

DELAWARE SERIES LIMITED LIABILITY COMPANY
OPERATING AGREEMENT

Fund EQ-ONJ, a series of Equidate Investments LLC
organized in respect of securities of the portfolio company

Airbnb, Inc.

2018-04-16 — *Version 803*
confidential



EQUIDATE INVESTMENTS

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- *Neither the United States Securities and Exchange Commission (the “SEC”) nor any state regulatory authority has approved or disapproved this Fund Agreement or the limited liability company interests provided for herein. Any representation to the contrary is unlawful.*
- *The securities represented by this Fund Agreement have not been registered under the Securities Act of 1933 (the “Securities Act”) or registered or qualified under any state securities laws. Such securities may not be offered for sale, sold, transferred, pledged or hypothecated unless registered and qualified under applicable federal and state securities laws or unless, in the opinion of counsel satisfactory to the Fund, such registration and qualification is not required. Transfers of the securities represented by this Fund Agreement, and other transactions concerning such securities, are further subject to other restrictions, the terms and conditions of which are set forth in this Fund Agreement.*
- *Purchasers of securities represented by this Fund Agreement should be aware that they will be required to bear the financial risks of their investment for an indefinite period of time.*

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LIMITED LIABILITY OPERATING AGREEMENT

This Delaware Series Limited Liability Company Operating Agreement (“**Fund Agreement**”) is made as of the date set forth on its header page (the “**Effective Date**”) by and among the Manager identified below and those Persons who have or may hereafter become members (the “**Members**”) of the fund identified in the header page (the “**Fund**”). In consideration of the



mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. DEFINITIONS

Capitalized terms used in this Fund Agreement but not otherwise defined shall have the following meanings:

1.1. *Fund Interests*

- (a) A “**Holder**” is any Person holding a Fund Interest. A “**Member**” is a Holder that has been admitted to the Fund pursuant to Section 4.1, with the rights and privileges associated with membership in a limited liability company pursuant to this Fund Agreement (including among others, voting and information rights), that has not ceased to be a Member pursuant to this Fund Agreement or the LLC Act. By contrast, a “**Non-Member Holder**” is a Holder who has not been admitted as a Member, or who has lost its privileges as a Member, in accordance with the provisions of this Fund Agreement.
- (b) “**Fund Interest**” means with respect to each Holder, as of any date, such Holder’s ownership interest in the Fund, expressed as the number of Units such Holder (or their predecessors in interest) were originally issued by the Fund in connection with their Subscription (their “**Units**” of Fund Interest), as may be adjusted in accordance with Section 4.10 (“**As Adjusted**”).
- (c) A Holder’s Fund Interest represents the totality of the Holders interests, and the right of such Holder to any and all benefits (including, without limitation, allocations of Net Profits and Net Losses and the receipt of Distributions) to which a Holder may be entitled pursuant to this Fund Agreement and under the LLC Act, together with all obligations of such Holder to comply with the terms and provisions of this Fund Agreement and the LLC Act.
- (d) Each Holder’s Fund Interest will be identified by a specific “**Class**”), as to whether that Fund Interest:
 - Is entitled to a portion of proceeds of the Fund Insurance Policy (as defined below). Such Classes are described as “**I**” Classes and their names include the capital letter *I*.
 - Bears Carried Interest (as defined below). Such Classes are described as “**C**” Classes and their names include the capital letter *C*.
 - Bears a Management Fee (as defined below). Such Classes are described as “**M**” Classes and their names include the capital letter *M*.
- (e) All Classes begin with the prefix EQ. Thus, there are eight possible Classes:
 - (i) Class EQ, which does not bear a Management Fee, does not bear Carried Interest, and is not entitled to receive any proceeds of the Fund Insurance Policy,
 - (ii) Class EQ-I, which does not bear a Management Fee, does not bear Carried Interest, and is entitled to receive a portion of the proceeds of the Fund Insurance Policy,



- (iii) Class EQ-C, which does not bear a Management Fee, bears Carried Interest, and is not entitled to receive any proceeds of the Fund Insurance Policy,
 - (iv) Class EQ-M, which bears a Management Fee, does not bear Carried Interest, and is not entitled to receive any proceeds of the Fund Insurance Policy,
 - (v) Class EQ-IC, which does not bear a Management Fee, bears Carried Interest, and is entitled to receive a portion of the proceeds of the Fund Insurance Policy,
 - (vi) Class EQ-IM, which bears a Management Fee, does not bear Carried Interest, and is entitled to receive a portion of the proceeds of the Fund Insurance Policy,
 - (vii) Class EQ-CM, which bears a Management Fee, bears Carried Interest, but is not entitled to receive any proceeds of the Fund Insurance Policy, and
 - (viii) Class EQ-ICM which bears a Management Fee, bears Carried Interest, and is entitled to receive a portion of the proceeds of the Fund Insurance Policy.
- (f) When Fund Interests are expressed as percentages, such percentages shall be calculated by (i) multiplying the number of Units held by such Holder by (ii) the difference between 100% and that Holder's Carry Percentage if any, and then (iii) dividing the product by the sum of the number of Units, As Adjusted, of all current Holders. The Organizer shall have a deemed Fund Interest, by virtue of its entitlement to Carried Interest, if it is so entitled, equal to the sum of (i) the number of Units of each C Class Fund Interest, As Adjusted, times (ii) the Carry Percentage associated with that Fund Interest, (iii) summed across all C Class Fund Interests, divided by the sum of the number of Units, As Adjusted, of all current Holders. The Organizer's Fund Interest is expressed as its entitlement, and is not denominated in Units, nor does it affect the determination of Unit-Share Parity as described below.
- (g) The Fund may issue a single Class of Fund Interests, or alternately, it may issue a mixture of Classes over time. No Class applies to the deemed Fund Interest, if any, that the Organizer hold by virtue of any entitlement to Carried Interest, nor shall the Organizer be considered a Holder except as set forth herein.

1.2. *Principal definitions*

- (a) The “**Broker**” shall mean the brokerage firm or firms specified or approved by the Organizer that Holders, or their predecessors in interest, engaged to broker and close their Subscriptions to the Fund, as set forth in their respective Subscription Agreements. The Broker for most of all Subscriptions made on or about the date of the present version of this Fund Agreement is Equidate Markets LLC, a licensed broker-dealer affiliated with and under common beneficial ownership as the Organizer.
- (b) The “**Carry Percentage**” shall mean, with respect to each C Class Fund Interest, such amount if any as set forth in the Subscription Agreement.
- (c) “**Closing**” shall mean, for each Holder, the issuance of Fund Interests by the Fund to that Holder or their predecessor in interest.
- (d) The “**Formation Date**” shall mean the date of formation of the Fund, namely the date that a version of this Fund Agreement is first executed by the Manager.



- (e) The “**Master LLC**” shall mean Equidate Investments LLC, a Delaware limited liability company.
- (f) The “**Management Fee**” shall mean the payment of a percentage of the purchase price of any M Class Fund Interest, as specified in the Subscription Agreement for that Fund Interest. The Management Fee in respect of Each Holder of such Fund Interests will be payable to the Organizer. Unless otherwise agreed at the time of Subscription of an M Class Fund Interest: (i) the first three years of Management Fees shall be prepaid upon Subscription to the Fund and fully earned upon Closing of such Subscription, (ii) yearly Management Fees thereafter shall be due on successive anniversaries of Closing and shall be paid out of available cash or liquid assets of the Fund otherwise distributable to holders of M Class Fund Interests; and (iii) any fees that are unpaid because of insufficient cash or liquid assets shall be debited against the capital account of Holders owing such fees, deemed a loan by Organizer to the Fund, and shall be payable without interest out of funds distributable to Holders of M Class Fund Interests upon the occurrence of a Distribution.
- (g) The “**Manager**” means that party described as such in Section 5 and throughout this Fund Agreement, who shall be a “manager” of the Fund within the meaning of the Delaware Limited Liability Company Act (the “**LLC Act**”), Section 18-101, *et seq.* The Manager shall be Assure Fund Management II, LLC, or any successor or replacement thereto appointed pursuant to this Fund Agreement.
- (h) The “**Memorandum**” shall mean, for each Holder, that Confidential Private Placement Memorandum of the Fund that was provided to such Holder, or their predecessor in interest, in connection with the Subscription to purchase their Fund Interest.
- (i) The “**Organizer**” shall mean Equidate Advisors LLC, a Delaware limited liability company.
- (j) The “**Portfolio Company**” shall mean that company identified in the header page of this Fund Agreement.
- (k) “**Portfolio Company Securities**” shall mean the instruments by which the Fund acquires shares of stock of the Portfolio Company, which may include, among other things: (i) forward purchase contracts with respect to Portfolio Company Stock, or other securities that contemplate delivery of Portfolio Company stock in the future, (ii) Portfolio Company stock purchased upfront, (iii) securities convertible into or exchangeable for shares of Portfolio Company stock, or (iv) holding companies, funds, special purpose vehicles, or other entities, or interests therein, that own any of the foregoing. Portfolio Company Securities may be purchased by the Fund from Shareholders in Private Secondary Transactions, or potentially, from the Portfolio Company in a primary issuance or via a company-facilitated internal tender offer.
- (l) A “**Subscriber**” is any Person who has applied to, and been accepted by the Manager, for issuance and purchase of a Fund Interest, generally used to describe prospective Holders prior to the issuance of their Fund Interest. The “**Subscription Agreement**” shall mean, for each Holder, that Delaware Series Limited Liability Company Subscription Agreement they signed in connection with the issuance of their Fund Interest. Their “**Subscription**” is the offer to purchase a Fund Interest that was made by a prospective investor, and accepted by the Fund by its execution



of the investors' completed Subscription Agreement. The “**Subscription Documents**” comprise the Subscription Agreement including the application included therein, together with this Fund Agreement, the Memorandum, and each such document's exhibits, addenda, amendments, any side letters, and any documents incorporated by reference therein. The “**Additional Documents**” comprise any additional instruments (including designations, representations, warranties, and covenants), documentation, opinions of counsel to the Subscriber, and other documents or information requested by the Fund in addition to the Subscription Documents a condition for Manager's acceptance of a Member's Subscription.

1.3. *Further definitions*

- (a) “**Affiliate**” of another Person means (i) a Person directly or indirectly (through one or more intermediaries) controlling, controlled by or under common control with that other Person; (ii) a Person owning or controlling ten percent (10%) or more of the outstanding voting securities or beneficial interests of that other Person; or (iii) an officer, manager, director, partner or member of that other Person. For purposes of this Fund Agreement, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. For the avoidance of doubt, no Member shall be deemed, solely by virtue of such membership, to be an Affiliate of the Fund.
- (b) “**Affiliated Persons**” of a Person that is a business entity include such entity's managers, officers, directors, members, partners, shareholders, equity holders, subsidiary companies, parent companies, affiliates under common ownership or control, advisors, agents, employees, and other representatives, each as applicable, including in the case of the Fund, its Tax Matters Partner defined in Section 9.5(c), and the Broker.
- (c) The “**Capital Account**” of a Holder means the capital account of such Holder determined in accordance with Section 3.2 of this Fund Agreement.
- (d) The “**Capital Contribution**” of a Holder means the total amount of cash and other assets contributed (or deemed contributed under Section 1.704-1(b)(2)(iv)(d) of the Treasury Regulations) to the Fund by such Holder and any of such Holder's predecessors in interest with respect to such Holder's Fund Interest, net of liabilities assumed or to which the assets are subject.
- (e) “**Carried Interest**” means a payment equal to the Carry Percentage that shall be payable to the Organizer out of Distributions otherwise payable to each Holder of C Class Fund Interests. The maximum Carried Interest over the life of the Fund shall equal the realized and unrealized gain less realized and unrealized losses of the Fund allocable to each Holder's C Class Fund Interest, times the Carry Percentage associated with that Interest, summed across all C Class Fund Interests.
- (f) “**Closing Date**” shall be the date on which a Closing takes place.
- (g) “**Closing Conditions**” shall mean the conditions precedent to a Closing, which shall be deemed met, unmet, or waived, as determined by the Manager on advice of the Organizer, and as applicable, by the Broker.
- (h) “**Code**” means the Internal Revenue Code of 1986.



- (i) “**Consent**” shall mean the approval of a Person to do the act or thing for which the approval is solicited, or the act of granting such approval, as the context may require. If any provision requires the Consent of a specified percentage of Fund Interests, such percentage shall be determined by reference to the aggregate Fund Interests of Members, excluding (as may be permitted by law) any Non-Member Holders, granting Consent on the applicable date.
- (j) “**Distribution**” means the transfer of money or property by the Fund to one or more Holders with respect to their Fund Interests, without separate consideration.
- (k) “**ERISA**” shall mean the Employee Retirement Income Security Act of 1974.
- (l) “**ERISA Member**” shall mean any Member that is an employee benefit plan subject to ERISA or a “benefit plan investor” within the meaning of the Plan Asset Rules.
- (m) “**Fair Market Value**” of property means the amount that would be paid for such property in cash by a hypothetical willing buyer to a hypothetical willing seller, each having knowledge of all relevant facts and being reasonably interested in a sale transaction, neither being under a compulsion to buy or sell, as promulgated by the Manager based on the good faith determination of the Organizer. Fair Market Values of Portfolio Company Securities determined in accordance with Section 5.5 shall be conclusively deemed to satisfy the provisions of this Section 1.3(m).
- (n) “**Fiscal Year**” means the Fund’s taxable year, which shall be the taxable year ended December 31, or such other taxable year as may be selected by the Manager in accordance with applicable law.
- (o) “**Fund Minimum Gain**” means the “partnership minimum gain” of the Fund computed in accordance with the principles of Sections 1.704-2(b)(2) and 1.704-2(d) of the Treasury Regulations.
- (p) “**Fund Persons**” means the Fund, the Managers, and the Organizers.
- (q) “**Identified Shares**” shall mean the stock underlying the Portfolio Company Securities (whether common or preferred).
- (r) “**Fund Insurance Policy**” means the insurance policy purchased by the Organizer, at the Organizer’s expense, for the benefit of the Fund, and distributable in respect of the I Class Fund Interests.
- (s) “**Incapacity**” of an individual means the incapacity of the individual to engage in any substantial activity with the Fund by reason of any medically determinable physical or mental impairment that reasonably can be expected to last for a continuous period of not less than 12 months as determined by a competent physician chosen by the Fund and Consented to by the individual or his legal representative (if so able to give Consent), which Consent will not be unreasonably withheld, conditioned or delayed.
- (t) The “**Liquidating Trustee**” shall mean the Manager (or its authorized designee) or, if there is none, a Person selected by the Organizer to act as a liquidating trustee of the Fund.
- (u) A “**Transferability Event**” means the receipt by the Fund of a material amount of cash, or non-cash assets that may readily be transferred or liquidated for cash, as set forth in Section 7.1, received by the Fund in respect of Portfolio Company Securities held by the Fund. A Transferability Event for a Portfolio Company Security shall be



deemed to occur upon the earliest of (a) the effectiveness of a registration of such security under the Securities Act, (b) the legal and practical ability of the Fund to register such security, or direct the holder of Identified Shares in respect such security to so register such shares, following any applicable Lock-Up Period; (c) the removal of transfer restrictions with respect to such security that would preclude or make impractical the transfer to the Fund of any Identified Shares in respect of such securities, and thereupon the transfer of such shares to the Holders of Fund Interests; (c) the Fund obtaining registered or otherwise transferable securities, cash, or other readily transferable assets in respect of, or in substitution of or exchange for, such security; or (d) upon the Manager, in its discretion, determining that the security, and any other assets of the Fund in respect of such security, are freely or readily transferable, each as of the date that such consideration is received or such determination of transferability is made.

