**LIMITED LIABILITY COMPANY AGREEMENT**

**[ENTITY NAME]**

NEITHER THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE REGULATORY AUTHORITY HAS APPROVED OR DISAPPROVED THIS LIMITED LIABILITY COMPANY AGREEMENT (THIS “***AGREEMENT***”) OR THE LIMITED LIABILITY COMPANY INTERESTS (THE “***INTERESTS***”) OR THE MERITS OF ACQUIRING INTERESTS PROVIDED FOR HEREIN OR THE MERITS OF ACQUIRING INTERESTS. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

THE INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “***SECURITIES ACT***”), OR THE SECURITIES LAWS OF ANY STATE. THE INTERESTS ARE NOT INTENDED TO BE SECURITIES UNDER THE SECURITIES ACT OR UNDER ANY STATE SECURITIES LAWS. TO THE EXTENT THE INTERESTS ARE DEEMED TO BE SECURITIES UNDER THE SECURITIES ACT, THEY ARE BEING OFFERED AND SOLD IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND THOSE STATES. ANY TRANSFER OR RESALE OF THE INTERESTS IS FURTHER SUBJECT TO RESTRICTIONS, THE TERMS AND CONDITIONS OF WHICH ARE SET FORTH IN THIS AGREEMENT.

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**LIMITED LIABILITY COMPANY AGREEMENT**

**[FULL ENTITY NAME]**

This limited liability company agreement is made as of <*DATE>* (the “***Effective Date***”) by and among the Members identified on the signature pages hereto and those Persons who have or may become parties to this Agreement in the future, in accordance with the terms of this Agreement (collectively the “***Parties***”) of the Company. In consideration of the mutual covenants in this Agreement the Parties agree as follows:

# DEFINITIONS

**Definitions.** When used in this Agreement, the following terms have the meanings specified in this Article I:

“***Account Address***” means a public key address on the Designated Blockchain Network that is uniquely associated with a single private key, and at which no smart contract has been deployed.

“***Act***” means the Delaware Limited Liability Company Act, Section 18-101, et seq., as it may be amended from time to time and any successor to said law.

“***Additional Capital Contributions***” has the meaning set forth in Section 4.5(d).

“***Administrative Member***” means [Administrative Member Name] or such other Person as may be appointed as a replacement Administrative Member pursuant to Section 5.1(b). For the avoidance of doubt, the Administrative Member is a Member of the Company.

“***Advance***” has the meaning set forth in Section 4.5(c).

“***Affiliate***” of another Person means (a) a Person directly or indirectly (through one or more intermediaries) controlling, controlled by or under common control with that other Person; (b) a Person owning or controlling 10% or more of the outstanding voting securities or beneficial interests of that other Person; or (c) an officer, Administrative Member, director, partner or member of that other Person. For purposes of this Agreement, “control” of a Person means the possession, directly or indirectly, of the power to direct the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise. For the avoidance of doubt, no Member will be deemed, solely by virtue of that membership, to be an Affiliate of the Company.

“***Agreement***” means this limited liability company agreement of the Company, as amended from time to time.

“***Arbitration Location***” means [San Francisco, California].

“***Attorney***” has the meaning specified in Section 13.1.

“***Business Day***” means any day other than Saturday, Sunday, any day which is a federal legal holiday in the United States or any other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

“***Capital Account***” of a Member means the capital account of the Member determined in accordance with Section 3.4 in this Agreement.

“***Capital Call***” has the meaning set forth in Section 4.5(d).

“***Capital Contribution***” of a Member means the total amount of cash and other assets contributed (or deemed contributed under Section 1.7041(b)(2)(iv)(d) of the Treasury Regulations) to the Company by that Member, net of liabilities assumed or to which the assets are subject.

“***Certificate of Formation***” means the Certificate of Formation of the Company, as amended and restated from time to time, filed with the Office of the Secretary of State of the State of Delaware pursuant to the Act.

“***Claim***” means any past, present or future dispute, claim, controversy, demand, right, obligation, liability, action or cause of action of any kind or nature.

“***Closing***” means the date a Member is admitted to the Company as a Member or the Commitment of a Member is increased (as agreed to by such Member and the Administrative Member).

“***Closing Date***” means the date of a Closing as determined by the Administrative Member.

“***Closing Conditions***” means the conditions of the Closing, as determined by the Administrative Member.

“***Code***” means the Internal Revenue Code of 1986, as amended, from time to time.

“***Commitment***” has the meaning set forth in Section 3.1.

“***Company***” means [Full Entity Name].

“***Company Minimum Gain***” means the “partnership minimum gain” of the Company computed in accordance with the principles of Sections 1.7042(b)(2) and 1.704-2(d) of the Treasury Regulations.

“***Confirmation***” of a transaction shall be deemed to have occurred if and only if such transaction has been recorded in accordance with the Consensus Rules in a valid block whose hashed header is referenced by at least [ten] subsequent valid blocks on the Designated Blockchain.

