).

(w) "*Remaining Members*" means, in the event of a Withdrawal Event, all of the Members at the time of such Withdrawal Event other than the Member with respect to which such Withdrawal Event has occurred.

(x) "*Transfer*" shall mean any voluntary or involuntary alienation, transfer, whether by gift, devise or bequest, sale, assignment, conveyance, pledge, hypothecation, creation of, or foreclosure upon, a security interest in, or other disposition of, a Membership or Economic Interest, and any agreement with respect thereto.

(y) "*Transferor*" shall mean any Member which Transfers or desires to Transfer all or any portion of its Membership Interest.

(z) "*Withdrawal Event*" means any of the events specified in Section 347.123 of the Missouri Act.

## ARTICLE II Formation of Company

2.01 *Formation.* On **January 11, 2001**, **Kurt D. Breeze** organized the Company by executing and delivering articles of incorporation to the Missouri Secretary of State.

2.02 *Principal Place of Business.* The principal place of business of the Company with the State of Missouri shall be **4771 Wickerwood Drive, St. Louis, Missouri 63129**. The Company may locate its places of business and registered office at any other place or places as the Managing Member may from time to time deem advisable.

2.03. *Registered office and Registered Agent.* The Company's initial registered office shall be at the office of its registered agent at **4771 Wickerwood Drive, St. Louis, Missouri 63129**, and the name of its initial registered agent at such address shall be **JAMES NESSELHAUF**. The registered office and registered agent may be changed from time to time by filing the appropriate information with the Missouri Secretary of State pursuant to the Missouri Act.

### **ARTICLE III Business of Company**

3.01 *Permitted Businesses.* The business of the Company shall be:

(a) To accomplish any lawful business whatsoever, or which shall at any time appear conducive to or expedient for the protection or benefit of the Company and its assets.

(b) To exercise all powers necessary to or reasonably connected with the Company's business that may be legally exercised by limited liability companies under the Missouri Act.

(c) To engage in all activities necessary, customary, convenient, or incident to any of the foregoing. **To own, operate, service and manage telecommunications equipment.**

### **ARTICLE IV Names and Addresses of Members**

The names and addresses of the Members are as follows:

<u>Name</u>	<u>Address</u>
Joltran Communications, Corp.	4771 Wickerwood Drive St. Louis, Missouri 63129
Midwest Communication Solutions, Inc.	9901 Gravois, Suite C St. Louis, Missouri 63123

## **ARTICLE V**

### **Rights and Duties of Members**

5.01 *Voting Rights.* All Members shall be entitled to vote on any matter submitted to a vote of, or requiring the approval or consent of, the Members. Unless specified otherwise in this Operating Agreement, including, but not limited to the provisions of Article VI hereof, all decision by the Members shall be made by unanimous agreement of both Members.

5.02 *Limitation of Liability.* Each Member's liability shall be limited as set forth in this operating Agreement, the Missouri Act, and other applicable law.

5.03 *Liability for Company Debts.* A Member will not be personally liable for any debts, losses or liabilities of the Company beyond the Member's respective Capital Contribution and the obligation, if any, under this Operating Agreement to make additional Capital Contributions, except as otherwise required by the Missouri Act. No Member shall have any obligation to contribute the amount of any negative balance in his Capital Account to the Company upon liquidation of Company or at any other time.

5.04 *Indemnification.* The Company shall indemnify the Members, Managing Member, and agents, for all costs, losses, liabilities, and damages paid or accrued by any such Member, Managing Member or agent in connection with the business of the Company, to the fullest extent provided or allowed by law.

5.05 *Transacting Business With Company.* A Member may lend money to and transact other business with the Company. The rights and obligations of a Member who lends money to or transacts business with the Company are the same as those of a person who is not a Member, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member has a direct or indirect interest in the transaction if either the transaction is fair to the company or the disinterested Members, knowing the material facts of the transaction and the Member's interest, unanimously authorize, approve, or ratify the transaction.

5.06 *Voluntary Withdrawal.* Either Member shall have the right to voluntarily withdraw from the Company at any time upon thirty (30) days notice to the other Member. Any rights such Withdrawing Member has with respect to his Membership Interest shall be specified in Article X which shall be in lieu of any rights he might otherwise have pursuant to the Act or otherwise.