- (v) “**Lock-Up Period**” shall mean the period following an initial public offering of a Portfolio Company, usually approximately 180 days, during which holders of Portfolio Company stock may be precluded from registering or transferring their shares, by virtue of transfer restrictions on their shares and/or agreement with the Portfolio Company.
- (w) “**Member Minimum Gain**” means the “partner nonrecourse debt minimum gain” of the Fund computed in accordance with the principles of Section 1.704-2(i)(3) of the Treasury Regulations.
- (x) “**Member Nonrecourse Deductions**” means the “partner nonrecourse deductions” of the Fund computed in accordance with the principles of Sections 1.704-2(i)(1) and (2) of the Treasury Regulations.
- (y) “**Nonrecourse Deductions**” means the “nonrecourse deductions” of the Fund computed in accordance with Section 1.704-2(b) of the Treasury Regulations.
- (z) “**Net Income**” and “**Net Loss**” means, for each Fiscal Year, the taxable income and taxable loss, as the case may be, of the Fund for such Fiscal Year determined in accordance with federal income tax principles, including items required to be separately stated, taking into account income that is exempt from federal income taxation, items that are neither deductible nor chargeable to a capital account and rules governing depreciation and amortization, except that in computing taxable income or taxable loss, the “tax book” value of an asset will be substituted for its adjusted tax basis if the two differ, and any gain, income, deductions or losses specially allocated under Section 6 or shall be excluded from the computation. Any adjustment to the “tax” book value of an asset pursuant to Section 1.704-1(b)(2)(iv)(e), (f) and (g) of the Treasury Regulations shall be treated as Net Income or Net Loss from the sale of such asset.
- (aa) “**Outside Date**” shall mean the last day of the ten-year period beginning on the date of the first Closing of the Fund unless the Manager has extended such period in accordance with Section 10.2 in which case the Outside Date shall mean the expiration of such extended period.
- (bb) “**Person**” means any entity, corporation, company, association, joint venture, joint stock company, partnership (including a general partnership, limited partnership and limited liability partnership), limited liability company, trust, real estate investment trust, organization, individual, nation, state, government (including an agency,



department, bureau, board, division or instrumentality thereof), trustee, receiver, liquidator, or other business organization that is considered a person for United States legal purposes.

- (cc) “**Plan Asset Rules**” shall mean Section 3(42) of ERISA and the regulations issued by the U.S. Department of Labor at Section 2510.3-101 of Part 2510 of Chapter XXV, Title 29 of the Code of Federal Regulations.
- (dd) The “**Principal Office Location**” shall mean 2150 S. 1300 E., Suite 360, Salt Lake City, UT 84106.
- (ee) “**Private Secondary Transactions**” shall mean the privately negotiated transactions between the Shareholders and the Fund related to the sale of Portfolio Company Securities.
- (ff) The “**Registered Agent**” if applicable, shall mean shall mean Harvard Business Services, Inc., 16192 Coastal Highway, Lewes, Delaware (County of Sussex), 19958.
- (gg) “**Shareholders**” means the sellers of Portfolio Company Securities to the Fund, including among others current holders of unregistered securities issued by the Portfolio Company.
- (hh) “**Transfer**” means, solely with respect to a Fund Interest, when capitalized, and for purpose of this Fund Agreement, (i) the sale, disposition, assignment, hypothecation, escrow, cancellation, gifting, or other transfer of that Fund Interest, such that it becomes owned or held by a person other than its present Holder, whether or not for value, including (ii) the occurrence of any of the foregoing involuntarily or as a matter of law, including among other things by reason of lien, attachment, exercise of a right of repurchase or other purchase option by a third party, court order, death, bankruptcy, divorce or separation, insolvency, or collections proceeding (“**As a Matter of Law**”). A “**Restricted Transaction**” in a Fund Interest means (i) a Transfer, pledge, or encumbrance thereof, or of any right or interest therein, or of any Portfolio Company Securities or Identified Shares distributable with respect thereto, (ii) a Transfer of a majority beneficial or voting interest in the Holder, or the prospective economic value thereof, in a single transaction or series of related transactions, or (iii) an offer, agreement, grant of an option or warrant to, endeavor, or public disclosure of an intent to do any of the foregoing, directly or indirectly, made by the Holder, including by way of powers of attorney, short sales, forward sales, put-equivalent positions, call-equivalent positions, or other derivative transactions.
- (ii) “**Treasury Regulations**” means the regulations promulgated by the United States Treasury Department pertaining to a matter arising under the Code.

2. ORGANIZATIONAL MATTERS

- 2.1. *Name.* The name of the Fund is set forth on the cover page of this Fund Agreement. The business of the Fund may be conducted under that name or under any other name that the Manager may determine. The Manager shall notify the Members of any change in the name of the Fund.
- 2.2. *Establishment of Series*



- (a) Pursuant to Section 18-215(b) of the LLC Act, and the Delaware Master Limited Liability Company Operating Agreement of the Master LLC (the “**Master LLC Agreement**”), the Master LLC is authorized and empowered to establish separate members and limited liability company interests with separate and distinct rights, powers, duties, obligations, businesses and objectives (each a “**Series**”). Without limiting the foregoing, the Manager with consent from the Organizer may establish multiple Series of funds with respect to a single Portfolio Company, affiliated or feeder funds, and other funds that are not Series of the Master LLC, without further consent of the Holders, distinguished from one another according to such matters as they may determine, including among other things (i) eligibility criteria for members, for example, funds for “Qualified Purchasers” under the Investment Company Act of 1940 (the “**Investment Company Act**”), or for non-US members; (ii) distinct types or groups of Shareholders; (iii) different types of Portfolio Company Securities, e.g. stock held outright versus forward agreements, or (iv) different series of stock issued by the Portfolio Company, or common versus preferred shares (in each case the new Series to be known as a “**Subsequent Fund**”). The Manager’s and Organizer’s entitlement to establish Subsequent Funds shall not be affected by whether or not those have substantially similar investments, or would be integrated into the Fund or another Series for purposes of the Investment Company Act, the Securities Act, or other laws, regulations, or standards.
- (b) The Fund is hereby established as of the Formation Date as a Series under the Master Agreement, and notice is hereby given of said formation. The Series created hereby and the rights and obligations of the Members of the Series admitted hereunder shall be governed by this Fund Agreement. In the event of any inconsistency between this Fund Agreement and the Master LLC Agreement, this Fund Agreement shall control. The debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the Fund shall be enforceable against the assets of the Fund only and not against the assets of the Master LLC generally or any other Series thereof, and, unless otherwise provided in this Fund Agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the Master LLC generally or any other Series thereof shall be enforceable against the assets of the Fund. A member participating in one Series shall have no rights or interest with respect to any other Series, other than through such member’s interest in such Series independently acquired by such member. This Fund Agreement and all provisions herein shall be interpreted in a manner to give full effect to the separateness of each Series.
- (c) The Manager shall take such reasonable steps as are necessary to implement the foregoing provisions of this Section 2.2. Without limitation on the preceding sentence, the Manager shall maintain separate and distinct records for each Series, shall separately account for and arrange for holding of the assets of each such Series, and shall otherwise comply with the requirements of Section 18-215 of the LLC Act. The Fund shall be dissolved and its affairs wound up pursuant to the provisions of this Fund Agreement. The dissolution and termination of the Fund shall not, in and of itself, cause or result in the dissolution or termination of the Master, LLC or any other Series.



- 2.3. *Term.* The term of the Fund's existence commenced upon the Formation Date shall continue in full force and effect until terminated pursuant to Section 10.
- 2.4. *Office and Registered Agent.* The Fund shall maintain its principal office at the Principal Office Location, or at such other place as the Manager may determine from time to time. The Manager shall notify the Members of any change in principal office of the Fund. The Registered Agent, if applicable, is the Fund's registered agent for service of process on the Fund or such other Person with such other address as the Manager may appoint from time to time.
- 2.5. *Purpose of Fund.* The purpose of the Fund shall be: (a) to invest in Portfolio Company Securities and to engage in any and all activities necessary, incidental, proper, advisable or convenient to the foregoing; and (b) to engage in any and all other lawful activities and transactions as may be necessary, advisable, or desirable, as determined by the Manager, in its sole discretion, to carry out the foregoing or any reasonably related activities. The Fund is restricted in the assets it can hold to (i) Portfolio Company Securities; (ii) cash and cash equivalents; and (iii) assets received as a distribution on Portfolio Company Securities, including any consideration received in substitution, exchange, or in lieu of Portfolio Company Securities. The Fund may not leverage the assets of the Fund by entering into borrowing or similar arrangements, except for short term borrowings incurred to facilitate payment of Fund Costs (as defined in Section 4.14 and Management Fees as set forth in Section 1.2(f)). The Fund will not be permitted to use cash received with respect to Portfolio Company Securities held by the Fund for reinvestment in additional assets, other than: (i) investment in cash and cash equivalents pending Distribution, and (ii) using cash received in lieu of a Portfolio Company Security, for example insurance proceeds or a resolution of a legal case against a defaulting Shareholder, to purchase replacement Portfolio Company Securities.
- 2.6. *Intent.* It is the intent of the Members that the Fund shall be treated as a partnership for federal income tax purposes. It also is the intent of the Members that the Fund not be operated or treated as a partnership for purposes of Section 303 of the United States Bankruptcy Code.
- 2.7. *Qualification.* The Manager shall cause the Fund to qualify to do business in each jurisdiction where it reasonably determines that such qualification is required. The Manager shall have the power and authority to execute, file and publish all such certificates, notices, statements or other instruments necessary to permit the Fund to conduct business as a limited liability company in all jurisdictions where the Fund elects to do business.
- 2.8. *Interest Register.* The Manager shall enter the name and contact information concerning the Holder of each Fund Interest, the Class and number of Units of that Fund Interest, as well as an indication of whether such Person is a Member or a Non-Member Holder, on its register of Fund Interests maintained by the Fund (the "**Interest Register**"). Each Holder shall promptly provide the Manager with the information required to be set forth for such Holder on the Interest Register and shall thereafter promptly notify the Manager of any change to such information. The Manager, or a designee of the Manager, shall update the Interest Register from time to time as necessary to accurately reflect the information therein as known by the Manager, including, without limitation, admission of new Members, revocations of Member status, Transfers, and issuances and repurchases / redemptions of Fund



Interests, but no such update shall constitute an amendment for purposes of Section 13 hereof.

- 2.9. *Maintenance of separate existence.* The Fund shall do all things necessary to maintain its limited liability company existence separate and apart from the existence of each Holder, any Affiliate of each Holder, and any Affiliate of the Fund, and any Fund Person or Affiliated Person thereof (other than the Fund), including maintaining the Fund's books and records on a current basis separate from that of any Affiliate of the Fund or any other Person. In furtherance, and not in limitation, of the foregoing, the Fund shall (i) maintain or cause to be maintained by an agent under the Fund's control physical possession of all its books and records (including, as applicable, storage of electronic records online or in "cloud" services), (ii) account for and manage all of its liabilities separately from those of any other Person, including payment by it of any taxes or other governmental charges levied against the Fund and (iii) identify or cause to be identified separately all its assets from those of any other Person.
- 2.10. *Title to Fund assets.* All assets of the Fund shall be deemed to be owned by the Fund as an entity, and no Holder, individually, shall have any direct ownership interest in such assets. The Manager shall arrange for the Fund, or a third-party custodian, to hold in safekeeping (at the Fund's expense) all non-cash assets of the Fund. Each Holder, to the extent permitted by applicable law, hereby waives its rights to a partition of the assets and, to that end, agrees that it will not seek or be entitled to a partition of any assets, whether by way of physical partition, judicial sale or otherwise, except as otherwise expressly provided in Section 10.
- 2.11. *Events affecting a Member of the Fund.* The death, bankruptcy, withdrawal, insanity, incompetency, temporary or permanent incapacity, liquidation, dissolution, reorganization, merger, sale of all or substantially all the stock or assets of, or other change in the ownership or nature of a Member or other Holder shall not dissolve the Fund.
- 2.12. *Events affecting the Manager.* Neither the withdrawal, bankruptcy, or dissolution of the Manager, nor the liquidation, reorganization, merger, sale of all or substantially all the stock or assets of, or other change in the ownership or nature of the Manager, shall constitute an "event of withdrawal" of the Manager under the LLC Act, and upon the happening of any such event, the affairs of the Fund shall be continued without dissolution by the Manager or any successor entity thereto.

3. CAPITAL ACCOUNTS

- 3.1. *No further Capital Contributions.* No Holder shall be required to make any Capital Contribution beyond such Holder's initial Capital Contribution, or lend money to the Fund.
- 3.2. *Capital Accounts*
 - (a) Upon Closing, each participating Subscriber shall make a Capital Contribution in an amount equal to its accepted Subscription Amount in exchange for a newly-issued Fund Interest.
 - (b) A separate Capital Account shall be established and maintained for each Holder (and if the Holder has more than one Class of Fund Interests, a sub-capital account for each type of Fund Interest held by the Holder).



- (c) The Capital Account of Holders shall be maintained in accordance with the rules of Section 704(b) of the Code and the Treasury Regulations (including Section 1.704-1(b)(2)(iv) thereof) thereunder. The Capital Accounts shall be adjusted by the Manager upon an event described in Sections 1.704-1(b)(2)(iv)(e) and (f)(5) of the Treasury Regulations in the manner described in Sections 1.704-1(b)(2)(iv)(e), (f) and (g) of the Treasury Regulations if the Manager determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Holders, and at such other times as the Manager may determine is necessary or appropriate to reflect the relative economic interests of the Holders.
 - (d) If any Fund Interest is Transferred pursuant to the terms of this Fund Agreement, the transferee shall succeed to the Capital Account and the respective Fund Interest of the transferor to the extent the Capital Account and Fund Interest is attributable to the Fund Interests so Transferred.
- 3.3. *Interest on Capital Account.* No Holder shall be entitled to receive any interest on its Capital Contributions or Capital Account.
 - 3.4. *Return of Capital Contributions.* Except as otherwise provided in this Fund Agreement, no Holder shall have any right to withdraw or reduce its Capital Contribution. No Holder has the right to require the Fund to redeem its Fund Interest. No Holder shall have any right to demand the return of its Capital Contribution, except to the extent a Distribution is due upon dissolution of the Fund pursuant to Section 7. No Holder shall have the right to demand property in return for its Capital Contribution, except to the extent a Distribution of such property is due upon dissolution of the Fund, or otherwise distributed in connection with the Fund's Distribution procedures, as set forth in Section 7.
 - 3.5. *Waiver of action for partitions.* Each Holder irrevocably waives, during the term of the Fund and during the period of its liquidation following dissolution, any right to maintain an action for partition of the Fund's assets.
 - 3.6. *No priorities of Holders.* Subject to the provisions hereof, no Holder shall have a priority over any other Holder as to any Distribution, whether by way of return of capital or by way of profits, or as to any allocation of Net Income, Net Loss or special allocations.