“***Consensus Attack***” means an attack that: (a) is undertaken by or on behalf of a block producer who controls, or group of cooperating block producers who collectively control, a preponderance of the means of block production on the Designated Blockchain Network; and (b) has the actual or intended effect of: (i) reversing any transaction made to or by the Designated Smart Contract after Confirmation of such transaction, including any “double spend” attack having or intended to have such effect; or (ii) preventing inclusion in blocks or Confirmation of any transaction made to or by the Designated Smart Contract, including any “censorship attack,” “transaction withholding attack” or “block withholding attack” having or intended to have such effect.

“***Consensus Rules***” means the rules for transaction validity, block validity and determination of the canonical blockchain that are embodied in the Designated Client.

“***Consent***” means the approval of a Person to do the act or thing for which the approval is solicited, or the act of granting the approval, as the context may require.

***“Contract”*** means any: (a) written, oral, implied by course of performance or otherwise or other agreement, contract, understanding, arrangement, settlement, instrument, warranty, license, insurance policy, benefit plan or legally binding commitment or undertaking; or (b) any representation, statement, promise, commitment, undertaking, right or obligation that may be enforceable, or become subject to an Order directing performance thereof, based on equitable principles or doctrines such as estoppel, reliance, or quasi-contract.

“***Contributing Member***” has the meaning set forth in Section 4.5(e).

“***Covered Losses***” has the meaning set forth in Section 11.3.

“***Covered Person***” means the Administrative Member, the Partnership Representative, the Liquidating Trustee, any officer of the Company, and their respective Affiliates.

“***Deadline***” has the meaning set forth in Section 4.5(d).

“***Designated Blockchain***” means at any given time, the version of the digital blockchain ledger commonly known as “[Ethereum]” that at least a majority of nodes running the Designated Client recognize as canonical as of such time. For the avoidance of doubt, the “Designated Blockchain” does not refer to the digital blockchain ledger commonly known as “Ethereum Classic” or any other blockchain ledgers from which or to which the Designated Blockchain has been “forked” or “split”.

“***Designated Blockchain Network***” means the Ethereum mainnet (networkID:1, chainID:1), as ***recognized*** by the Designated Client.

“***Designated Client***” means the Official Go Ethereum client available at https://github.com/ethereum/go-ethereum.

“***Designated Smart Contract***” means the smart contract deployed at address [\_\_\_\_\_\_\_\_\_\_\_\_] on the Designated Blockchain.

“***Digital Assets***” means tokens, cryptocurrencies, and other digital assets the record of which is primarily stored in a distributed ledger system utilizing cryptographic verification.

“***Disability***” of an individual means the incapacity of the individual to engage in any substantial gainful activity with the Company 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 Company and Consented to by the individual or his legal representative, which Consent will not be unreasonably withheld, conditioned or delayed.

“***Distributable Cash***” at any time means that amount of the cash then on hand or in bank accounts of the Company which the Administrative Member determines is legally available for Distribution, taking into account (a) the amount of cash required for the payment of all current expenses, liabilities and obligations of the Company and (b) the amount of cash which the Administrative Member deems necessary or appropriate to establish reserves for the payment of future expenses, liabilities, or obligations, including liabilities which may be incurred in litigation and liabilities undertaken pursuant to the indemnification provisions of this Agreement.

“***Distributed Subject Property***” means any asset, right or property that was once Subject Property and has been distributed to a Member.

“***Distribution***” means the transfer of money or property by the Company to one or more Members with respect to their Interests, without separate consideration.

“***Distribution Expenses***” has the meaning set forth in Section 7.1(c).

“***Effective Date***” has the meaning set forth in the initial paragraph of this Agreement.

“***ERISA***” has the meaning set forth in Section 8.4(d).

“***Exception Handling Addendum***” has the meaning set forth in Section 2.12(b)(3)(A).

“***Exception Handling Proposal***” has the meaning set forth in Section 2.12(b)(1)(C).

“***Exception Notice***” has the meaning set forth in Section 2.12(b)(1).

“***Exception Objection Notice***” has the meaning set forth in Section 2.12(b)(3)(C).

“***Fair Market Value***” of any property means, subject to Section 3.4(b), the amount that would be paid for that property in cash by a hypothetical willing buyer to a hypothetical willing seller, each having knowledge of all relevant facts and neither being under a compulsion to buy or sell, as determined by the Administrative Member in good faith; provided, however, the Fair Market Value of any Digital Asset shall be the price in US Dollars per token of the relevant Digital Asset as set forth at 5:00 pm Pacific Time on the day immediately preceding the applicable valuation date on coinmarketcap.com (or, if not valued on coinmarketcap.com, such other publicly available third party valuation website as the Administrative Member may reasonably select), if such price is available.

“***Family Members***” means an individual who is a Member’s spouse, child, stepchild, son-in-law, daughter-in-law, father, or mother, including adoptive relationships.