5.07 *Other Activities.* The Members may have other business interest 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 any other investments or activities of any other Member or to the income or proceeds derived therefrom.

No Member shall incur any liability to the Company or to any of the other members as a result of engaging in any other business or venture.

## **ARTICLE VI Managing Members**

### **6.01 *Managers.***

(a) Except as otherwise provided herein, all decisions concerning the usual day-to-day business of the Company shall be made by unanimous decision of the managers. Each Member shall have the right to designate one (1) Manager. The initial Managers shall be:

**Joltran Communications, Corp. - Jim Nesselhauf**

**Midwest Communication Solutions, Inc. - Gary Pace**

Each Member shall have the right to designate a different person as its Manager representative from time to time as it may choose in its sole discretion by notice to the other Member. Any manager may resign his position as Manager by notice to the member whom he is representing.

(b) If the Managers are unable to agree with respect to any particular matter, either Manager may submit the matter to **JIM NESSELHAUF** for decision. In such an event, the decision of **JIM NESSELHAUF** made in good faith shall be deemed the unanimous decision of the Managers.

**6.02 *Term of Office as Managing Member.*** No Managing Member shall have any contractual right to such position. The Managing Member shall serve until the earliest of:

- (a) The occurrence of a Withdrawal Event with respect to such Member;
- (b) Removal of such Managing Member;
- (c) Resignation of such Managing Member.

**6.03 *Authority of Members to Bind the Company.*** Only the Managing Member and agents authorized by the Managing Member shall have the authority to bind the Company. No Member other than a Managing Member shall take any action as a member to bind the Company, and shall indemnify the company for any costs or damages incurred by the Company as a result of the unauthorized action of such Member.

6.04 *Compensation of Managing Member.* The Managing Member shall be entitled to compensation from the Company for performing the duties of Managing Member only if and at such rate as, agreed to by Members other than such Managing Member holding a Majority of the Profits Interests held by such Members.

6.05 *Managing Member's Standard of Care.* The Managing Member shall perform its duties as Managing Member in good faith, in a manner he reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. The Managing Member who so performs the duties as Managing Member shall not have any liability by reason of being or having been a Managing Member of the Company. The Managing Member does not, in any way, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. The Managing Member shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any member, unless the loss or damage shall have been the result of fraud, deceits gross negligence willful misconduct, breach of this Agreement or a wrongful taking by the Managing Member.

6.06 *Removal and Resignation of Managing Member.* The Managing Member may be removed by unanimous agreement of both Members. The Managing Member may resign at any time by giving notice to all Members. The removal or resignation of the Managing Member shall not affect its rights as a Member of the Company.

6.07 *Restrictions on Authority of the Managing Member.*

(a) The Managing Member shall not have the authority to, and covenants and agrees that he shall not, do any of the following acts without the consent of the other Member;

(i) Cause or permit the Company to engage in any activity that is not consistent with the purposes of the Company as set forth in Section 3.01 hereof;

(ii) Knowingly do any act in contravention of this Operating Agreement;

(iii) Knowingly do any act which would make it impossible to carry on the ordinary business of the Company;

(iv) Cause the Company to voluntarily take any action that would cause a bankruptcy of the Company;



(v) Cause a significant change in the nature of the Company's business;

(vi) Cause the Company to merge or consolidate with another person;

(vii) Cause the Company to sell or dispose of substantially all of the Property of the Company as part of a single transaction or a series of related transactions or cause the Company to acquire substantially all the assets of another company;

(viii) Cause the Company to admit any additional Members other than pursuant to Article XI hereof; or

(ix) Amend this Operating Agreement;

(x) The terms and conditions of any Prime Contract to be executed by the Company and any changes, amendments or modifications thereto;

(xi) Performance by the Company of any work or services that would contain risks or liabilities of a nature other than that contained in a Prime Contract;

(xii) Confessing a judgment, settling or prosecuting any lawsuit or other formal dispute resolution proceeding by or against a third party;

(xiii) Initiating a lawsuit or other formal dispute resolution proceeding in the name of the Company;

(xiv) Borrowing in the name of the Company or acting as guarantor for any borrowing of any third party.