4. MEMBERS; MEMBERSHIP CAPITAL

- 4.1. *Admission of Members.* The Manager may, at its sole discretion, admit any Person as a Member who has Subscribed to a Fund Interest for a minimum Subscription Amount that may be established by the Manager, upon signing a counterpart of this Fund Agreement (which may be done by power of attorney or by any other document or instrument of the Fund that by its terms is deemed to be an execution of this Fund Agreement). Such admission shall be conditioned on such Person's payment in full of their Subscription Amount to the Fund, and payment of any brokerage fee due to the Broker, as well as any costs due thereon, and made effective when the Manager enters the name of such Person on the Interest Register. The Manager shall have the authority, in its sole discretion, to reject any Subscription for a Fund Interest in whole or in part, including for having failed to meet the foregoing or any other Closing Conditions. Each Member shall continue to be a member of the Fund until it ceases to be a member of the Fund in accordance with the provisions of this Fund Agreement.



- 4.2. *Limited liability.* No Holder shall be liable to the Fund or to any other Holder for (i) the performance, or the omission to perform, any act or duty on behalf of the Fund, (ii) the termination of the Fund and this Fund Agreement pursuant to the terms hereof, or (iii) the performance, or the omission to perform, on behalf of the Fund any act in reliance on advice of legal counsel, accountants or other professional advisors to the Fund. In no event shall any Holder (or former Holder) have any liability for the repayment or discharge of the debts and obligations of the Fund or be obligated to make any contribution to the Fund; *provided, however*, that:
- (a) appropriate reserves may be created, accrued and charged against the net assets of the Fund and proportionately against the Capital Accounts of the Holders for contingent liabilities or probable losses or foreseeable expenses that are permitted hereunder, such reserves to be in the amounts that the Manager deems necessary or appropriate, subject to increase or reduction at the Manager's sole discretion; and
 - (b) each Holder shall have such other liabilities as are expressly provided for in this Fund Agreement.
- 4.3. *Nature of ownership.* Fund Interests held by Holders constitute personal property.
- 4.4. *Closings.* Closings may occur from time to time as directed by Manager pursuant to instructions by the Organizer, by the issuance of Fund Interests against the Fund's purchase of Portfolio Company Securities. The Manager may at its sole discretion accept or reject any Subscriptions, may increase or decrease the Subscription Target, and may establish a minimum Subscription Amount or waive that amount for any investor, subject to applicable law.
- 4.5. *First Closing.* The Fund will not be organized, and Subscriptions will not be accepted, until reaching an aggregate "**Subscription Amount**" of \$100,000 (the "**Subscription Target**") among accepted Subscriptions of all Classes, unless the Manager decides at its discretion to waive said Subscription Target.
- 4.6. *Additional Closings.* Following the first Closing of the Fund, the Manager, pursuant to instructions by the Organizer, may issue additional Fund Interests of any Class in the Fund at subsequent Closings through the acceptance of Subscriptions.
- 4.7. *Issuance price of Fund Interests.* The issuance price of any Fund Interests, at each Closing, will be based on a negotiation between the Organizer, prospective Subscribers, and Shareholders, regarding the price per each share of stock of the Identified Shares. The Manager will arrange for the Fund to buy Portfolio Company Securities from Shareholders based on such price per share for the Identified Shares, net of brokerage commissions, at which such Shareholders are willing to enter into Private Secondary Transactions with the Fund, or that the Portfolio Company is willing to enter a primary sale of shares directly to the Fund, and in turn sell Fund Interests to Subscribers based on that price per share. The entire purchase price of the Fund Interests must be paid in full when acquired and will not be financed.
- 4.8. *Unit-Share Parity.* At each Closing, (and as a Closing Condition) the Fund shall ensure that the number of Identified Shares of the Portfolio Company comprising, or underlying (as the case may be), the Portfolio Company Securities to be purchased is in parity ("**Unit-Share Parity**") with the number of Units of Fund Interests to be sold at the Closing.



- 4.9. *Pool Investors.* The Manager may from time to time issue Fund Interests to the holders of certain “Payment-Dependent Notes” (“PDNs”), as described more fully in the Memorandum. Upon Closing, (i) such Persons will become Members of the Fund, with a number of Units equal to the number of “Reference Shares” specified in their PDNs; and (2) the “Shareholder Notes” referenced by the PDNs, or rights thereto, shall be assigned in whole or in part to and become Portfolio Company Securities of the Fund, in such share numbers as are required to maintain Unit-Share Parity.
- 4.10. *Adjustments to Units*
- (a) In the event of a recapitalization, stock split or reverse stock split, reorganization, stock dividend, or the like, of the Portfolio Company, resulting in a change in the number of Identified Shares without a corresponding purchase, redemption, or change in the Fund Interests of the Holders, the number of Units of each Holder’s Fund Interest will be adjusted in proportion to the proportionate change in the Fund’s aggregate number of Identified Shares, so that Unit-Share Parity is preserved, and each Holder’s proportionate Fund Interest remains unchanged.
 - (b) The number of Identified Shares may also be reduced should the Fund or any of the Shareholders liquidate them, write them off, distribute them out to Holders, or should they escape from being potentially transferable to the Fund per the terms of the Portfolio Company Securities. Such a reduction may occur in the event of a default, insolvency, or death of a Shareholder, by operation of law, or by act of the Portfolio Company or its other shareholders and transfer agents, among other things. In such event the number of Units of each Holder’s Fund Interest will be adjusted in proportion to the proportionate change in the Fund’s aggregate number of Identified Shares, so that Unit-Share Parity is preserved, and each Holder’s proportionate Fund Interest remains unchanged, *provided that* in the event there is an occurrence that leaves no Identified Shares in the Fund, each Holder’s number of Units, and proportionate Fund Interest, shall thereafter remain at the same amount it was before such event.
 - (c) Should it occur from time to time that Identified Shares of the Portfolio Company held by the Fund are sold by their holders or otherwise exchanged for shares of another issuer, or that shares of another issuer, or securities in respect of the same, otherwise be obtained by the Fund instead of or in addition to the Identified Shares, then the terms Portfolio Company, Portfolio Company Securities, and Identified Shares, and similar terms, shall thereafter each refer to a proportionate mix of shares of the one or more various issuers. In such events the Manager shall exercise its discretion implement processes and formulas it deems appropriate with respect to Capital Accounts, Distributions, and other rights, interests, and obligations, so as to preserve the intended economic result of this Fund Agreement.
- 4.11. *Dealing with third parties.* Unless admitted to the Fund as a Member, as provided in this Fund Agreement, no Person shall be considered a Member. The Fund and the Manager need deal only with Persons so admitted as Members. The Fund and the Manager shall not be required to deal with any Non-Member Holder or other Person (other than with respect to Distributions to assignees pursuant to Transfers made in compliance with Section 8, and otherwise as required explicitly by the provisions of this Fund Agreement) merely because of an assignment or transfer of any Fund Interest(s) to such Person whether by reason of the Incapacity of a Member or



otherwise; provided, however, that any Distribution by the Fund to the Person shown on the Fund's records as a Holder or to its legal representatives, or to the assignee of the right to receive the Fund's Distributions as provided herein, shall relieve the Fund and the Manager of all liability to any other Person who may be interested in such Distribution by reason of any other assignment by the Holder or by reason of its Incapacity, or for any other reason.

- 4.12. *Member Capital Contributions.* Upon Closing, each participating Member shall make a Capital Contribution in an amount equal to its accepted Subscription Amount in exchange for a newly-issued Fund Interest
- (a) No Holder shall be paid interest on any Capital Contribution to the Fund or on such Holder's Capital Account.
 - (b) No Holder shall have any right to demand the return of its Capital Contribution, except to the extent a Distribution is due upon dissolution of the Fund pursuant to Section 7.
 - (c) No Holder shall have the right to demand property in return for its Capital Contribution, except to the extent a Distribution of such property is due upon dissolution of the Fund, or otherwise distributed in connection with the Fund's Distribution procedures, as set forth in Section 7.
- 4.13. *Members are not Agents.* Pursuant to Section 5 of this Fund Agreement, the management of the Fund is vested in the Manager. No Member or other Holder shall have any right to participate in the management of the Fund except as expressly authorized by the LLC Act or this Fund Agreement. No Holder, acting solely in the capacity of a Member or Holder, is an agent of the Fund, nor does any Holder, unless expressly and duly authorized in writing to do so by the Manager, have any power or authority to bind or act on behalf of the Fund in any way, to pledge its credit, to execute any instrument on its behalf or to render it liable for any purpose.
- 4.14. *Expenses*
- (a) Except as otherwise expressly provided herein, the Fund shall bear all organizational and offering expenses of the Fund and other expenses attributable to the activities of the Fund: including, but not limited to (i) attorneys' and accountants' fees and disbursements on behalf of the Fund (except for fees associated with the preparation of the Fund's tax returns and Schedule K-1s, to the extent charged to the Organizer by the Manager in accordance with the agreement between them); (ii) insurance (other than the Fund Insurance Policy described in 1.3(r)) including manager's and officer's insurance described in Section 11.8, regulatory or litigation expenses (and damages), including reasonable collection and enforcement costs, as well as the cost of investigating, litigating, arbitrating, otherwise pursuing or defending against, or paying, any claims, disputes, awards, damages, settlements, or other liabilities to the extent attributable to the Fund; (iii) expenses incurred in connection with the winding up or liquidation of the Fund; (iv) expenses incurred in connection with any amendments to the constituent documents of the Fund and related entities, including the Manager; (v) expenses incurred in connection with Distributions to the Holders and in connection with any meetings of Members called by the Manager; (vi) fees and costs associated with maintaining and storing non-cash assets for such Fund in safekeeping or custody; (vii) expenses related to fees, transaction costs and delivery costs pertaining to collections on Portfolio Company Securities, including transfer



fees, title fees and taxes, express delivery and other shipping fees, currency exchange fees and reasonable out-of-pocket fees for its Manager, Organizer, and Tax Matters Partner to comply with any further acts, such as notarizing and transmitting documents; (viii) expenses relating to brokerage commissions, escrow fees, clearing and settlement charges, custodial fees, and any other costs relating to the liquidation, Distribution, or transfer of assets to the Holders; (ix) Extraordinary Management Expenses as described in Section 4.14(c); and (x) other costs and expenses described in this Fund Agreement as being those of the Fund ((i) through (x), collectively, the “**Fund Costs**”), including any debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing for the Fund, its Manager, and its Organizer with respect to Fund Costs.

- (b) The Fund will be specifically permitted to incur indebtedness from Fund Persons and third parties, to provide for payment of Fund Costs, *provided that* should the Fund so borrow funds other than from unaffiliated third parties on an arm’s length basis, it shall do so on terms no less advantageous to the Fund as would be available from a third-party lender.
 - (c) Expenses other than those described in Section 4.14(a) incurred by the Organizer and Manager shall not be attributable to the Fund. Such expenses include those incurred by the Organizer and Manager for their own daily activities and operations, including salaries and fringe benefits of professional, administrative, clerical, bookkeeping, secretarial and other personnel employed by such manager including in-house legal and tax staff; rent, office equipment, insurance (fire, theft, general liability, and any other common business insurance obtained), heat, light, cleaning, power, water and other utilities of any office space maintained by the Organizer and Manager on their own behalf or on behalf of the Fund; stationery, office supplies for the Organizer, Manager, or Fund; in-house bookkeeping services; secretarial services; travel and entertainment (to the extent not Fund transaction expenses); telecommunications and Internet service; industry research; licenses; business registration and taxes; publications and Subscriptions; data processing; and any other overhead type expenses. The Organizer will also be responsible for any premiums of the Fund Insurance Policy (and entitled to any “return premium”), and any routine service fees associated with the Manager and with the third-party custodian, including their engagement fees, during the initial term of the Fund (through the originally-scheduled Outside Date), but not any of such persons’ extraordinary expenses such as litigation, collections and enforcement costs, follow-on fees for continuing to serve during an extended Term, cost of serving as a liquidating trustee, and other fees charged back to the Fund that are in addition to the base service fee (collectively, “**Extraordinary Management Expenses**”).
- 4.15. *Nature of obligations between Members.* Except as otherwise expressly provided herein, nothing contained in this Fund Agreement shall be deemed to constitute any Holder, in such Holder’s capacity as a Member or Holder, an agent or legal representative of any other Holder or to create any fiduciary relationship between Holders for any purpose whatsoever, apart from such obligations between the members of a limited liability company as may be created by the LLC Act. Except as otherwise expressly provided in this Fund Agreement, a Holder shall not have any authority to act for, or to assume any obligation or responsibility on behalf of, any other Holder or the Fund.



- 4.16. *Status under the Uniform Commercial Code.* All Fund Interests shall be securities governed by Article 8 of the Uniform Commercial Code as in effect from time to time in the State of Delaware. The Fund Interests are not evidenced by certificates, and will remain not evidenced by certificates. The Fund is not authorized to issue certificated Fund Interests. Any paper or electronic representations of Fund Interests are for illustrative and informative purposes only. The Fund shall record all valid Transfers of Holders' Fund Interests in its Interest Register. Notwithstanding the foregoing, should the Fund provide a certificate or other instrument confirming or evidencing ownership of Fund Interests, it may cause a legend to be placed on that instrument to facilitate compliance with the Securities Act or any other securities law, or reflecting some or all of the restrictions other terms applicable to the Fund Interest.