“***Fiscal Year***” means the Company's taxable year, which will be the taxable year ended December 31, or other taxable year as may be selected by the Administrative Member in accordance with applicable law.

“***Initial Closing***” means the first Closing.

“***Initial Closing Date***” means the date selected by the Administrative Member for the Initial Closing.

“***Interest***” means with respect to each Member, as of any date, its fractional ownership of the membership interest in the Company which is expressed as a percentage, the numerator of which is that Member's then Capital Contributions and the denominator of which is the sum of the then Capital Contributions of all Members to the Company. A Member’s Interest represents the totality of the Member’s interests in the Company and the right of that Member to all benefits (including, without limitation, allocations of Net Income and Net Losses and the receipt of Distributions) to which a Member may be entitled pursuant to this Agreement and under the Act, together with all obligations of that Member to comply with the terms and provisions of this Agreement and the Act.

“***Interest Register***” has the meaning specified in Section 2.8.

**“*Investment***” means an investment by the Company in a Digital Asset or a Portfolio Company Security.

“***Legal Order***” means any restraining order, preliminary or permanent injunction, stay or other order, writ, injunction, judgment or decree that either: (a) is issued by a court of competent jurisdiction, or (b) arises by operation of applicable law as if issued by a court of competent jurisdiction, including, in the case of clause “(b)” an automatic stay imposed by applicable law upon the filing of a petition for bankruptcy.

“***Liquidating Trustee***” means the Administrative Member (or its authorized designee) or, if there is none, a Person selected by a Majority in Interest to act as a liquidating trustee of the Company.

“***Liquidity Event Proceeds***” means (a) the receipt by the Company 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, in respect of an Investment as a result of (i) the sale or other liquidation of such Investment; (ii) a Merger Event or a sale of all or substantially all of the assets, of a Portfolio Company; (iii) the bankruptcy, liquidation or dissolution of a Portfolio Company or (b) in the case of a Portfolio Security, the determination by the Administrative Member that such Portfolio Security is then freely or readily transferable by the holder thereof without restriction under applicable law and the documents governing the terms of such Portfolio Security or the Company’s investment therein.

“***Majority in Interest***” means, at any time, a majority of the total Interests held by all Members in the Company. Except as otherwise expressly required under this Agreement, whenever in this Agreement the Members are permitted or required to vote on, approve, make a determination as to, or consent to any matter or proposed action, such vote, approval, determination or consent shall only require a Majority in Interest.

“***Material Adverse Exception Event***” means that one or more of the following has occurred, is occurring or would reasonably be expected to occur:

(a) a Consensus Attack adversely affecting the results or operations of the Designated Smart Contract;

(b) the Designated Smart Contract having become inoperable, inaccessible or unusable, including as the result of any code library or repository incorporated by reference into the Designated Smart Contract or any other smart contract or oracle on which the Designated Smart Contract depends having become inoperable, inaccessible or unusable or having itself suffered a Material Adverse Exception Event, mutatis mutandis;

(c) a material and adverse effect on the use, functionality or performance of the Designated Smart Contract as the result of any bug, defect or error in the Designated Smart Contract or the triggering, use or exploitation (whether intentional or unintentional) thereof (it being understood that for purposes of this clause “(iii)”, a bug, defect or error will be deemed material only if it results in a loss to a Party of at least 20 percent of the Subject Property);

(d) any unauthorized use of an administrative function or privilege of the Designated Smart Contract, including: (i) any use of any administrative credential, key, password, account or address by a Person who has misappropriated or gained unauthorized access to such administrative credential, key, password, account or address or (ii) any unauthorized use of an administrative function or privilege by a Party or a representative of a Party; or

(e) the Designated Smart Contract[, any of the Parties] or the Subject Property is subject to a Legal Order that prohibits the Designated Smart Contract [(or that, if the Designated Smart Contract were a Person, would prohibit the Designated Smart Contract)] from executing any function or operation it would otherwise reasonably be expected to execute.

“***Member***” means any Person admitted as a Member pursuant to Section 4.1 that has not ceased to be a Member pursuant to this Agreement or the Act.

“***Member Minimum Gain***” means the “partner nonrecourse debt minimum gain” of the Company computed in accordance with the principles of Section 1.7042(i)(3) of the Treasury Regulations.

“***Member Nonrecourse Deductions***” means the “partner nonrecourse deductions” of the Company computed in accordance with the principles of Sections 1.704-2(i)(1) and (2) of the Treasury Regulations.

“***Merger Event***” means a Portfolio Company has merged or consolidated with or into any other entity, and after giving effect to that transaction, the equity owners of a Portfolio Company immediately prior to that transaction ceased to own at least a majority of the equity interest of the surviving or resulting entity.

“***Negotiation Period***” has the meaning set forth in Section 2.12(b)(3)(D).

“***Net Fair Market Value***” of an asset means its Fair Market Value net of any liability secured by the asset that the Member or the Company, as applicable, assumes or takes subject to.