6.10 *Vacancy.* If there is a vacancy in the position of Managing Member for any reason a new Managing Member may be appointed by unanimous agreement of both Members.

## **ARTICLE VII**

### **Capital Contributions**

7.01 *Members' Capital Contributions.* Each Member shall make the initial Capital Contribution specified in **Exhibit A**. The Members shall make such additional Capital Contributions as determined by unanimous agreement of both Members. No obligation to make an additional Capital Contribution may be enforced by any Person other than the Company.

7.02 *Interest on Capital Contributions.* No Member shall be paid interest on any Capital Contribution to the Company.

7.03 *Return of Capital Contributions.* Except as provided in Article X hereof, prior to dissolution of the Company, no Member shall have the right to demand the return of its Capital Contribution, and upon dissolution, he shall only have the right to make such demand to the extent assets are available and payable by the Company as provided herein. No Member shall have the right to demand receipt of Property other than cash in return for his Capital Contribution.

## **ARTICLE VIII**

### **Allocation of Profits, Losses; Distributions; Tax Items**

8.01 *Profits and Losses.* All Profits and Losses of the Company shall be allocated among the Members according to their Profits Interests as indicated in **Exhibit A**.

8.02 *Other Allocation Rules.*

(a) For purposes of determining the Profits, Losses or other items allocated to any period, Profits, Losses and any other such items shall be determined on a daily, monthly or other basis, as determined by the Company using any permissible methods under IRC Section 706 and the Regulations thereunder.

(b) The Members are aware of the income tax consequences of the allocations made by this Article VIII and agree to be bound by the provisions of this Article VIII in reporting their share of Company income and loss for income tax purposes.

8.03 *Distributions.* Except as provided in Section 11.03(d) below, all distributions shall be made at such time and in such amounts as determined by unanimous agreement of both Members.

8.04 *Accounting Principles.* The Profits and Losses of the Company shall be determined in accordance with generally accepted accounting principles (provided that the cash method of accounting may be utilized if so determined by the Managing Member) applied on a consistent basis utilizing the method of accounting as determined by the Managing Member.

8.05 *Returns; Other Elections; Tax Matters Partner.* The Managing Member shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the IRC and all other tax returns deemed necessary and required in each jurisdiction in which the Company does

business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. The Managing Member shall be the tax matters partner of the Company as such term is defined in I.R. C. Section 6231(a)(7).

## **ARTICLE IX**

### **Transferability**

9.01 *General.* Except as otherwise specifically provided in this Operating Agreement, no Member shall Transfer all or any portion of its Membership Interest. This provision is expressly intended to not only limit the ability of a Member to substitute another person as a Member in his place, but also to limit the right a Member otherwise possesses to assign his interest in profits and distributions under the Missouri Act. Any Transfer that is not permitted under the provisions of this Operating Agreement shall be null, void and of no effect.

#### *9.02 Right of First Refusal.*

(a) If a Transferor desire to Transfer all but no less than all of his Membership Interest ("Transfer Interest") to any person (the "Outsider"), the Transferor shall give notice ("Transfer Notice") to the Company and the other Member ("Other Member") of his desire to Transfer such Transfer Interest. The Transfer Notice shall, in addition to stating the desire to Transfer such transfer Interest, state: (i) the name and address of the Outsider and (ii) the provisions and conditions of the proposed Transfer, including but not limited to the proposed Transfer price of the Transfer Interest ("Transfer Price"), if any, and the provisions for payment for the Transfer Interest. For purposes of this Operating Agreement, any provisions for payment requiring non-cash or non-note consideration and any security therefor and any ancillary agreement shall be null, void and of no effect. Upon receipt of the Transfer Notice, the company shall have an option in its discretion to purchase all of the Transfer Interest owned by the Transferor at the Transfer Price and on the same payment terms set forth in the Transfer Notice (expressly excluding any provisions and conditions relating to non-cash or non-note consideration for the Interest and any security therefore).