5. MANAGEMENT AND CONTROL OF THE FUND

- 5.1. *Management.* Management of the Fund shall be vested in the Manager. Except as otherwise provided in this Fund Agreement and subject to the provisions of the LLC Act, the Manager has all power and authority to exclusively manage, control and direct the Fund and all of its business, affairs, activities and operations. Any power not otherwise delegated pursuant to this Fund Agreement or by the Manager in accordance with the terms of this Fund Agreement shall remain with the Manager.
- (a) The Manager may agree to (i) delegate any matters or actions that it is authorized to perform under this Fund Agreement to employees or agents of the Manager, to the Organizer, or to third persons, (ii) follow the advice of the Organizer with regard to decisions the Fund may be asked to make as holder of the Portfolio Company Securities, (iii) appoint any Persons, with such titles as the Manager may select, to act on behalf of the Fund, with such power and authority as the Manager may delegate from time to time to such Persons, or (iv) enter a contract with the Organizer with respect to the carrying out, delegation, or assignment, as between the Manager and Organizer, of any rights, obligations, fees, or payments assigned to either of them hereunder. Any such delegation may be rescinded at any time by the Manager (as may be limited by other agreements the Manager may enter with such Persons).
 - (b) The Manager may from time to time open bank accounts in the name of the Fund, and the Manager or a representative of the Manager shall be the signatory thereon.
 - (c) Third parties dealing with the Fund may rely conclusively upon any certificate of the Manager to the effect that it is acting on behalf of the Fund. The signature of the Manager shall be sufficient to bind the Fund in every manner to any agreement or on any document.
 - (d) The Manager may resign at any time upon five days' prior written notice to the Members. The Manager may also be terminated (i) by written notice of the Organizer, or (ii) if the Organizer or their successor in interest is no longer participating in the Fund, by Consent of the holders of the majority of Units of Fund Interest. Upon such resignation or termination, the Organizer may appoint a successor Manager, or if the Organizer is not so longer participating, the Members may do so by majority Consent. The bankruptcy, expulsion, resignation, removal or withdrawal, liquidation, dissolution, reorganization, merger, sale of all or substantially all the stock or assets of, or other change in the ownership or nature of



the Manager shall not dissolve the Fund, and upon the happening of any such event, the affairs of the Fund shall be continued by the Manager or any successor thereto. The provisions of this Section 5.1(d) may not be amended or waived without the written Consent of the Organizer.

- (e) The Manager and the Organizer are permitted to create and manage Subsequent Funds.

5.2. *Duties and obligations of the Manager and Organizer*

- (a) The Manager shall take all action that may be necessary or appropriate for the continuation of the Fund's valid existence and authority to do business as a limited liability company under the laws of the State of Delaware and of each other jurisdiction in which such authority to do business is, in the judgment of the Manager, necessary or advisable.
- (b) The Manager shall prepare or cause to be prepared and shall file on or before the due date (or any extension thereof) any federal, state or local tax returns required to be filed by the Fund.
- (c) The Manager shall cause the Fund to pay any taxes or other governmental charges levied against or payable by the Fund; *provided, however*, that the Manager shall not be required to cause the Fund to pay any tax so long as the Manager or the Fund is in good faith and by appropriate legal proceedings contesting the validity, applicability or amount thereof and such contest does not materially endanger any right or interest of the Fund. If deemed appropriate or necessary by the Manager, the Fund may establish reasonable reserves to fund its actual or contingent obligations under this Section 5.2(c).
- (d) The Manager shall use its reasonable best efforts to ensure that at no time shall the equity participation in the Fund by "benefit plan investors" be "significant," within the meaning of the Plan Asset Rules. If the Manager becomes aware that the assets of the Fund at any time are likely to include plan assets of a benefit plan investor, the Manager may require any or all of the ERISA Members to immediately withdraw so much of their capital in the Fund as shall be necessary to maintain the investment of such Holders at a level so that the assets of the Fund are not deemed to include plan assets under ERISA.
- (e) Notwithstanding anything herein to the contrary, neither the Manager nor the Organizer shall or will owe any fiduciary duties of any kind whatsoever to the Fund, or to any of the Members or other Holders, by virtue of their role respectively as the Manager and Organizer, including, but not limited to, the duties of due care and loyalty, whether such duties were established as of the date of this Fund Agreement or any time hereafter, and whether established under common law, at equity, or legislatively defined. It is the intention of the parties to this Fund Agreement that any such fiduciary duties be affirmatively eliminated as permitted by Delaware law and under the LLC Act and the Holders hereby waive any rights with respect to such fiduciary duties. Notwithstanding the foregoing, nothing contained in this Section 5.2(e) shall constitute a waiver of any legal duties of the Organizer, if deemed an investment adviser under the Investment Advisers Act of 1940 (the "**Advisers Act**"), or duties of the Organizer, if so deemed an investment adviser, that are not permitted to be contractually waived under the Advisers Act.



- *This clause contains a statutory waiver of fiduciary duties by the Manager and the Organizer.*

- (f) Notwithstanding any other provision of this Fund Agreement or otherwise applicable provision of law or equity, whenever in this Fund Agreement, the Manager or Organizer are permitted or required to make a decision (i) in its “sole discretion” or “discretion” or under a grant of similar authority or latitude, such party shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall, to the fullest extent permitted by applicable law, have no duty or obligation to give any consideration to any interest of or factors affecting the Fund or the Holders, or (ii) in its “good faith” or under another expressed standard, the Manager shall act under such express standard and shall not be subject to any other or different standards. Unless otherwise expressly stated, for purposes of this Section 5.2(f), the Manager and Organizer shall each be deemed to be permitted or required to make all decisions hereunder in its sole discretion.
- 5.3. *Rights or powers of Members.* Except as expressly provided otherwise in this Fund Agreement or by operation of law, the Members (as members of the Fund) and other Holders shall have no rights or powers to take part in the management and control of the Fund and its business and affairs and shall have no power or authority to act for the Fund, or bind the Fund under agreements or arrangements with third parties as Members. The Members shall have the right to vote only on the matters explicitly set forth in this Fund Agreement. Holders shall have no right to vote on Fund matters, except as may be required by law.
- 5.4. *The Manager and Organizer may engage in other activities.* Subject to the terms of any employment, consulting, or other agreements among the Manager, the Fund, and the Organizer, neither the Manager nor the Organizer are obligated to devote all of their time or business efforts to the affairs of the Fund, *provided* that each shall devote such time, effort and skill as it determines in its sole discretion may be necessary or appropriate for the proper operation of the Fund. Subject to the foregoing, the Manager and Organizer may have other business interests and may engage in other activities in addition to those related to the Fund, including organizing and managing Subsequent Funds. Except as expressly set forth herein, the Manager, Organizer, and each Member, and their respective Affiliates, may engage in or possess any interest in other business ventures of any kind, nature or description, independently or with others, whether such ventures are competitive with the Fund or otherwise. Neither the Fund nor any Member or other Holder shall have the right, by virtue of this Fund Agreement, to share or participate in such other investments or activities of the Manager or Organizer, or to the income derived therefrom.
- 5.5. *Valuation*
- (a) In determining the Fair Market Value of any Portfolio Fund Securities, the Organizer (as well as Members and Shareholders) will typically have access to public records and third-party information about primary and secondary transactions occurring in Portfolio Company’s stock and other relevant information. In the event no generally recognized stock price quotation or other publicly-available, authoritative market pricing is available, and in addition to such information if available, the Organizer may base its assessment on: (i) pricing indications obtained



through negotiation by the Broker and Fund of Private Secondary Transactions such as buy and sell orders, or completed transactions, known to it or reported to it by the Broker with respect to the Identified Shares and other Portfolio Company Securities, (ii) posted or publicly available reports of offerings, reported sales, or reported purchase prices available or made by investors in retail purchases, (iii) the Organizer's good faith estimate or appraisal of the value or retail price that Identified Shares are available for purchase, allowing for any due discounts or surcharges applying due to the lack of liquidity, uncertainty over forward sale contracts, and other factors specific to the Portfolio Company Securities, and (iv) reported or estimated pricing of preferred stock of the Portfolio Company in recent primary offerings made by the Portfolio Company, taking into account conversion ratios and, if the Organizer deems pertinent, liquidation preferences with respect to various series of the Portfolio Company's stock. The parties acknowledge and agree that the following, without more, are not conclusive determinations of market pricing of such securities for such purposes: (i) fair market value estimates proffered by the Portfolio Company, obtained through a so-called 409A appraisal or otherwise, (ii) prices in recent internal tender offers made by or through the Portfolio Company, or (iii) fundamental analysis performed based on company financial or market performance, assets, or other information, whether done by the Organizer or by a third party. In determining Fair Market Value of an asset, the provisions of Section 1.704-1 of the Treasury Regulations shall be applied as may be required

- (b) The Organizer, from time to time, may value the assets of the Fund and establish a net asset value per Unit (or per percentage) of Fund Interest (and if applicable per Class of Fund Interest) for various purposes, including the maintenance of Capital Accounts and periodic reporting to Members. The Organizer shall rely on the factors described in Section 5.5(a) in valuing fund assets, *provided that*: (i) in valuing assets of the Fund, the Organizer will not generally take into account the credit standing of a Shareholder in the absence of information known to the Organizer that indicates that there is a material risk of default in a Shareholder's obligations; and (ii) the Organizer may take into account as appropriate the lack of liquidity, markets, information, transfer costs and restrictions, and other factors applying to Fund Interests. While valuations of the Fund Interests and assets will be in good faith, the Fund does not guarantee that it could liquidate assets promptly or at the valuation determined by the Fund.

- 5.6. *Business judgment.* The Manager and Organizer shall each exercise their business judgment in managing the business operations and affairs of the Fund, and all other duties and actions they take with respect to Fund business and affairs. Their liability to the Fund and related parties shall be limited as set forth in Section 11.1 and 11.1(a).

6. ALLOCATIONS OF NET INCOME AND NET LOSS

- 6.1. *Allocation of Net Income and Net Loss.* Except as otherwise provided in this Fund Agreement, Net Income and Net Loss (including individual items of profit, income, gain, loss, credit, deduction and expense) of the Fund shall be allocated among the Holders in a manner such that the Capital Account balance of each such Holder, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to the Distributions that would be made to such Holder pursuant to Section 10.4 if the Fund were dissolved, its affairs wound up and its assets sold for



cash equal to their Fair Market Value, all Fund liabilities were satisfied (limited with respect to each nonrecourse liability to the Fair Market Value of the assets securing such liability), and the net assets of the Fund were distributed in accordance with Section 10.4 to the Holders immediately after making such allocation, adjusted for applicable special allocations, computed immediately prior to the hypothetical sale of assets. The Capital Account of each Holder will be credited with the purchase price of any Fund Interests purchased with cash, as well as the basis of any PDNs tendered by Pool Investors under the provisions of Section 4.9, and will be adjusted upward or downward at the time of any subsequent purchases of Fund Interests. Capital Accounts may also be adjusted as of December 31 of each year, to reflect any change in the net asset value of the Fund, if and as may be required by law or regulation or if a new valuation of fund assets has been made by the Organizer. The capital accounts will also be adjusted for a Holder's allocable share of Fund Costs (described below), and if applicable, Management Fee, proceeds from the Fund Insurance Policy, and Carried Interest. The capital account will be debited for any Distribution of cash. In the case of Distributions of assets, any gain or loss not previously allocated to the capital account will be booked to the capital account immediately prior to the Distribution, and the capital account will then be debited for the fair value of assets distributed in kind.

6.2. *Allocation rules*

- (a) In the case of Holders that are issued Fund Interests at different Closings, or whose Fund Interests change or are redeemed during a Fiscal Year, the Net Income or Net Loss allocated to the Holders for each Fiscal Year during which Holders receive such Fund Interests shall be allocated among the Holders in accordance with Section 706 of the Code, using any convention permitted by law and selected by the Manager.
- (b) For purposes of determining the Net Income, Net Loss and individual items of income, gain, loss credit, deduction and expense allocable to any period, Net Income, Net Loss and any such other items shall be determined on a daily, monthly or other basis, as determined by the Manager using any method that is permissible under Section 706 of the Code and the Treasury Regulations thereunder.
- (c) Except as otherwise provided in this Fund Agreement, all individual items of Fund income, gain, loss and deduction shall be divided among the Holders in the same proportions as they share Net Incomes and Net Loss for the Fiscal Year or other period in question.
- (d) There shall be no allocation of Net Losses to any Holder to the extent that such allocation would create a negative balance in the Capital Account of such Holder (or increase the amount by which such Holder's Capital Account balance is negative).

6.3. *Tax allocations*

- (a) *Generally.* Except as otherwise provided in this Section 6.3, the taxable income or loss of the Fund (and items thereof) shall be allocated pro rata among the Holders in the same manner as the corresponding items of Net Income, Net Loss and separate items of income, gain, loss, credit, deduction and expense (excluding items for which there are no related tax items) are allocated among the Holder for Capital Account purposes.
- (b) *Special Allocations*



- (i) *Minimum Gain chargeback.* In the event there is a net decrease in the Fund Minimum Gain during any Fiscal Year, the minimum gain chargeback provisions described in Sections 1.704-2(f) and (g) of the Treasury Regulations shall apply.
 - (ii) *Member Minimum Gain chargeback.* In the event there is a net decrease in Member Minimum Gain during any Fiscal Year, the partner minimum gain chargeback provisions described in Section 1.704-2(i) of the Treasury Regulations shall apply.
 - (iii) *Qualified Income Offset.* In the event a Holder unexpectedly receives an adjustment, allocation or Distribution described in of Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, which adjustment, allocation or Distribution creates or increases a deficit balance in that Holder's Capital Account, the "qualified income offset" provisions described in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations shall apply.
 - (iv) *Nonrecourse Deductions.* Nonrecourse Deductions shall be allocated in accordance with and as required in the Treasury Regulations.
 - (v) *Member Nonrecourse Deductions.* Member Nonrecourse Deductions shall be allocated to the Members as required in Section 1.704-2(i)(1) of the Treasury Regulations.
 - (vi) *Intention.* The special allocations in this Section 6.3 are intended to comply with certain requirements of the Treasury Regulations and shall be interpreted consistently therewith. It is the intent of the Members that any special allocation pursuant to this Section 6.3 shall be offset with other special allocations pursuant to this Section 6.3. Accordingly, special allocations of Fund income, gain, loss or deduction shall be made in such manner so that, in the reasonable determination of the Manager, taking into account likely future allocations under this Section 6.3, after such allocations are made, each Holder's Capital Account is, to the extent possible, equal to the Capital Account it would have been were this Section 6.3 not part of this Fund Agreement.
- (c) *Recapture items.* In the event that the Fund has taxable income in any Fiscal Year that is characterized as ordinary income under the recapture provisions of the Code, each Holder's distributive share of taxable gain or loss from the sale of Fund assets (to the extent possible) shall include a proportionate share of this recapture income equal to that Holder's share of prior cumulative depreciation deductions with respect to the assets which gave rise to the recapture income.
 - (d) *Tax credits and similar items.* Allocations of tax credits, tax credit recapture, and any items related thereto shall be allocated in such items as determined by the Manager taking into account the principles of Treasury Regulation Section 1.704-1(b)(4)(ii).
 - (e) *Consistent treatment.* All items of income, gain, loss, deduction and credit of the Fund shall be allocated among the Holders for federal income tax purposes in a manner consistent with the allocation under this Section 6. Each Holder is aware of the income tax consequences of the allocations made by this Section 6 and hereby agrees to be bound by the provisions of this Section 6 in reporting its share of Fund income and loss for income tax purposes. No Holder shall report on its tax return



any transaction by the Fund, any amount allocated or distributed from the Fund or contributed to the Fund inconsistently with the treatment reported (or to be reported) by the Fund on its tax return nor take a position for tax purposes that is inconsistent with the position taken by the Fund.