“***Non-Contributing Member***” has the meaning set forth in Section 4.5(e).

“***Nonrecourse Deductions***” means the “nonrecourse deductions” of the Company computed in accordance with Section 1.704-2(b) of the Treasury Regulations.

“***Net Income***” and “***Net******Loss***” means, for each Fiscal Year, the taxable income and taxable loss, as the case may be, of the Company for that 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 Article VI will 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 will be treated as Net Income or Net Loss from the sale of that asset.

“***Partnership Representative***” means the Person designated pursuant to Section 9.4.

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

“***Person***” means any human, robot, bot, artificial intelligence, corporation, partnership, association or other individual or entity recognized as having the status of a person under the law.

“***Portfolio Company***” means the issuer of a Portfolio Company Security.

“***Portfolio Company Securities***” means debt or equity securities acquired by the Company in accordance with this Agreement. Any non-fungible token held by the Company shall not be deemed a Portfolio Company Security.

“***Proceeding***” has the meaning set forth in Section 11.3.

“***Receiving Party***” has the meaning set forth in Section 2.12(b)(1).

“***Registered Agent***” means the registered agent appointed by the Company as the Company’s registered agent for the service of process on the Company in the State of Delaware.

“***Sending Party”*** has the meaning set forth in Section 2.12(b)(1).

“***Shortfall Amount***” has the meaning set forth in Section 4.5(e).

“***Standstill Period***” has the meaning set forth in Section 2.12(b)(2).

“***Subject Property***” means the property of the Company [that is the subject of the Designated Smart Contract].

“***Subscription Agreement***” means a Subscription Agreement in the form of Exhibit A or such other form as is determined by the Administrative Member to be acceptable.

“***Syndicate***” means Syndicate Inc., a Delaware corporation.

“***Transfer***” means, with respect to an Interest, the sale, assignment, transfer, other disposition, pledge, hypothecation or other encumbrance, whether direct or indirect, voluntary, involuntary or by operation of law, and whether or not for value, of that Interest. Transfer includes any transfer by gift, devise, intestate succession, sale, operation of law, upon the termination of a trust, because of or in connection with any property settlement or judgment incident to a divorce, dissolution of marriage or separation, by decree of distribution or other court order or otherwise.

“***Treasury Regulations***” means the income tax regulations, including temporary regulations, promulgated by the United States Treasury Department under the Code, as such regulations may be amended from time to time (including corresponding provisions of superseding regulations).

“***40 Act***” has the meaning set forth in Section 8.4(c).

# ORGANIZATIONAL MATTERS

## **Name**. The name of the Company is set forth on the cover page of this Agreement. The business of the Company may be conducted under that name or under any other name that the Members may determine.

## **Term**. The Parties hereto as of the Effective Date, by execution of this Agreement and the filing of the Certificate of Formation, hereby form the Company as a limited liability company under and pursuant to the Act as of the Effective Date. The term of the Company commenced on the Effective Date and will continue in full force and effect until the Company is terminated pursuant to Article X.

## **Member Information**. Each Member may be required by the Company, at any time, to provide basic Know Your Customer (KYC) information, such as copy of national ID, name, proof of address, Form W-9, among others, in the event where: (a) the Company desires to obtain a bank account or (b) the Company is legally required to provide such information.

## **Office and Agent**. The Company will maintain its principal office at a place as the Administrative Member may determine from time to time. The Administrative Member will notify the Members of any change in principal office of the Company. The Registered Agent and the address of the registered office of the Company in the State of Delaware as of the Effective Date is set forth in the Certificate of Formation. The Administrative Member may change the identity of the Registered Agent and the Company’s registered office in accordance with the Act. The Administrative Member will notify the Members of any change in the identity of the Registered Agent or the location of the Company’s registered office in the State of Delaware.

## **Purpose of the Company**. The Company has been created to [\_\_\_\_] and the purpose of the Company shall be to engage in the foregoing and in any and all lawful activities and transactions as may be necessary, advisable, or desirable, as determined by the Administrative Member, in its sole discretion, to carry out the foregoing or any reasonably related activities.

## **Intent**. It is the intent of the Members that the Company will be treated as a “partnership” for federal income tax purposes.[[1]](#footnote-1) It also is the intent of the Members that the Company not be operated or treated as a “partnership” for purposes of Section 303 of the United States Bankruptcy Code.

## **Qualification**. The Administrative Member shall cause the Company to qualify to do business in each jurisdiction where qualification is required. The Administrative Member has the power and authority to execute, file and publish all certificates, notices, statements or other instruments necessary to permit the Company to conduct business as a limited liability company in all jurisdictions where the Company elects to do business.