(b) In the event that the Company desire to purchase all of the Transfer Interest owned by the Transferor, then the Company may exercise its option by giving notice ("Company Purchase Notice") to the transferor at any time within ninety (90) days following the receipt of the Transfer Notice. The transferor shall not vote regarding any determination by the Company concerning the exercise of the Company's option, and such determination shall be made by the other Member. If the Company fails to give the Company Purchase Notice within such ninety (90) day period, then the company shall be deemed to have declined to purchase such Transfer Interest. If the Company exercises its option

to purchase such Transfer Interest, then the Transferor shall sell and the Company shall purchase such transfer Interest at the Transfer Option Price, and otherwise pursuant to the provisions set forth in Section 9.02 and Section 9.04 of this Operating Agreement.

(c) In the event the Company fails or determines not to exercise its option set forth herein, then at any time within thirty (30) days thereafter, the Transferor may Transfer the Transfer Interest described in the Transfer Notice to the Outsider upon the precise terms and conditions contained in the transfer Notice, and upon compliance with the provisions of Section 9.04(a)(iii), such Outsider shall become a Member of the Company. If such Transfer to the Outsider is not effected within said thirty (30) day period, or if the provisions of the proposed Transfer as described in the Transfer Notice are changed in any respect, then any such Transfer shall be null, void and of no effect, and the Transfer of the Transfer Interest described in the Transfer Notice shall continue to be subject to the Transfer restrictions contained in this Operating Agreement and may not be Transferred without again first being offered to the Company pursuant to the provisions of Section 9.02.

#### 9.03 *Closing.*

(a) Any purchase and sale to be effected under this Article IX shall be closed on a date specified in the Company Purchase Notice which shall be regular banking business day not less than thirty (30) nor more than ninety (90) days after the giving of the Company Purchase Notice, and the place of closing shall be the principal office of the Company or at such other place as agreed to by purchaser and seller.

(b) On the date of Closing (i) such documents as may reasonably be deemed necessary by the attorneys for the Company to Transfer the Transfer Interest being Transferred shall be delivered to the Company, and (ii) the Company shall deliver as payment to the seller its cashier's check and/or promissory note, as the case may be, in an amount equal to the price of the Transfer Interest being Transferred.

#### 9.04 *Miscellaneous.*

(a) Anything to contrary herein notwithstanding, no Member (whether any proposed Transferee were to otherwise be admitted as a Member or was merely to be an Assignee) may transfer any portion of his Membership Interest;

(i) if such Transfer, alone or when combined with other transactions, would result in a termination of the Company within the meaning of I.R.C. Section 708;

(ii) without an opinion of counsel satisfactory to the Managing Member that such Transfer is subject to an effective registration under, or exempt from the registration requirements of, applicable state and federal securities laws;

(iii) unless and until the Company receives from the proposed transferee any information and agreements that the Managing Member may reasonably require.

## **ARTICLE X**

### **Withdrawal of a Member**

10.01 *Company Options.* Upon the occurrence of a Withdrawal Event with respect to a Member ("Withdrawing Member") other than a voluntary Transfer to an outsider which shall be governed by Article IX hereof, the Company may elect to (i) purchase the Withdrawing Member's Membership Interest for a price equal to such Member's Capital Account as of the date of withdrawal ("Purchase Price"), or (ii) treat the Withdrawing Member, or the proposed transferee of such Withdrawing Member's Membership Interest, as the case may be, as an Assignee of such Withdrawing Member's Membership Interest. The decision to elect either (i) or (ii), and any other decisions or actions of the Company with respect to option (i) if such option is elected, shall be made by the Member other than the Withdrawing Member. In order to elect (i) above, Company must give notice ("Withdrawal Purchase Notice") of such election to the Withdrawing Member (or his personal representative) within sixty (60) days of the Withdrawal Event. In the absence of a timely Withdrawal Purchase Notice, Company shall be deemed to have elected (ii) above. The Purchase Price shall be paid all in cash at closing. With respect to the voluntary withdrawal of a Member, the Company shall be deemed to have automatically elected (i) above.

10.02 *Name Change.* Upon the request of a Withdrawing Member the Company shall change its name to eliminate any reference to the Withdrawing Member.

#### *10.03 Closing.*

(a) Any purchase sale pursuant to this Article X shall be closed on a date agreed to by the parties which shall be a regular banking business day not less than thirty (30) nor more than sixty (60) days after the Withdrawal Purchase Notice, and the place of closing shall be the principal office of the Company, or at such place as agreed by the purchaser and seller.