- (f) *Modifications to preserve underlying economic objectives.* If, in the opinion of counsel to the Fund, there is a change in the Federal income tax law (including the Code as well as the Treasury Regulations, rulings, and administrative practices thereunder) which makes modifying the allocation provisions of this Section 6 it necessary or prudent to preserve the underlying economic objectives of the Members as reflected in this Fund Agreement, the Manager shall make the minimum modification necessary to achieve such purpose.
- 6.4. *Allocation of excess nonrecourse liabilities.* “Excess nonrecourse liabilities” of the Fund as used in Section 1.752-3(a)(3) of the Treasury Regulations shall first be allocated among the Holders pursuant to the “additional method” described in such section and then in accordance with the manner in which the Manager expects the nonrecourse deductions allocable to such liabilities will be allocated.
- 6.5. *Allocations in respect of a Transferred Fund Interest.* Except as otherwise provided herein, amounts of Net Income, Net Loss and special allocations allocated to the Holders shall be allocated among the appropriate Holders in proportion to their respective Fund Interests. If there is a change in any Holder’s Fund Interest for any reason during any Fiscal Year, each item of income, gain, loss, deduction or credit of the Fund for that Fiscal Year shall be assigned pro rata to each day in that Fiscal Year in the case of items allocated based on Fund Interests, and the amount of such item so assigned to any such day shall be allocated to the Holder based upon that Holder’s Fund Interest at the close of that day. Notwithstanding the immediately preceding sentence, the net amount of gain or loss realized by the Fund in connection with a sale or other disposition of property by the Fund shall be allocated solely to the Holders having Fund Interests on the date of such sale or other disposition.
- 6.6. *Allocations in year of liquidation event.* Notwithstanding anything else in this Fund Agreement to the contrary, the parties intend for the allocation provisions of this Section 6 to produce final Capital Account balances of the Holders that will permit liquidating Distributions to be made in pursuant to the order set forth in Section 10.4. To the extent that the allocation provisions of this Section 6 would fail to produce such final Capital Account balances, the Manager may elect, in its sole discretion, to (a) amend such provisions if and to the extent necessary to produce such result and (b) reallocate income and loss of the Fund for prior open years (including items of gross income and deduction of the Fund for such years) among the Holders to the extent it is not possible to achieve such result with allocations of items of income (including gross income) and deduction for the current year and future years, as approved by the Manager. This Section 6.6 shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service or any other taxing authority. The Manager shall have the power to amend this Fund Agreement without the Consent of the other Members, as it reasonably considers advisable, to make the allocations and adjustments described in this Section 6.6. To the extent that the allocations and adjustments described in this Section 6.6 result in a reduction in the Distributions



that any Holder will receive under this Fund Agreement compared to the amount of the Distributions such Holder would receive if all such Distributions were made pursuant to the order set forth in Section 10.4, the Fund may make a guaranteed payment (within the meaning of Section 707(c) of the Code) to such Holder (to be made at the time such Holder would otherwise receive the Distributions that have been reduced) to the extent such payment does not violate the requirements of Sections 704(b) and 514(c)(9)(E) of the Code or may take such other action as reasonably determined by the Manager to offset such reduction.

7. DISTRIBUTIONS AND HOLD-BACKS

7.1. *Distributions*

- (a) *Form of Distribution.* Distributions pursuant to this Section 7 will be comprised of (i) Portfolio Company Securities, and/or (ii) cash, other securities, or other assets the Fund has received, in exchange for Portfolio Company Securities.
- (b) *Transferability Events.* The Fund anticipates that the most likely Distribution events will be upon Transferability Events arising either from an exchange or sale of the Identified Shares.
 - (i) In the event Identified Shares underlying Portfolio Company Securities (or that comprise Portfolio Company Securities, as applicable) are sold by a Shareholder, the Fund expects to receive cash, securities, and/or other assets in exchange for its Portfolio Company Securities. Securities received in such event may be free of transfer restrictions that would prevent transfers among Shareholders, the Fund, and Fund Interest Holders (“**Freely Tradable**”), or they may be subject to restrictions on transfer because they are unregistered shares, or are subject to an escrow, holdback, or restriction.
 - (ii) In the event Identified Shares underlying Portfolio Company Securities (or that comprise Portfolio Company Securities, as applicable) become registerable, following any lockup or other waiting period, the Fund will register such shares, or if held by a Shareholder, ask the Shareholder to do the same, each as may be practical, whereupon such shares will become Freely Tradable.
 - (iii) The Fund intends to distribute out cash and any Freely Tradable securities in connection with Transferability Events, according to the provisions of this Section 7.1. The Manager will either distribute out any non-cash collections in the form received, liquidate them for cash in order to make cash Distributions, or hold them until liquidation is more feasible or favorable, pursuant to instructions made by the Organizer. The Organizer intends that non-cash collections be distributed the form received, if commercially feasible, and consistent with applicable transfer restrictions and with securities laws and regulations.
- (c) *Distribution waterfall.*
 - (i) The Fund shall first use available cash and assets to repay outstanding debts and obligations, if any, of the Fund, taking into account (i) the amount of cash required for the payment of all current expenses, liabilities and obligations of the Fund (whether for expense items, capital expenditures, improvements, retirement of indebtedness or otherwise) and (ii) the amount of cash which the



Manager deems necessary or appropriate to establish reserves for the payment of future expenses, liabilities, obligations, capital expenditures, improvements, retirements of indebtedness, operations and contingencies, known or unknown, liquidated or unliquidated, including liabilities which may be incurred in litigation and liabilities undertaken pursuant to the indemnification provisions of this Fund Agreement.

- (ii) Then, Distributions shall generally be made to each Holder, *pro rata*, in proportion to their respective number of Units of Fund Interest of each Class *provided that* with respect to each Class C Fund Interest, Distributions made in excess of the Holder's Capital Contribution in respect of such Fund Interest, the Organizer shall be due a portion thereof as a Carried Interest equal to the Carry Percentage for such Fund Interest times the amount of such excess Distribution.
- (d) *Cash Distributions.* The Fund shall first use available cash to repay outstanding debts and obligations, if any, of the Fund, including among other things any Management Fees or loans made to cover Fund Costs that are then due. Then, subject to Section 7.1(h), the Fund shall periodically make Distributions of cash once it has a material amount thereof (as determined by the Manager in its sole discretion) to the extent that the remaining cash and assets in the Fund are each greater than the Manager deems necessary or prudent to reserve as a reserve against future Fund Costs expenses, liabilities, and other purposes. The Fund may retain otherwise distributable cash with respect to each Holder pending the distributable cash due that Holder exceeding a *de minimus* amount as determined by the Manager, or the winding down of the Fund, whichever is first to occur.
- (e) *Non-cash distributions*
 - (i) Whenever a Distribution provided for in this Section 7.1 shall be payable in property other than cash, the value of such Distribution shall be deemed to be the Fair Market Value of such property, subject to valuations of Portfolio Company Securities made by the Organizer in accordance with Section 5.5(a).
 - (ii) For the avoidance of doubt, any expenses relating to brokerage commissions, escrow fees, clearing and settlement charges, custodial fees, and any other costs relating to the transfer of Portfolio Company Securities or other assets to the Holders, in connection with a Transferability Event or otherwise ("**Distribution Expenses**"), shall be paid by the Fund prior to any Distributions to the Holders. The amount of assets that are distributable to the Holders will be net of such expenses.
 - (iii) All Distributions of securities will be made subject to, and following satisfaction of, any requirements and transfer restrictions relating to or restricting the transfer of Fund Interests or Portfolio Company Securities imposed by the Portfolio Company or at law. No Distribution of securities shall be made to any Holder to the extent such Holder would be prohibited by applicable law from holding such securities, or Distribution thereof would in Manager's sole judgment violate, or cause either the Fund or Shareholders to violate, any transfer restrictions applicable the securities.
 - (iv) The Fund intends to distribute any securities only upon their becoming Freely Tradable or the removal of any transfer restrictions thereon that in the



Manager's judgment would make such securities commercially infeasible, or inadvisable, to so distribute. Alternately, at the direction of the Organizer, the Fund may liquidate securities that are not Freely Tradable, and other non-cash assets, as described in Section 7.1(b)(iii), and distribute the cash proceeds according to the provisions of this Section 7.1.

- (v) Any Carried Interest due with respect to a non-cash distribution may be distributed to the Organizer in the form of Portfolio Company Securities or other non-cash assets; provided, that the Manager may liquidate a portion of such assets for cash in order to pay the Carried Interest in cash if the Organizer so instructs.
- (vi) Without limiting the foregoing, in connection with Distributions of the Portfolio Company, and if required by the Manager or the Portfolio Company, each Holder agrees to be subject to the terms of the Portfolio Company Securities purchase agreement, stockholder agreement, or other agreement between the Portfolio Company and the holder of the Identified Shares, as if such Holder was an original purchaser thereunder.
- (f) *Accounts.* Unless otherwise agreed to by the Manager, Distributions to a Holder will be made to its respective brokerage account; provided that any cash Distributions may, in the sole discretion of the Manager, be made, in whole or in part, to the account from which the attributable Capital Contribution was paid, or to such other account as the Manager has been instructed by the Holder to make Distributions.
- (g) *Insurance Policy proceeds.* Net proceeds of Fund Insurance Policy claims, if any, shall be reconciled and distributed upon the dissolution of the Fund, such that the Distribution of such proceeds throughout the life of the Fund is made: (i) first to each Holder of a I Class Fund Interest in proportion to the amount (if any) by which (A) Distributions payable to such Holder (including Distributions already made, valued as of the date of Distribution), are less than (B) the Capital Contribution of such Holder, less any Fund Costs, Management Fee, Carried Interest, and other charges and deductions allocated or allocable to such Holder, and then (ii) to the extent there are excess proceeds not distributed according to the previous subsection of this Section 7.1(g), such excess shall be distributed to each Holder of I Class Fund Interests in proportion to such Holder's number of Units of I Class Fund Interest, subject to the Carried Interest distributable to the Organizer as set forth in Section 7.1(c). Members' Capital Accounts shall be adjusted to reflect their entitlement to, and the making of, such Distributions. Only funds paid by the insurer to the Fund may be considered insurance proceeds. Any return premium or other funds paid by the insurer to the Organizer shall *not* be deemed a proceed of the Fund Insurance Policy.
- (h) *Return of Distributions.* Any Holder receiving a Distribution in violation of the terms of this Fund Agreement (or with respect to Insurance Policy Proceeds, in excess of the amount to which such Holder is entitled per the provisions of Section 7.1(g)) shall return such Distribution (or cash equal to the net fair value of any property so distributed, determined as of the date of Distribution) promptly following the Holder's receipt of a request therefor from the Manager or from any other Holder. No third party shall be entitled to rely on the obligations to return Distributions set forth herein or to demand that the Fund or any Holder make any request for any such return.



- 7.2. *Liquidating Vehicle.* In the event that, on the Outside Date, Transferability Events have not occurred with respect to all of the Portfolio Company Securities, or there are otherwise assets remaining in the Fund that are otherwise not Freely Tradable or readily capable of liquidation or Distribution on commercially reasonable terms, the Manager shall appoint a third party liquidator or custodian at the expense of the Fund and/or distribute the assets of the Fund to a liquidating trust or Entity for the benefit of the Holders (a “**Liquidating Vehicle**”). Interests in any Liquidating Vehicle shall generally be subject to terms comparable to Fund Interests (including, for the avoidance of doubt, Distribution Expenses); provided that, in addition to other expenses contemplated hereunder, interests in a Liquidating Vehicle may be subject to actual expenses incurred in connection with the ongoing operations of the Liquidating Vehicle, including among other things such additional salaries, contract fees, servicing or operating fees charged by a party to be hired by the Manager or Organizer to operate the Liquidating Vehicle. The Manager or the Liquidating Trustee, in its sole discretion, may establish reserves for contingencies under this paragraph 7.2, including with respect to interests in any Liquidating Vehicle. At such time, in the event there are outstanding Fund assets that are not Freely Tradable, the Fund’s Manager will distribute or allocate such remaining assets to the Liquidating Vehicle or similar liquidating account which will liquidate or transfer to the Holders such assets for the benefit of Holders.
- 7.3. *Amounts withheld.* Any amounts withheld with respect to a Holder pursuant to any federal, state, local or foreign tax law from a Distribution by the Fund to the Holder shall be treated as paid or distributed, as the case may be, to the Holder for all purposes of this Fund Agreement. Taxes paid or withheld that are allocable to one or more investors or investments will be deemed to have been distributed to such investors. The Manager may, but is not required to, distribute cash to Holders to enable them to pay tax with respect to the Holders’ allocable share of taxable income of the Fund. Holders will not have the right to compel the Fund to make tax or other Distributions. In addition, the Fund may withhold from Distributions amounts deemed necessary, in the sole discretion of the Manager, to be held in reserve for payment of accrued or foreseeable permitted expenses of the Fund. Each Holder hereby agrees to indemnify and hold harmless the Fund from and against any liability with respect to income attributable to or Distributions or other payments to such Holder. Any other amount that the Manager determines is required to be paid by the Fund to a taxing authority with respect to a Holder pursuant to any federal, state, local or foreign tax law in connection with any payment to or tax liability (estimated or otherwise) of the Holder shall be treated as a loan from the Fund to such Holder. If such loan is not repaid within thirty (30) days from the date a Manager notifies such Holder of such withholding, the loan shall bear interest from the date of the applicable notice to the date of repayment at a rate at the lesser of (a) the one-month LIBOR plus four percent (4%) or (b) the maximum legal interest rate under applicable law, compounded annually. In addition to all other remedies the Fund may have, the Fund may withhold Distributions that would otherwise be payable to such Holder and apply such amount toward repayment of the loan and interest. Any payment made by a Holder to the Fund pursuant to this Section 7.3 shall not constitute a Capital Contribution.



- 7.4. *Member giveback.* Except as required by applicable law or this Fund Agreement, no Holder shall be required to repay to the Fund any Holder or any creditor of the Fund all or any part of the Distributions made to such Holder.
- 7.5. *No creditor status.* A Holder shall not have the status of, and is not entitled to the remedies available to, a creditor of the Fund with regard to Distributions that such Holder becomes entitled to receive pursuant to this Fund Agreement and the LLC Act.
- 7.6. *Limitations on Distributions.* Notwithstanding any provision to the contrary contained in this Fund Agreement, the Fund shall not make a Distribution to any Holder on account of its interest in the Fund if such Distribution would violate the LLC Act or other applicable law.