## **Interest Register**. The Administrative Member will maintain a register (the (“***Interest Register***”) that sets forth the name, contact information, Commitment, Capital Contributions and Interest of each Member. The Interest Register will be available to each Member at request of such Member. Each Member shall promptly provide, upon request, the Administrative Member with the information required to be set forth for that Member on the Interest Register and shall promptly notify the Administrative Member of any change to that information. The Administrative Member, or a designee of the Administrative Member, shall update the Interest Register from time to time as necessary to accurately reflect the information therein as known by the Administrative Member, including, without limitation, admission of new Members, but no update will constitute an amendment for purposes of Section 14.1. Any reference in this Agreement to the Interest Register will be deemed to be a reference to the Interest Register as amended and in effect from time to time.

## **Maintenance of Separate Existence**. The Company will do all things necessary to maintain its limited liability company existence separate and apart from the existence of each Member, any Affiliate of a Member and any Affiliate of the Company, including maintaining the Company’s books and records on a current basis separate from that of any Affiliate of the Company or any other Person. In furtherance of the foregoing, the Company must (a) maintain or cause to be maintained by an agent under the Company’s control physical possession of all its books and records (including, as applicable, storage of electronic records online or in “cloud” services), (b) account for and manage all of its liabilities separately from those of any other Person, and (c) identify separately all its assets from those of any other Person.

## **Title to Assets**. All assets of the Company will be deemed to be owned by the Company as an entity, and no Member, individually, will have any direct ownership interest in those assets. Each Member, to the extent permitted by applicable law, hereby irrevocably waives its rights to a partition of the assets of the Company 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.

## **Events Affecting a Member**. 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 will not dissolve the Company and, upon the happening of any such event, the affairs of the Company will be continued without dissolution by the remaining Members or any successor entities thereto.

## **Effects of Designated Smart Contract**.

### **General Binding Effect**.

#### Smart Contract Results Binding. Subject to Section 2.12(b) the results of operation of the Designated Smart Contract shall be determinative of the rights and obligations of, and shall be final, binding upon and non-appealable by, each of the Parties with respect to the Subject Property.

#### Smart Contract Trumps Other Contracts. Except as set forth in Section 2.12(b), if there is any conflict or inconsistency between: (A) this Agreement or any other Contract between or involving the Parties; and (B) any Contract created or implied by, or embodied in, the machine, assembly or other code, or the results of operation, of the Designated Smart Contract, then the Contract referred to in the preceding clause “(B)” shall prevail over the Contract referred to in the preceding clause “(A).”

#### Prohibition of Transfers. Each Party shall not, without the prior written consent of all of the other Parties, directly or indirectly take or attempt to take any of the following actions:

##### convey any of the Subject Property other than such Party’s Distributed Subject Property it being understood that for a Party to “convey” any of the Subject Property means for such Party to or enter into any Contract that may obligate such Party to: (1) create, perfect or enforce any lien on, (2) pledge, hypothecate, grant an option or derivative security with respect to or (3) convey, sell, transfer or dispose of such Subject Property or any right or interest of a Party to or in such Subject Property; or

##### cause, encourage or facilitate, a Material Adverse Exception Event.

### **Exception Handling**. Notwithstanding anything to the contrary set forth in Section 2.12(a), if there is a Material Adverse Exception Event, then the rules and procedures set forth in this Section 2.12(b) shall determine the rights and obligations of the Parties relating to the Subject Property.

#### Exception Notice. If any Party becomes aware that there is a Material Adverse Exception Event, such Party (the “***Sending Party***”) shall deliver to the other Parties (the “***Receiving Parties***”) a notice (an “***Exception Notice***”) signed by such Party:

##### certifying that the Sending Party believes in good faith that there is a Material Adverse Exception Event;

##### describing in reasonable detail the events, facts, circumstances and reasons forming the basis of such belief;

##### describing in reasonable detail any proposal by the Sending Party of the actions to be taken, the agreements to be entered into, and the remedies to be sought by the Parties in response to the Material Adverse Exception Event (an “***Exception Handling Proposal***”);

##### including copies of any written evidence or other material written information, and summaries of any other evidence, relevant to, and material for the consideration of, the Material Adverse Exception Event and the other matters referred to in the Exception Notice; and

##### containing a representation by the Sending Party, made to and for the benefit of the Receiving Parties with the understanding that the Receiving Party will rely thereon, that, to the Sending Party’s knowledge, the certification and statements made pursuant to the preceding clauses “(A)” and “(B)” are accurate as of the date of the Exception Notice, and, considered collectively, do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances in which they were made, not misleading.

#### Exception Standstill. During the period commencing upon the earlier of any Party becoming aware that there is a Material Adverse Exception Event or being delivered an Exception Notice and ending with the Parties entering into an Exception Handling Addendum, agreeing that no Material Adverse Exception Event has occurred or receiving a final decision of an arbitrator in accordance with Section 2.12(b)(3) (the “***Standstill Period***”), such Party shall: (A) treat all of the Distributed Subject Property of such Party that may have been transferred to such Party as a result of the Material Adverse Exception Event as if it were Subject Property; and (B) deposit and maintain such Distributed Subject Property in a segregated Account Address to be treated, to the extent permitted by applicable legal requirements, as a custodial trust held for the benefit of the other Parties.