(b) On the date of closing, (i) such documents as may reasonably be deemed necessary by the attorneys for the Company to Transfer the Membership Interest being Transferred shall be delivered to the Company,

and (ii) the Company shall deliver as payment to the seller its cashier's check in an amount equal to the price of the Transfer Interest being Transferred.

## **ARTICLE XI**

### **Additional Members**

11.01 *Admission to Membership.* Subject to the provisions of this Operating Agreement specifically including but without limitation, the provisions concerning Transfer of Membership Interests, and subject to the provisions of the Missouri Act, any Person acceptable to both of the Members may become a Member in the Company for such consideration as shall be unanimously agreed upon by such Members.

11.02 *Financial Adjustments.* No new Members shall be entitled to any retroactive allocation of losses, incomes or expense deductions incurred by the Company. The Company may, at its option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, income, and expense deductions to a new Member for that portion of the Company's tax year in which a member was admitted in accordance with the provisions of IRC § 706(d) and the Treasury Regulations promulgated thereunder.

## **ARTICLE XII**

### **Dissolution and Termination**

#### **12.01 *Dissolution.***

(a) The Company shall be dissolved upon unanimous agreement of both Members.

(b) As soon as possible following the decision of the Members to dissolve, the appropriate representative of the Company shall execute a notice of winding up in such form as shall be prescribed by the Missouri Secretary of State and file same with the Missouri Secretary of State's office.

12.02 *Effect of Filing of Winding Up Notice.* Upon the filing with the Missouri Secretary of State of a notice of winding up, the Company shall cease to carry on its business except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until articles of termination have been filed with Secretary of State or until a decree terminating the Company has been entered by a court of competent jurisdiction.

12.03 *Winding Up, Liquidation, and Distribution of Assets.* Upon dissolution, an accounting shall be made by the Company's independent

accountants of the accounts of the Company and of the Company's assets, liabilities, and operations, from the date of the last previous accounting until the date of dissolution. The Managing Member shall immediately proceed to wind up the affairs of the Company. If the Company is dissolved and its affairs are to be wound up, the Managing Member shall:

(a) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent that Managing Member may determine to distribute any assets to the Members in kind);

(b) Allocate any profit or loss resulting from such sales to the Members' Capital Accounts in accordance with Article VIII above;

(c) Discharge all liabilities of the Company, including liabilities to members who are creditors, to the extent otherwise permitted by law, other than liabilities to Members for distributions and establish such reserves as may be reasonably necessary to provide for contingencies or liabilities of the Company.

(d) Distribute the remaining assets in the following order:

(i) If any assets of the Company are to be distributed in kind, the net fair market value of those assets as of the date of dissolution shall be determined by independent appraisal or by agreement of the Members. Those assets shall be deemed to have been sold as of the date of dissolution for their fair market value and the Capital Accounts of the Members shall be adjusted pursuant to the provisions of Article VII and Section 1.01(d) of this Operating Agreement to reflect such deemed sale.

(ii) The positive balance (if any) of each Member's Capital Account as determined after taking into account all capital Account adjustments for the Company's taxable year during which the liquidation occurs) shall be distributed to each Member, either in cash or in kind, as determined by the Managing Member, with any assets distributed in kind being valued for this purpose at their fair market value as determined pursuant to Section 21.03(d)(i). Any such distributions to the Members in respect of their Capital Account shall be made in accordance with the time requirements set forth in Regulations § 1.704-1(b)(2)(ii)(b)(2).

(e) Notwithstanding anything to the contrary in this Operating Agreement, upon a liquidation within the meaning of Regulation § 1.704-1(b)(2)(ii)(g), if any member has a deficit Capital Account (after giving effect to all contributions, distributions, allocations, and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), the Member shall have no obligation to make any Capital Contribution, and the negative balance of the Member's Capital Account shall not be considered a debt

owed by the Member to the Company or to any other Person for any purpose whatsoever.

(f) The Managing Member shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

12.04 *Articles of Termination.* When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Members, the Company shall be deemed terminated and articles of termination shall be filed with the Missouri Secretary of State. Upon the filing of the articles of termination, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Missouri Act. The Managing Member shall have authority to distribute any Company property discovered after dissolution, convey real estate, and take such other action as may be necessary on behalf of and in the name of the Company.