8. TRANSFERS

- 8.1. *Transfers.* Except as otherwise expressly provided in this Section 8, no Member or other Holder may Transfer, or engage in any other Restricted Transactions with respect to, all or any portion of its Fund Interests, without the prior written approval of the Manager and the Organizer, which approval may be withheld, conditioned, or delayed in the Manager's and Organizer's sole and absolute discretion. Any attempted Restricted Transaction in violation of this Section 8 shall be null and void *ab initio*, and shall not bind the Fund. The Fund is under no obligation to approve any Restricted Transaction. The Fund may impose a transfer fee, as well as a brokerage fee that is payable to an Organizer-affiliated Broker if such Broker participates in such transaction. The Manager and Operator will be allowed to Transfer their respective Fund Interests (if any), rights, and duties to an Affiliate, *provided* that such parties agree to enter into and become subject to all the provisions of this Fund Agreement.
- 8.2. *Brokered Transfers.* The Organizer or Manager may setup a means for Members and other Holders to Transfer their Fund Interests, in whole or in part, to transferees approved by the Manager, via the Broker. Such transactions may be accomplished, rather than by a direct Transfer, by an equivalent redemption by the Fund of the Fund Interests to be Transferred, and a simultaneous re-issuance of a new Fund Interest in the same number of Units to the transferee. The price paid for the newly re-issued Fund Interest, and the brokerage fees payable to the Broker, shall be as negotiated with the transferring Holder and the transferee. At the discretion of the Manager, and subject to such negotiations as well as any limitations imposed by the Code and Treasury Regulations and the LLC Act, the Capital Account, and credit for the Capital Contribution amount, may be set at either the amount as of the Closing of the original purchase of the Fund Interest to be transferred, at the re-issuance price, or at a negotiated amount, in each case pro-rated in the case of a partial transfer of Fund Interests.
- 8.3. *Further restrictions on Transfers.* Notwithstanding anything herein to the contrary, in addition to any other restrictions on a Transfer of a Fund Interest or other Restricted Transaction, no Fund Interest may be subject to a Restricted Transaction (a) without compliance with the Securities Act of 1933, as amended, and any other applicable securities or "blue sky" laws, (b) if, in the determination of the Manager, the Restricted Transaction could result in the Fund not being classified as a partnership for federal income tax purposes, (c) if, in the determination of the



Manager, the Restricted Transaction could cause the Fund to become subject to the Investment Company Act of 1940, (d) if, in the determination of the Manager, the Restricted Transaction would cause a termination of the Fund under Section 708(b)(1)(B) of the Code that would have a material adverse effect on the Fund, or (e) the transferee is a minor or incompetent.

- 8.4. *Admission of Transferee as a Member.* A Restricted Transaction permitted by the Manager shall only transfer the rights of a Non-Member Holder as set forth in Section 8.6 unless (a) the transferee is a Member or is admitted as a Member and (b) payment to the Fund of a transfer fee in cash which is sufficient, in the Manager's sole determination, to cover all reasonable expenses incurred by the Fund in connection with the Restricted Transaction and admission of the transferee as a Member.
- 8.5. *Involuntary Transfer of Fund Interests.* In the event of any transfer of Fund Interests, or interests or rights therein, to a Person occurring As a Matter of Law, such Person shall have only the rights of a Non-Member Holder set forth in Section 8.6 with respect to such Fund Interests.
- 8.6. *Rights of Non-Member Holder.* A Non-Member Holder has no right to vote, or to receive information concerning the business and affairs of the Fund, and is entitled only to receive Distributions and allocations attributable to the Fund Interest held by the Non-Member Holder as determined by the Manager and in accordance with this Fund Agreement.
- 8.7. *Enforcement.* The restrictions on Restricted Transactions contained in this Fund Agreement are an essential element in the ownership of a Fund Interest. Upon application to any court of competent jurisdiction, a Manager shall be entitled to a decree against any Person violating or about to violate such restrictions, requiring their specific performance, including those prohibiting a Restricted Transaction applying to all of or a portion of its Fund Interests.
- 8.8. *Death or incapacity of a Member.* Upon the death or Incapacity of a Member, such Member shall cease to be a member of the Fund. Such Person, or the legal representative of such a Person's estate (or the trustee of a living trust established by such deceased Person if such Person's Fund Interests have been transferred to such trust) shall have the rights only of a Non-Member Holder.
- 8.9. *Tenders.* The Manager, on behalf of the Fund may, from time to time, offer to repurchase Fund Interests pursuant to written tenders by Holders. Repurchases will be made at such times, in such amounts and on such terms as may be determined by the Organizer, in its sole discretion. The Manager reserves the right to limit such tenders to Members in good standing. If a repurchase offer is oversubscribed by Holders who tender Fund Interests, the Manager may extend the repurchase offer, repurchase a *pro rata* portion of the Fund Interests tendered, may place upper or lower limits on the amount of Fund Interests tendered by each participating Holder, or take any other action or make any allocation of tenders that is permitted by applicable law. The Fund, through the Manager, acting pursuant to instructions of the Organizer, reserves the right to redeem or repurchase Fund Interests in cash or in kind, including but not limited to repurchases paid through interests in a successor or Affiliate vehicle of the Fund.



- 8.10. *Compulsory redemption.* Under limited circumstances, Members may be permitted or required to withdraw from the Fund.
- (a) The Manager may, by notice to any Holder, force the sale of all or a portion of such Holder's Units of Fund Interest, or the withdrawal of such Holder as a Member (upon which event such Holder shall become a Non-Member Holder), in the event the Manager determines or has reason to believe that:
 - (i) Continued status of such Holder as a Member or continued Ownership of Fund Interests by such Holder (together, continued "**Holder Status**"), is reasonably likely to cause any Fund Person or Broker to be in violation of securities laws and regulations of the United States or any other applicable jurisdiction, or the rules of any self-regulatory organization such as FINRA;
 - (ii) Continued Holder Status is, or is likely to be, harmful to the business or reputation of any Fund Persons or Broker, may subject such Persons or other Holders to a risk of adverse tax or financial consequences, including without limitation, adverse consequences under ERISA, or may otherwise be in the best interests of the Fund;
 - (iii) Any of the representations and warranties made by such Holder, or such Holder's predecessor in interest, under the Subscription Documents and Additional Documents were not true, accurate, complete, and not misleading, when made or have ceased to be so, in a way that causes material harm (or risk thereof) to any Fund Person or to other Holders;
 - (iv) Any of Holder's Fund Interest has vested in any other Person by reason of bankruptcy, dissolution, Incapacity, incompetency, or death of such Holder;
 - (v) Such Holder has attempted to effect a Restricted Transaction in, or a Restricted Transaction has occurred with respect to, any of such Holder's Fund Interest in violation of this Fund Agreement;
 - (vi) A reorganization, merger, sale of all or substantially all of the equity or assets of such Holder, or other change in the ownership or nature of Holder, results in a transfer of more than 50% of the voting interest of Holder;
 - (vii) Such Holder is in material breach of this Fund Agreement, *provided that* in the event such breach is reasonably curable within 30 days, the Manager shall offer such Holder a period of 30 days following written notice setting forth with particularity of any claimed breach during which Holder may cure such breach to the satisfaction of the Manager; or
 - (viii) The Fund may repurchase Fund Interests of Holders or require any Holder to withdraw from the Fund by compulsorily redeeming such Member's Fund Interests if, among other reasons, the Fund determines that such repurchase would be in the interest of the Fund. The Fund reserves the right to redeem or repurchase Fund Interests in cash or in kind, including but not limited to repurchases paid through interests in a successor or Affiliate vehicle of the Fund.
 - (b) Upon a compulsory redemption of a Holder's Fund Interest in whole or part, the Fund shall repurchase (or arrange for a designee to repurchase) such Fund Interest (or portion thereof, as applicable) at the Fair Market Value of such Fund Interest or portion thereof, as determined in accordance with Section 5.5(b). In the event the



Fund does not have sufficient available cash to pay for such repurchase, the Fund may, at the Manager's discretion, either: (i) issue a new Fund Interest in respect of the Fund Interest to be repurchased, as provided in Section 8.2, provided that the Manager may set a purchase price that is no lower than such Fair Market Value instead of entering negotiations with such Holder regarding price per Unit, and no brokerage fee shall be payable by such Holder, or (ii) to the extent permissible by law, and after due consideration of any tax consequences, issue a promissory note to such Holder in lieu of an upfront cash payment, in the principal amount equal to such Fair Market Value, bearing interest from the date of redemption to the date of repayment at a rate of the one-month LIBOR plus 4%, compounded annually, either: (a) with payments amortized over a payment period of no greater than 36 months, or (b) with a balloon payment in full deferred by a period of no greater than 24 months.

- 8.11. *Optional Redemption.* Under certain circumstances, Members may request to withdraw from the Fund.
- (a) A Holder may request that the Fund redeem all or a portion of its Fund Interests (an “**Optional Redemption**”). To request an Optional Redemption, a Holder will deliver to the Manager a duly completed and signed request for redemption, specifying the number of Units of Fund Interests that it desires the Fund to redeem. The Fund is under no obligation to approve any Optional Redemption. The Fund may impose a transaction fee to cover operational costs, as well as a brokerage fee that is payable to an Organizer-affiliated Broker if such Broker participates in such transaction.
 - (b) If the Manager, on behalf of the Fund, approves the Optional Redemption, in whole or part, the Fund shall repurchase (or arrange for a designee to repurchase) the applicable Fund Interests (or portion thereof, as applicable) at a price to be negotiated mutually between the Member, the Fund, and as applicable any third party purchasing a new Fund Interest to replace the Fund Interest to be redeemed.
- 8.12. *Splitting of Fund.* At the discretion of the Manager, upon notice to the Members, the Manager may offer Holders an opportunity, or in some cases require Holders, to redeem or exchange their Fund Interests for equivalent interests in a new fund that is identically organized, that is also under management by the Manager and under advisorship of the Organizer, and that holds or will hold Portfolio Company Securities of the same Company as the Fund. In such event, the Manager will cause the Fund to assign, partly assign, or otherwise enter an agreement between the two Funds to transfer Portfolio Company Securities or beneficial interests therein, in proportion to the number of Units of Fund Interest, so as to maintain Unit-Share Parity with respect to both funds, and also to ensure that the arrangement does not result in the recognition of taxable gain or loss to either Fund or its Fund Interest Holders. As an example, and without limiting the foregoing, the Fund may transfer some or all Holders who are Qualified Purchasers (or alternately, all who are *not* Qualified Purchasers), to a sister fund, such that one fund qualifies for an exemption from registration under Section 3(c)(1), and the other qualifies under Section 3(c)(7), all as set forth in the Investment Company Act. As another example, without limiting the foregoing, the Manager may setup a feeder fund or sister fund for non-US Persons.



9. RECORDS, REPORTS, AND TAXES

- 9.1. *Books and records.* The Manager shall maintain all of the information required to be maintained by the LLC Act, available for inspection and copying by Members and their authorized representatives as may be required by the LLC Act, subject to the confidentiality provisions of Section 9.6 and 9.7, including as applicable: (i) information regarding the business and financial condition of the Fund, (ii) the Fund's federal, state, and local income tax returns, as and when available, (iii) contact information for the Manager and Organizer, and a facility for the Member to maintain its contact information, (iv) copies of this Fund Agreement and amendments, (v) any powers of attorney and other documents executed or deemed to have been executed pursuant to this Fund Agreement, and (vi) records of such Member's cash contributions, Fund Interest, and status of Membership. The Fund is under no obligation to prepare annual audited financial statements. The Fund, in the Manager's discretion, may provide periodic reports to Members detailing the Fund's activities and investments.
- 9.2. *Reports.* The Fund shall file all documents and reports required to be filed with any governmental agency in accordance with the LLC Act. The Fund shall prepare and duly and timely file, at the Fund's expense, all tax returns required to be filed by the Fund. The Manager shall send or cause to be sent to each Holder within ninety (90) days after the end of each Fiscal Year, or such later date as determined in the discretion of the Manager, such information relating to the Fund as is necessary for the Holder to complete its federal, state and local income tax returns that include such Fiscal Year.
- 9.3. *Bank accounts.* All funds of the Fund shall be deposited with banks or other financial institutions in such account or accounts of the Fund as may be determined by the Manager. Moneys for multiple Series of the Master LLC may be kept in a common omnibus account or the like, each under a separate ledger account. If the Account is an interest-bearing account, the Manager reserves the right to use interest payments received towards Fund Costs.
- 9.4. *Tax elections.* Except as otherwise expressly provided herein, the Fund shall make such tax elections as the Manager may determine.
- 9.5. *Tax Matters Partner*
- (a) *Designation.* The Manager shall be the initial "tax matters partner" within the meaning of Code Section 6231(a)(7) (the "**Tax Matters Partner**").
 - (b) *Powers and duties.* The Tax Matters Partner shall have all of the powers and authority of a tax matters partner under the Code. The Tax Matters Partner shall represent the Fund (at the Fund's expense) in connection with all administrative and judicial proceedings by the Internal Revenue Service or any taxing authority involving any tax return of the Fund, and may expend the Fund's funds for professional services and costs associated therewith. The Tax Matters Partner shall provide to the Members prompt notice of any communication to or from or agreements with a federal, state or local authority regarding any return of the Fund, including a summary of the provisions thereof.
 - (c) *Notice.* The Tax Matters Partner shall take such action as may be necessary to cause each Holder (to the extent permissible under applicable tax law) to become a "notice partner" within the meaning of Section 6231 of the Code. The Tax Matters Partner



shall inform each Holder of all significant matters that may come to its attention in its capacity as Tax Matters Partner by giving notice thereof on or before the fifth business day after becoming aware thereof and, within that time, shall forward to each Holder copies of all significant written communications he may receive in that capacity. The Tax Matters Partner may take any action contemplated by Sections 6222 through 6232 of the Code, but this sentence does not authorize the Tax Matters Partner to take any action left to the determination of an individual partner under Section 6222 through 6232 of the Code. Notwithstanding anything to the contrary in this Fund Agreement, the Holders agree that an election under Section 754 of the Code shall be made by the Fund upon the reasonable request of any Holder.