#### Determination of Exception Handling.

##### The term “***Exception Handling Addendum***” refers to an addendum to this Agreement approved by a Majority in Interest which sets forth a description of the Material Adverse Exception Event and the actions to be taken, the agreements to be entered into, and the remedies to be sought in response thereto. Each Exception Handling Addendum shall automatically and without further action of the Parties be deemed incorporated into and to form a part of this Agreement.

##### Notwithstanding Section 2.14(b)(3)(A), if the Sending Party has provided an Exception Handling Proposal, and no Receiving Party disputes the existence of the Material Adverse Exception Event described in the Exception Notice or objects to the terms of the Exception Handling Proposal included in the Exception Notice within [3] Business Days after delivery of the Exception Notice, then the Exception Handling Proposal shall be deemed to have been approved by all Parties as the Exception Handling Addendum.

##### If a Receiving Party disputes the existence of a Material Adverse Exception Event, or does not wish to accept all or any part of the Exception Handling Proposal included in the Exception Notice, if any, then the Receiving Party shall promptly (but in any event within [3] Business Days of delivery of the Exception Notice) deliver a written notice of such non-acceptance (an “***Exception Objection Notice***”) to the Sending Party and each other Receiving Party. The Exception Objection Notice shall include the same categories of information, statements, evidence and representations and warranties as would be required for an Exception Notice, mutatis mutandis, and the basis for the objection to the Exception Handling Proposal.

##### If any Receiving Party delivers a timely Exception Objection Notice, then during the continuous 30-day period beginning on the date such Exception Notice is delivered to the other Parties (the “***Negotiation Period***”), the Parties shall use commercially reasonable efforts to negotiate in good faith to agree upon the existence or non-existence of a Material Adverse Exception Event and the Exception Handling Addendum to be approved in response to such Material Adverse Exception Event.

##### If the Parties fail to reach an agreement resulting in an Exception Handling Addendum during the Negotiation Period (or a determination that no Material Adverse Exception Event has occurred), then any Party may initiate an arbitration action to resolve the issues in accordance with the procedures set forth in Section 14.7; provided the decision of the arbitrators shall include, among any other determinations, a determination of the treatment of any Distributed Subject Property and whether to extend, modify or terminate the covenants applying to the Distributed Subject Property during the Standstill Period.

# Membership Capital; CAPITAL ACCOUNTS

## **Membership Capital**. Upon each Closing, each participating Member shall make a Capital Contribution in an amount equal to its accepted Subscription Amount as set forth in its Subscription Agreement (its “***Commitment***”) in exchange for an Interest.

## **No Further Capital Contributions**. No Member will be required to make Capital Contributions in the aggregate in excess of that Member’s then accepted Commitment or lend money to the Company.

## **In-Kind Contributions**. In the sole discretion of the Administrative Member, Capital Contributions can be made via non-cash assets, such as Portfolio Company Securities or Digital Assets. Non-cash assets will be valued at their Net Fair Market Value on the date of contribution.

## **Capital Accounts**.

### A separate capital account will be established and maintained for each Member (“***Capital Account***”) reflecting each Member’s Interest in the Company.

### The Capital Accounts of Members will be maintained in accordance with the rules of Section 704(b) of the Code and the related Treasury Regulations (including Section 1.704-1(b)(2)(iv)). The Capital Accounts will be adjusted by the Administrative Member 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 Administrative Member determines that the adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company, and at other times as the Administrative Member may determine is necessary or appropriate to reflect the relative economic interests of the Members. In determining Fair Market Value of an asset, the provisions of Section 1.704-1 of the Treasury Regulations shall be applied.

### If any Interest is Transferred pursuant to the terms of this Agreement, the transferee will succeed to the Capital Account and the respective Interest of the transferor to the extent the Capital Account and Interest is attributable to the Interests so Transferred.

## **Interest on Capital**. No Member will be entitled to receive any interest on its Capital Contributions or Capital Account.

## **Return of Capital Contributions**. Except as otherwise provided in this Agreement, no Member has any right to withdraw or reduce its Capital Contribution or Commitment.

## **No Priorities of Members**. Subject to the provisions of this Agreement, no Member will have a priority over any other Member 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.

# MEMBERS

## **Admission of Members.**

### Except in connection with a Transfer permitted pursuant to Article VIII, only individuals will be admitted to the Company as Members. The individuals who, as of the Initial Closing Date, have supplied the Company with a signed, fully completed Subscription Agreement, which has been accepted by the Administrative Member, together with an executed signature page to this Agreement and any other information that may be required pursuant to Section 12.3 (as determined in good faith by the Administrative Member) shall be admitted as Members effective as of the Initial Closing Date. [With the consent of a Majority in Interest or in the case of a Transfer permitted by Article VIII, with the consent of the Administrative Member pursuant to Section 8.3] additional Members may be admitted to the Company and existing Members may increase their Commitments from time to time on such date and upon such terms and conditions, including Closing Conditions, as determined by the Administrative Member; provided no Person shall be admitted as a Member unless and until such Person has supplied the Company with a signed, fully completed Subscription Agreement, which has been accepted by the Administrative Member, together with an executed signature page to this Agreement and any other information that may be required pursuant to Section 12.3 (as determined in good faith by the Administrative Member).