12.05 *Return of Contribution Nonrecourse to Other Members.* Except as provided by law or expressly provided in this Operating Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company Property remaining after the payment or discharge of the debts and liabilities of the company is insufficient to return the cash contribution of one or more Members, the Members shall have no recourse against any other Member.

### **ARTICLE XIII**

#### **Miscellaneous Provisions**

13.01 *Notices.* Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Operating Agreement, or to such other address as may be designated by a Member or the Company by notice to all the Members and/or the company, as the case may be. Except as otherwise provided in this Operating Agreement, any such notice shall be deemed to be given three business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid.

13.02 *Enforcement.* In acknowledgment of the uniqueness of the Membership Interests and the inadequacy of money damages with respect



thereto, the Members individually and the Company itself shall have the right to enforce the provisions of this Operating Agreement and the remedies for a failure to comply with the provisions of this Operating Agreements shall include the remedy of specific performance.

**13.03 *Records, Audits and Reports.*** At the expense of the Company, the Managing Member shall maintain records and accounts of all operations and expenditures of the Company. At a minimum the Company shall keep at its principal place of business the following records:

(a) A current list of the full name and last known business, residence, or mailing address of each Member, both past and present;

(b) A copy of the Articles of Organization of the Company and all articles of amendment thereto, together with executed copies of any powers of attorney pursuant to which any articles have been executed;

(c) Copies of the Company's federal, state, and local tax returns and reports, in any, for the four (4) most recent years;

(d) Copies of the Company's current effective written Operating Agreement, and all amendments thereto, and copies of any written operating agreements no longer in effect, and copies of any financial statements of the Company for the three (3) most recent years;

(e) Minutes, if any, of all meetings of Members;

(f) Any written consents obtained for Members for actions taken by Members without a meeting;

(g) Any other information required by Section 347.091 of the Missouri Act.

**13.04 *Application of Missouri Law.*** This Operating Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Missouri and specifically the Missouri Act. To the extent permitted by law, the Members designate (@) St. Louis County, Missouri as the proper venue of any action regarding this Operating Agreement.

**13.05 *Waiver of Action for Partition.*** Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

**13.06 *Amendments.*** The Operating Agreement may not be amended except by the unanimous written agreement of all of the Members.

13.07 *Execution of Additional Instruments.* Each member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney, and other instruments necessary to comply with any laws, rules, and regulations.

13.08 *Construction.* Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

13.09 *Headings.* The headings in this Operating Agreement are for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Operating Agreement or any of its provisions.

13.10 *Waivers.* The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, that would have originally constituted a violation, from having the effect of an original violation.

13.11 *Rights and Cumulative.* The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

13.12 *Severability.* If any provision of this Operating Agreement or its application to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Operating Agreement and its application shall not be affected and shall be enforceable to the fullest extent permitted by law.

13.13 *Heirs, Successors, and Assigns.* Each and all of the covenants, terms, provisions, and agreements contained in this Operating Agreement shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors, and assigns.

13.14 *Creditors.* None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company.

13.15 *Assignees.* The Transfer by an Assignee of his interest in the Company shall be subject to the same restrictions as provided in this Operating Agreement with respect to the Transfer by a Member of a Membership Interest. Any event which would constitute an Event of Withdrawal if it had occurred with

respect to a member shall be treated as an Event of Withdrawal if such event occurs with respect to an Assignee, and the company and such Assignee shall have the same rights and obligations with respect to such Assignee's interest in the company as specified in Article X hereof with respect to a Withdrawing Member's Membership Interest.

13.16 *Counterparts.* This Operating Agreement may be executed in counterparts each of which shall be deemed an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Members hereto have executed this Operating Agreement as of the 11<sup>th</sup> day of January, 2001

Joltran Communications, Corp.

Midwest Communication Solutions, Inc.

By: Jim Nesselhauf  
Jim Nesselhauf

By: Gary Pace  
Gary Pace

"MEMBERS"

**EXHIBIT A**

<u>Member</u>	<u>Capital Contribution</u>	<u>Profit Interest</u>
Joltran Communications, Corp.	\$ <u>2,000</u>	50 %
Midwest Communication Solutions, Inc.	\$ <u>2,000</u>	50 %

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