9.6. *Confidentiality*

- (a) The terms, conditions, and matters set forth in this Fund Agreement, including any communications or disclosure provided to Holders by the Fund, the Manager, the Organizer, the Portfolio Company, Shareholders, and other Holders (collectively, “**Disclosing Parties**”), shall as between each Member and the Fund be deemed confidential information belonging to the Fund.
- (b) The identity of and any other personally identifiable information identifying each Member as being a Member of the Fund, shall deemed confidential information belonging to each such Member.
- (c) Holders shall not disclose to any third party (other than to such Holder’s lawyers, accountants, and other agents, including such Holder’s employees, contractors, service providers, and Affiliates, each of whom are themselves under a duty of nondisclosure on a need to know basis) or use for itself any confidential information belonging to the Fund without the Manager’s explicit written permission. Notwithstanding the foregoing, a Holder shall have no duty of confidentiality with respect to information that is or becomes publicly known through no fault of such Holder, that such Holder independently derives without reference to the Fund’s confidential information hereunder, or that such Holder receives from a third party without duty of confidentiality. Notwithstanding the foregoing, a Holder may disclose confidential information if required by legal process, provided that its entitlement to so, other than for purposes of inquiries and compliance audits of such Holder or its Affiliates requested by regulatory bodies such as the Internal Revenue Service, SEC, or private regulatory bodies, is conditioned on prompt disclosure of such legal process to the Manager, so as to give the Fund an opportunity to object to or attempt to limit the extent of disclosure. The covenants of this Section 9.6 shall be interpreted consistently with and shall in no event supersede the provisions of any terms of use, privacy policy, Subscription Agreement, or other agreement that is in place between the Holder and any Disclosing Parties.

- 9.7. In addition to any other conditions or limitations set forth in this Fund Agreement or as a matter of law, a Member’s or other Holder’s rights to access or receive any information about the Fund or its business is conditioned on the Holder’s willingness and ability to assure that the information will be used solely by the Holder for purposes of monitoring its Fund Interest, and that the information will not become publicly available as a result of the Holder’s rights to access or receive such information. The Manager shall be entitled to withhold certain Fund information from Holders who are unable to comply with the Fund’s confidentiality requirements, and from Non-Member Holders generally. In the event the Fund



makes any confidential information available to a Holder, either for convenience, due to any right of inspection such Holder may have, or as compelled by law, the Manager may to the extent legally permitted (and each Holder hereby agrees that such actions are reasonable and fair to protect the privacy of other Persons' financial transactions, and further agrees not to claim or challenge otherwise before any court or other dispute resolution body) either: (i) redact the identity and any other personally identifiable information from such disclosure, (ii) use aliases to represent the identity of each Person thereby disclosed, and/or (iii) aggregate or generalize any data provided so that it is not personally identifiable.

10. DISSOLUTION AND LIQUIDATION

- 10.1. *Dissolution.* The Fund shall be dissolved, its assets disposed of and its affairs wound up upon any of the following:
 - (a) the Outside Date;
 - (b) the final Distribution of the net assets of the Fund to the Holders or to a Liquidating Vehicle in accordance with Section 7.2; or
 - (c) entry of a judicial decree of dissolution of the Fund pursuant to the LLC Act.
- 10.2. *Date of dissolution.* Dissolution of the Fund shall be effective on the day on which the event occurs giving rise to the dissolution, but the Fund shall not terminate until the assets of the Fund have been liquidated and distributed as provided herein. Prior to a dissolution pursuant to Section 10.1, the Manager, in its sole discretion, may extend the Outside Date by unlimited successive one (1) year periods. Notwithstanding the dissolution of the Fund, prior to the termination of the Fund, the business of the Fund and the rights and obligations of the Holders, as such, shall continue to be governed by this Fund Agreement.
- 10.3. *Winding up.* Upon the occurrence of any event specified in Section 10.1, the Fund shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, satisfying the claims of its creditors, and distributing any remaining assets in cash or in kind, to the Holders in accordance herewith. The Liquidating Trustee shall be responsible for overseeing the winding up and liquidation of the Fund and shall cause the Fund to sell or otherwise liquidate all of the Fund's assets except to the extent the Liquidating Trustee determines to distribute any assets to the Holders in kind, discharge or make provision for all liabilities of the Fund and all costs relating to the dissolution, winding up, and liquidation and Distribution of assets, establish such reserves as may be necessary to provide for contingent liabilities of the Fund (for purposes of determining the Capital Accounts of the Holders, the amounts of such reserves shall be deemed to be an expense of the Fund and shall be deemed income to the extent it ceases to be reserved), and distribute the remaining assets to the Holders, in the manner specified in Section 10.4. The Liquidating Trustee shall be allowed a reasonable time for the orderly liquidation of the Fund's assets and discharge of its liabilities, so as to preserve and upon disposition maximize, to the extent possible, the value of the Fund's assets.
- 10.4. *Liquidation.* The Fund's assets, or the proceeds from the liquidation thereof, shall be paid or distributed in the following order:



- (a) First, to creditors (including the Manager, Organizer, and those, if any, who are Holders) to the extent otherwise permitted by applicable law in satisfaction of all liabilities and obligations of the Fund, including any unpaid Management Fees and expenses of the liquidation (whether by payment or the making of reasonable provision for payment thereof), other than liabilities for which reasonable provision for payment has been made and liabilities, if any, for Distribution to Holders;
 - (b) Next, to the establishment of such reserves for contingent liabilities of the Fund as are deemed necessary by the Liquidating Trustee (other than liabilities for which reasonable provision for payment has been made and liabilities, if any, for Distribution to Holders and former Holders under the LLC Act);
 - (c) Next, to Holders and former Holders in satisfaction of any liabilities for Distributions under the LLC Act, if any; and
 - (d) Finally, to the Holders, on a pro rata basis in the order of priority set forth in paragraph 7.1(a).
- 10.5. *Distributions in kind.* Any non-cash asset distributed to one or more Holders shall first be valued by the Manager at its Fair Market Value, with Portfolio Company Securities valued as set forth in Section 5.5, to determine the Net Income, Loss and special allocations that would have resulted if that asset had been sold for that value, which amounts shall be allocated pursuant to Section 6 and the Holders' Capital Accounts shall be adjusted to reflect those allocations. The amount distributed and charged to the Capital Account of each Holder receiving an interest in the distributed asset shall be such Fair Market Value of such interest (net of any liability secured by the asset that the Holder assumes or takes subject to).
- 10.6. *No liability.* Notwithstanding anything herein to the contrary, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Holder has a negative Capital Account balance (after giving effect to all contributions, Distributions, allocations and other Capital Account adjustments for all Fiscal Years, including the Year in which such liquidation occurs), neither that Holder nor any Manager shall have any obligation to make any contribution to the capital of the Fund, and the negative balance of that Holder's Capital Account shall not be considered a debt owed by that Holder or any Manager to the Fund or to any other Person for any purpose whatsoever; *provided, however*, that nothing in this Section 10.6 shall relieve any Holder from any liability under any promissory note or other affirmative commitment such Holder has made to contribute capital to the Fund.
- 10.7. *Limitations on payments made in dissolution.* Except as otherwise specifically provided in this Fund Agreement, each Holder shall be entitled to look only to the assets of the Fund for Distributions (including Distributions in liquidation) and no Holder, Manager or officer of the Fund shall have any personal liability therefor.
- 10.8. *Certificate of Cancellation; Articles of Dissolution.* Upon completion of the winding up of the Fund's affairs, the Manager shall file a Certificate of Cancellation, as applicable.
- 10.9. *Conversion to a trust.* In the event that, on the Outside Date, a Transferability Event has not occurred, the Manager may create a Liquidating Vehicle according to the provisions of Section 7.2.



11. LIMITATION OF LIABILITY; STANDARD OF CARE; INDEMNIFICATION

11.1. *Exculpation*

- (a) The debts, obligations and liabilities of the Fund, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Fund. The Manager, Organizer, and Affiliated Person thereof, shall have no personal liability whatsoever to the Fund, to any Member or other Holder, to any Affiliate of the Fund, or any Affiliate of any Holder on account of such Person's status as a Fund Person, or by reason of such Person's acts or omissions in connection with the conduct of the business of the Fund.
- (b) Neither the Manager nor the Organizer shall be liable or obligated to the Members for any mistake of fact or judgment or for the doing of any act or for the failure to do any act by either the Manager or Organizer in conducting the business operations and affairs of the Fund. The Manager and Organizer do not, in any way, guarantee the return of any Holder's Capital Contribution or a profit for the Holders from the operation of the Fund. Neither the Manager nor the Organizer, nor Affiliated Persons thereof, shall be responsible to any Holder for the loss of its investment or a loss in operations unless the result shall have been a result of fraud, gross negligence, willful misconduct or a willful and wrongful taking by such party. The Manager and Organizer, and Affiliated Persons thereof, shall incur no liability to the Fund or to any of the Holders as a result of engaging in any other business or venture.

11.2. *Indemnification.* To the extent permitted by law, the Fund shall indemnify and hold harmless the Manager, Organizer, and Affiliated Persons thereof made, or threatened to be made, a party to an action or proceeding, whether civil, criminal, administrative (including by private administrative bodies), or investigative (a "**Proceeding**"), including an action by or in the right of the Fund, by reason of the fact that such Person was or is a Fund Person, or Affiliated Person thereof, or committed any acts or omissions in connection with Fund business, from and against all judgments, fines, amounts paid in settlement, and reasonable expenses, including investigation, accounting and attorneys' fees (collectively, "**Losses**"), incurred as a result of such Proceeding, or any appeal therein (and including indemnification against active or passive negligence or breach of duty).

11.3. *Limitations.* The exculpation provisions of Section 11.1 shall not apply to any liability, and the indemnification pledge under Section 11.2 shall not apply to any Losses, notwithstanding anything in such Sections to the contrary, to which such Person would otherwise be subject by reason of (a) any act or omission of such Person that was found by the final judgment of a court of competent jurisdiction, or applicable arbitration forum, after exhaustion of all appeals therefrom (collectively a "**Finding**"), to be of such Person's own, actual bad faith, fraud, willful misconduct, gross negligence, or criminal conduct (except for conduct for which such Person had no reasonable cause to believe that such conduct was unlawful); (b) any act for which there is a Finding that such person did not act either (i) in good faith for a purpose which the Person reasonably believed to be in, or not opposed to, the best interests of the Fund, and from which such Person or its Affiliate derives no improper personal benefit; or (ii) with respect to the Manager and Organizer, as may be permitted by Sections 5.2(e) and 5.2(f); or (c) any act or omission for which



liability may not be so waived in accordance with the LLC Act, the Advisers Act, the Securities Act, or other applicable securities laws and regulations.

- 11.4. *Survival.* The Fund's indemnification obligations hereunder shall survive the termination of the Fund. Each indemnified Person shall have a claim against the net assets of the Fund for payment of any indemnity amounts from time to time due hereunder, which amounts shall be paid or properly reserved for prior to the making of Distributions by the Fund to the Holders. Holders may be required to return Distributions to the Fund to enable the Fund to meet its indemnification obligations.
- 11.5. *Contract right; advances.* The right to indemnification conferred in this Section 11 shall be a contract right. The indemnification rights of the Manager, Tax Matters Partner, and Organizer, shall include the right to require the Fund to advance the expenses incurred by the indemnified Person in defending any such Proceeding in advance of its final disposition, and the Fund may at the Manager's discretion so advance such expenses incurred by other Fund Persons and Affiliated Persons of Fund Persons, subject to an understanding to return the amount so advanced if it is ultimately determined that the indemnified Person has not met the standard of conduct required for indemnification.
- 11.6. *Nonexclusive right.* The right to exculpation, indemnification, and the payment of expenses incurred in defending a Proceeding in advance of its final disposition conferred in this Section 11, shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute, agreement (including the Subscription Agreement), obligation of indemnification under the LLC Act, or under any insurance policy obtained for the benefit of any Manager, Tax Matters Partner, Organizer, or officer of the Fund.
- 11.7. *Severability.* If any provision of this Section 11 is determined to be unenforceable in whole or in part, such provision shall nonetheless be enforced to the fullest extent permissible, it being the intent of this Section 11 to provide indemnification to all Persons eligible hereunder to the fullest extent permitted by applicable law.
- 11.8. *Insurance.* The Manager may cause the Fund, at the Fund's expense, to purchase and maintain insurance on behalf of any Person (including among others any Manager, Tax Matters Partner, Organizer, or officer of the Fund) who is or was an agent of the Fund against any liability asserted against that Person and incurred by that Person in any such capacity.

12. FURTHER REPRESENTATIONS, WARRANTIES, AND COVENANTS

- 12.1. *Representations and Warranties of the Members.* Each Member and other Holder hereby represents, warrants and covenants to the Manager, Organizer, and the Fund that:
 - (a) It is fully aware that (i) the Fund and the Manager are relying upon the exemption from registration provided by Section 4(a)(2) of the 1933 Act and Regulation D promulgated thereunder, and (ii) the Fund will not register as an investment company under the Investment Company Act, by reason of the provisions of either Section 3(1) thereof that exclude from the definition of "investment company" any issuer that is beneficially owned by not more than 100 investors and that is not making a public offering of its securities, or by reason of the provisions of Section 3(7) thereof that so exclude any issuer that sells interests only to "Qualified Purchasers" as defined therein. Each Holder also is fully aware that the Fund and the



Manager are relying upon the truth and accuracy of the representations made in this Fund Agreement by each Holder (and any predecessors in interest), and those made in its Subscription Agreement.

- (b) In the case of any business organization, it has been duly formed and is validly existing and in good standing under the laws of its jurisdiction of organization with full power and authority to enter into and to perform this Fund Agreement in accordance with its terms; and (ii) in the case of an individual, he or she has the full legal capacity to enter into and to perform this Fund Agreement in accordance with its terms;
- (c) This Fund Agreement is a legal, valid and binding obligation of such Holder, enforceable against such Holder in accordance with its terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights, and subject, as to enforceability, to the effect of general principles of equity;
- (d) Its Fund Interest is being acquired for its own account, for investment and not with a view to the distribution or sale thereof, subject, however, to any requirement of law that the disposition of its property shall at all times be within its control;
- (e) It is an Accredited Investor, and if so indicated, a Qualified Purchaser;
- (f) It is not a participant-directed defined contribution plan;
- (g) It is not an "investment company" registered under the Investment Company Act;
- (h) If it is a "benefit plan investor" under Section 3(42) of ERISA, it has identified itself as the same in writing to the Manager, its purchase and holding of its Fund Interest is permissible under the documents governing the investment of its assets and under ERISA and the Code;
- (i) It understands and acknowledges that the investments contemplated by the Fund involve a high degree of risk. The Holder, and its management if a business entity, has substantial experience in evaluating and investing in Portfolio Company Securities, Identified Shares, or like investment assets, and is capable of evaluating the merits and risks of its investments and has the capacity to protect its own interests. The Holder, by reason of its, or its management's, business or financial experience, has the capacity to protect its own interests in connection with proposed investments. The Holder has sufficient resources to bear the economic risk of any investments made, including any diminution in value thereof, and shall solely bear the economic risk of any investment;
- (j) It has undertaken its own independent investigation, and formed its own independent business judgment, based on its own conclusions, as to the merits of the Portfolio Company Securities and investing in the Fund. The Holder is not relying and has not relied on the Manager, the Organizer or any of their Affiliates for any evaluation or other investment advice in respect of the Portfolio Company Securities or the advisability of investing in the Fund and has had all questions answered and requests fulfilled that the Holder has deemed to be material to the Holder's decision to invest in the Fund.
- (k) It has had the opportunity to consult with legal counsel of its choice and has read and understands this Fund Agreement, the Subscription Agreement, and the Memorandum.