### Notwithstanding Section 4.1(a), the Company will be deemed “closed”, such that no additional Members may be admitted except in connection with a Transfer permitted by Article VIII, or increased Commitments are no longer accepted following the earliest of (i) the date the Administrative Member closes the Company, (ii) the maximum number of Members is reached (as specified by the Administrative Member), and (iii) the set maximum amount of Capital Contributions to the Company is reached (as specified by the Administrative Member). This can be seen when the closed Syndicate event is emitted for a given Syndicate address within the Syndicate smart contract.

## **Nature of Ownership**. Interests held by Members constitute personal property.

## **Dealing with Third Parties**. Unless admitted as a Member as provided in this Agreement, no Person will be considered a Member. The Company and the Administrative Member need deal only with Persons admitted as Members. The Company and the Administrative Member will not be required to deal with any other Person (other than with respect to Distributions to assignees pursuant to assignments in compliance with Article VIII) merely because of an assignment or transfer of any Interest to that Person whether by reason of the Disability of a Member or otherwise; provided, however, that any Distribution by the Company to the Person shown on the Interest Register as a Member or to its legal representatives, or to the assignee of the right to receive such Member’s Distributions as provided in this Agreement, will relieve the Company and the Administrative Member of all liability to any other Person who may be interested in that Distribution by reason of any other assignment by the Member or by reason of its Disability, or for any other reason.

## **Members are not Agents**. Pursuant to Article V of this Agreement, the management of the Company is vested in the Members as a group. No Member acting alone has any right to direct the management of the Company except as expressly authorized by the Act or this Agreement. Except as expressly authorized in this Agreement or in writing by a Majority in Interest, no Member, acting solely in the capacity of a Member, is an agent of the Company, nor does any Member, have any power or authority to bind or act on behalf of the Company in any way, to pledge its credit, to execute any instrument on its behalf or to render it liable for any purpose.

## **Expenses**.

### The Company shall maintain reserves from the assets of the Company (including Capital Contributions made by the Members) for the payment of the expenses, liabilities and obligations of the Company, including for taxes, contingent liabilities or probable losses or foreseeable expenses, in such accounts and in such amounts that the Administrative Member deems necessary or appropriate, subject to increase or reduction at the Administrative Member’s sole discretion. All organizational and operating costs and expenses of the Company will be paid by the Company (excluding any regulatory expenses, or other costs incurred by the Administrative Member in connection with its daily operations, including but not limited to salary and other payments to employees of the Administrative Member).

### The Administrative Member will, to the extent of available funds of the Company, pay or cause to be paid, all Company operating costs and expenses incurred by the Company or on its behalf, including (i) out-of-pocket expenses that are associated with disposing of Investments, including transactions not completed; (ii) extraordinary expenses, if any (such as certain valuation expenses, litigation and indemnification payments); (iii) interest on borrowed money, investment banking, financing and brokerage fees and expenses, if any; (iv) expenses associated with the Company’s tax compliance costs, tax returns and Schedules K-1, custodial, legal and insurance expenses, any taxes, fees or other governmental charges levied against the Company; (v) attorneys’ and accountants’ fees and disbursements on behalf of the Company; (vi) insurance, regulatory or litigation expenses (and damages); (vii) expenses incurred in connection with the winding up or liquidation of the Company; (viii) expenses incurred in connection with any amendments to the constituent documents of the Company, and related entities; (ix) except as set forth in Section 4.5(a), all out of pocket costs and expenses incurred by the Administrative Member in connection with its services as such to the Company; and (x) expenses incurred in connection with the distributions to the Members and in connection with any meetings of the Members called by the Administrative Member.

### If the Administrative Member determines at any time, or from time to time, that the available funds of the Company (after the drawdown of any then unfunded Commitments) are not sufficient to pay the Company’s operating costs and expenses, then the Administrative Member may, but is not required to, loan its own funds to the Company for the payment of such costs and expenses (an “***Advance***”). The Company shall reimburse the Administrative Member for any such Advance together with interest on such Advance from the date of such Advance at an annual rate of [10%]. Any such Advance, together with the interest thereon, shall be an expense of the Company and shall be paid by the Company prior to making any further Distributions. Payments by the Company shall be applied first to accrued interest on and then to the principal of such Advance. The determination to apply funds of the Company to the payment of such Advance shall be at the Administrative Member’s discretion. For the avoidance of doubt, an Advance by the Administrative Member will not constitute a Capital Contribution by the Administrative Member.