- 12.2. *Conduct.* Holder agrees to conduct its business and affairs (including its investment activities) in a manner such that it will be able to honor its obligations under this Fund Agreement.
- 12.3. *Further Instruments.* Each Holder shall furnish, from time to time, to the Manager within five calendar days after receipt of the Manager's request therefor (or such other amount of time as specified by the Manager) such further instruments (including any designations, representations, warranties, and covenants), documentation and information as the Manager deems to be reasonably necessary, appropriate or convenient: (i) to facilitate the Closing or satisfy any Closing Conditions; (ii) to satisfy applicable anti-money laundering requirements; (iii) for any tax purpose; or (iv) for any other purpose that is consistent with the terms of this Fund Agreement.

13. POWER OF ATTORNEY

- 13.1. Each Holder, by its execution hereof, hereby irrevocably makes, constitutes and appoints each of the Manager, and the Liquidating Trustee, if any, in such capacity as Liquidating Trustee, each for so long as it acts as such (each is hereinafter referred to as the "**Attorney**"), as its true and lawful agent and attorney-in-fact, with full power of substitution and full power and authority in its name, place and stead, to make, execute, sign, acknowledge, swear to, record and file (i) this Fund Agreement and any amendment to this Fund Agreement that has been adopted as herein provided; (ii) the original Certificate of Formation of the Fund and Master LLC, and all amendments thereto required or permitted by law or the provisions of this Fund Agreement and the Master LLC Agreement; (iii) all instruments or documents required to effect a transfer of Fund Interest; (iv) all certificates and other instruments deemed advisable by the Manager or the Liquidating Trustee, if any, to carry out the provisions of this Fund Agreement and Master LLC Agreement, and applicable law or to permit the Fund and Master LLC to become or to continue as a series limited liability company wherein the Holder have limited liability in each jurisdiction where the Fund may be doing business; (v) all instruments that the Manager or the Liquidating Trustee, if any, deems appropriate to reflect a change, modification or termination of this Master LLC Agreement, the Fund Agreement, or the Fund in accordance with this Fund Agreement including, without limitation, the admission of additional Members (including those holding newly issued Fund Interests or transferees of existing Fund Interests) pursuant to the provisions of this Fund Agreement, as applicable; (vi) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Master LLC and the Fund; (vii) all conveyances and other instruments or papers deemed advisable by the Manager or the Liquidating Trustee, if any, including, without limitation, those to effect the terms of Section 7.2, 10.3, and 10.4, and the dissolution and termination of the Fund (including a Certificate of Cancellation or to effect the terms of Section 10.8); (viii) all other agreements and instruments necessary or advisable to consummate any purchase or disposition of Portfolio Company Securities; and (ix) all other instruments or papers that may be required or permitted by law to be filed on behalf of the Fund.
- 13.2. The foregoing power of attorney: (i) is coupled with an interest, namely the granting or transfer of each Holder's Fund Interest, shall be irrevocable, and shall survive and shall not be affected by the subsequent death or Incapacity of any Holder or any



subsequent power of attorney executed by a Holder; (ii) may be exercised by the Attorney, either by signing separately as attorney-in-fact for each Holder or by a single signature of the Attorney, acting as attorney-in-fact for all of them; (iii) shall survive the delivery of an assignment by a Holder of all or any portion of its Fund Interest; except that, where the assignee of all of such Holder's Fund Interest has been approved by the Manager for admission to the Fund, as a substituted Holder, the power of attorney of the assignor shall survive the delivery of such assignment for the sole purpose of enabling the Attorney to execute, swear to, acknowledge and file any instrument necessary or appropriate to effect such substitution; and (iv) is in addition to any power of attorney that may be delivered by a Holder in accordance with its Subscription Agreement entered into in connection with its acquisition of Fund Interest.

- 13.3. Each Holder shall execute and deliver to the Manager within five (5) days after receipt of the Manager's request therefor such further designations, powers-of-attorney, and other instruments as the Manager reasonably deems necessary to carry out the terms of this Fund Agreement.

14. OTHER PROVISIONS

- 14.1. *Costs.* Each party shall pay its own legal, accounting, and other advisory and consulting fees in connection with all actions contemplated by this Fund Agreement, except as may be provided in this Fund Agreement, the Subscription Agreement, and Members' engagement of Broker.
- 14.2. *Amendment; Waiver.* The provisions of this Fund Agreement may be modified or waived only by written instrument executed by the Manager and the party against whom such modification or waiver applies. Unless expressly provided otherwise, (i) no course of dealing, omission, or delay on the part of any party asserting or exercising any right hereunder shall constitute a waiver of such right, and (ii) no waiver shall constitute an ongoing or future waiver of any provision hereof.
- 14.3. Notwithstanding the provisions of Section 14.2, no amendment to this Fund Agreement may:
- (a) Modify the limited liability of a Holder; reduce any indemnification and exculpation rights of the parties indemnified herein; or increase in any material respect the liabilities or responsibilities of, or diminish in any material respect the rights or protections of, any Holder under this Fund Agreement, in each case, without the Consent of each such affected Holder or indemnified Party, as the case may be;
 - (b) Alter the interest of any Member in income, gains and losses, or amend any portion of Section 4, without the Consent of the Holder if adversely affected by such amendment; *provided, however,* that the admission of additional Members in accordance with the terms of this Fund Agreement shall not constitute such an alteration or amendment;
 - (c) Amend any provisions hereof that requires the Consent, action or approval of a Holder without the Consent of such Holder; or
 - (d) Amend or waive any provision of this Section 14.3.
- 14.4. Notwithstanding the limitations of paragraphs 14.2 and 14.3, amendments that are ministerial, technical, or administrative in nature, or that may be required by law, to avoid contradictions or ambiguities, or to correct errors, may be made from time to



time and at any time in the discretion of the Manager without the Consent of any of the Members; *provided, however*, that no amendment shall be adopted pursuant to this Section 14.4, unless such amendment would not alter, or result in the alteration of, the limited liability of the Holders or the status of the Fund as a partnership for federal income tax purposes.

- 14.5. Upon the adoption of any amendment to this Fund Agreement, the amendment shall be executed by the Manager and, if required, shall be recorded in the proper records of each jurisdiction in which recordation is necessary for the Fund to conduct business. Any such adopted amendment may be executed by the Manager on behalf of the Holders pursuant to the power of attorney granted in paragraph 13.
- 14.6. *Offset Privilege.* The Fund may offset against any monetary obligation owing from the Fund to any Holder, the Manager, or the Organizer, any monetary obligation then owing from that Person to the Fund, or owing to other funds that are series of the same Master LLC or of any other master limited liability company managed by the Manager for which Organizer performs a substantially similar role; *provided, however*, that such offset right shall only apply to any obligation to distribute cash or assets that is owed to such Person in their capacity as a Holder or Manager.
- 14.7. *Notices.* All communications hereunder, by and among the Fund, the Holders, the Organizer, and the Tax Matters Partner, including among other things delivery of Consents and requests therefor, financial statements, tax reports, and all other instruments, agreements, information, documents, and notices, shall be in writing and delivered in person, physically or electronically, addressed as specified in the Subscription Agreement, by online document service, or at such other place as the receiving party may designate to the other by written notice. Communications shall be deemed received on the earlier of (i) receipt, (ii) personal delivery, (iii) electronic transmission (with evidence of personal receipt), or (iv) one business day after deposit with a nationally recognized overnight courier service.
- 14.8. *Dispute resolution*
- (a) Notwithstanding anything to the contrary in this Fund Agreement, all disputes arising out of (i) this Fund Agreement, (ii) each Member and Non-Member Holder's participation in the Fund, and (ii) the actions of Fund Persons in respect of the Fund (collectively, the "**Fund Operations**"), shall be submitted to and resolved by binding arbitration in accordance with this Section 14.8.

- *The Subscriber acknowledges and agrees that by agreeing to these arbitration provisions, the parties are waiving their right to seek remedies in court, including the right to jury trial, and may be waiving other rights including the right to participate in certain class action cases.*

- (b) All matters regarding Fund Operations will be construed in accordance with the laws of California without regard to conflicts of laws. All controversies arising hereunder or thereunder will be resolved by binding arbitration in California conducted by JAMS if available, or by an alternate arbitration service of comparable reputation if not, in accordance with such agency's rules for commercial disputes before a single arbitrator appointed in accordance with such rules. The prevailing party entitled to recover its costs (including without limitation arbitration fees and reasonable fees for



attorneys, appraisers, and expert witnesses) in connection with any action, including appeals, investigation, and enforcement. The parties shall maintain the confidential nature of the arbitration proceeding and of any award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy or for enforcement of any injunctive order of the arbitrator, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. The parties adopt and agree to implement the JAMS Optional Arbitration Appeal Procedure, or the comparable appeal procedure if any of the arbitrating body if not JAMS, with respect to any final award in an arbitration arising out of or related to Fund Operations. Judgment on any award rendered may be entered in any court having jurisdiction.

- (c) No person will bring a putative or certified class action concerning Fund Operation to arbitration, nor seek to enforce any pre-dispute arbitration agreement against the other party that has initiated in court a putative class action or that is a member of a putative class that has not opted out of the class with respect to any claims encompassed by the putative class action until (i) the class certification is denied, (ii) the class is decertified, or (iii) the other party is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this Fund Agreement except if stated herein.
 - (d) Notwithstanding anything herein to the contrary, arbitration under this Section 14.8 shall be conducted under the auspices of FINRA, to the extent FINRA has mandatory jurisdiction over any of the parties and issues in the dispute. To the extent any portion of this Section 14.8 conflicts with any rules of FINRA that apply, as then in effect, such FINRA rules shall prevail.
 - (e) In the event of any actual or prospective breach or default of this Fund Agreement by any party, the other parties shall be entitled to equitable relief, including remedies in the nature of injunction and specific performance (without being required to post a bond or other security or to establish any actual damages). In this regard, the parties acknowledge that they will be irreparably damaged in the event this Fund Agreement is not specifically enforced, since (among other things) the Fund Interests are not readily marketable. All remedies hereunder are cumulative and not exclusive, may be exercised concurrently and nothing herein shall be deemed to prohibit or limit any party from pursuing any other remedy or relief available at law or in equity for any actual or prospective breach or default, including the recovery of damages.
- 14.9. *Severability.* If any provision of this Fund Agreement is held by applicable authority to be unlawful, void or unenforceable to any extent, such provision, to the extent necessary, shall be severed from this Fund Agreement and the remainder of this Fund Agreement shall not be affected thereby and shall continue in full force and effect.
- 14.10. *Copies and Counterparts.* Copies and electronic versions of signatures to this Fund Agreement shall be valid, binding and effective as original signatures for all purposes hereunder. This Fund Agreement may be executed in any number of counterparts, each of which shall be an original but all of which taken together shall constitute one agreement.



- 14.11. *Entire Agreement.* This Fund Agreement, the Subscription Agreement, and any side letter entered into between the Manager or the Fund and any Holder, and all of the exhibits and appendices attached hereto and thereto, constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and thereof and supersedes any prior written or oral agreements or understandings of the parties with respect thereto. Notwithstanding the foregoing, any terms of service and privacy agreement Subscriber has entered pertaining to Organizer's online services, and any agreement of engagement with the Broker, shall remain in force and continue to apply except to the extent the Subscription Agreement or this Fund Agreement explicitly provide terms inconsistent thereto. Further, any provisions of this Fund Agreement regarding confidentiality, ownership of intellectual property, exculpation, and indemnification shall apply cumulatively and in addition to, not in place of, any corresponding covenants, rights, and obligations of Holders and Fund Persons that may arise from other agreements among them.
- 14.12. *Further Acts.* Subscriber and the Fund agree to execute such additional documents and letters of direction, and taking all further actions, as may be reasonably necessary to effect the transactions contemplated in the Subscription Documents, including as applicable any securities forms, registrations, stock assignments, and payment instructions.
- 14.13. *Privacy.* In accordance with the U.S. Federal Trade Commission privacy rule, 16 C.F.R. Part 313, and without expanding the range of permissible disclosures under Section 9.6, Members and Non-Member Holders are hereby advised that the Fund Interest is a financial product that such Person (or their predecessor in interest) has requested and authorized, and that the Fund Persons may disclose nonpublic personal information concerning Members and Non-Member Holders to their respective lawyers, accountants, affiliates, bankers, transfer agents, and other service providers, and may be forced to make such disclosures to other Members, the Portfolio Company, Shareholders, and government and private regulators. Services used for maintaining communications and relations with Holders may have their own separate privacy notices and terms.
- 14.14. *IRS Circular 230 disclosure.* Any discussion of United States federal tax issues contained in this Fund Agreement or concerning the Fund, by the Fund, the Manager, the Organizer, the Tax Matters Partner, and their respective counsel, is not intended or written to be relied on by the other for purpose of avoiding penalties imposed under the Internal Revenue Code. Each party should seek advice from an independent tax adviser based on their particular circumstances.
- 14.15. *Assignment.* Except as otherwise provided herein, this Fund Agreement, and any right, interest or obligation hereunder, may not be assigned by any party without the prior written Consent of the Fund and set forth in Section 8 hereof. Any purported assignment without such Consent shall be *ab initio* null and void and without effect.
- 14.16. *Binding Effect.* This Fund Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. This Fund Agreement is not intended, and shall not be deemed, to create or confer any right or interest for the benefit of any Person not a party to this Fund Agreement, *except that* the Broker and Organizer, and Affiliates and Affiliated Persons of Fund Persons shall be entitled to rely on exculpation, indemnification, and other provisions of this Fund Agreement that explicitly grant rights to them.



- 14.17. *Construction.* This Fund Agreement shall not be construed against any party by reason of such party having caused this Fund Agreement to be drafted.



IN WITNESS WHEREOF, the undersigned has executed this Delaware Series Limited Liability Company Operating Agreement effective as of the date first set forth above.

DocuSigned by:

Jeremy Nilson

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Assure Fund Management II, LLC

By ,

on behalf of the Manager and the Fund

DocuSigned by:

Sohail Prasad

7CFB3F0F2BE1482...

Equidate Advisors LLC

By Sohail Prasad, Managing Director
as Organizer



IN WITNESS WHEREOF, the undersigned has executed this Delaware Series Limited Liability Company Operating Agreement effective as of the date first set forth above.

Green Sands Fund H, LLC

,

DocuSigned by:
Reema Khan
315D68DCF5F0407...