### If the Administrative Member does not make an Advance, then the Administrative Member shall notify the Members and describe in reasonable detail the operating costs and expenses requiring additional Company funds. Such notification shall also state the aggregate amount of additional Capital Contributions (“***Additional Capital Contributions***”) being requested from the Members and each Member’s pro rata share of such amount. (such a request, a “***Capital Call***”) Within 15 days following the date of such Capital Call (the “***Deadline***”), each Member may, but is not obligated to, make an Additional Capital Contribution in an amount equal to its pro rata share (based on its Interest) of the aggregate amount of the Additional Capital Contributions requested by the Administrative Member. An Additional Capital Contribution made by a Member shall be treated as having been received on the later of the Deadline with respect to the applicable Capital Call or the date on which such Additional Capital Contribution is actually made.

### If any Member (the “***Non-Contributing Member***”) fails to make any Additional Capital Contribution (or any portion thereof) requested by a Capital Call (a “***Shortfall Amount***”) by the Deadline, the Administrative Member shall notify each Member that is not a Non-Contributing Member in respect of such Capital Call (a “***Contributing Member***”) of the aggregate Shortfall Amount in writing, and each Contributing Member may elect to make a further Additional Capital Contribution in the amount of such Shortfall Amount (or a portion thereof). If more than one Contributing Member elects to make a further Additional Contribution, the Shortfall Amount shall be allocated to such Contributing Members pro rata based on their Interests, but not in excess of the actual Additional Capital Contribution such Contributing Member has elected to contribute. Such further Additional Capital Contributions shall be made within 15 days after the Deadline.

### If the Company has insufficient funds to pay its operating costs and expenses after a Capital Call and any Advances, the Administrative Member, in its discretion, may sell assets of the Company without any Consent of the Members in order to pay the Company’s operating costs and expenses.

## **Nature of Obligations between Members**. Except as otherwise required by applicable law, nothing contained in this Agreement will be deemed to constitute any Member, in that Member’s capacity as a Member, an agent or legal representative of any other Member or to create any fiduciary relationship between Members for any purpose whatsoever. Except as otherwise expressly provided in this Agreement, a Member has no authority to act for, or to assume any obligation or responsibility on behalf of, any other Member or the Company.

## **Status Under the Uniform Commercial Code**. All Interests will be securities governed by Article 8 of the Uniform Commercial Code as in effect from time to time in the State of Delaware. The Interests are not evidenced by certificates and will remain not evidenced by certificates. The Company is not authorized to issue certificated Interests. The Company will record all Transfers of Members’ Interests made in accordance with Article VIII of this Agreement in the Interest Register.

# MANAGEMENT AND CONTROL OF THE COMPANY

## **Management.**

### Management of the Company is vested in the Members. Except for those matters delegated to the Administrative Member pursuant to this Agreement, the Members, acting by Majority in Interest (or such greater percentage specified in this Agreement with respect to a specified matter), have the exclusive management and control of the Company and its business and affairs, including all decisions related to the acquisition and disposition of Investments or otherwise required to be made by the Company as the holder of an Investment. Except as otherwise provided in this Agreement and subject to the provisions of the Act, the Administrative Member has all power and authority to take all actions necessary to execute the decisions made by a Majority in Interest or otherwise delegated to it under this Agreement.

### A [Majority in Interest] of the Members may at any time remove the Person then serving as the Administrative Member. The Administrative Member may also at any time, upon not less than 30 days prior notice, resign as the Administrative Member. The Members, by Majority in Interest, may also appoint an alternate Administrative Member to act on behalf of the Company and the Members if the Administrative Member is temporarily unable to serve or is unwilling to serve in any particular circumstance. When so acting, the alternative Administrative Member shall have all the powers and authority delegated to the Administrative Member. Any vacancy in the position of the Administrative Member (whether from the removal, resignation or death of such Administrative Member or otherwise) shall be automatically filled by the then appointed alternate Administrative Member, or if none, by the Members acting by a Majority in Interest.

### The Members may agree to (i) delegate any matters or actions authorized to be taken by the Members under this Agreement to the Administrative Member, specified Member(s) or third Persons and (ii) appoint any Persons, with titles as the Members may select, to act on behalf of the Company, with power and authority as the Members may delegate from time to time. Any delegation by the Members may be rescinded at any time by a Majority in Interest. If a Person is appointed as an officer of the Company, then, unless otherwise specified in such appointment, such Person shall have the authority and duties customarily held by an officer of a Delaware corporation with such title.

### Third parties dealing with the Company or its assets shall not be required to investigate the authority of the Administrative Member or whether any approval of the Members is required or has been obtained with respect to any matter and may rely conclusively upon any certificate of the Administrative Member to the effect that it is authorized to and is acting on behalf of the Company as to any matter relating to the Company or its assets and Members. The Administrative Member shall have the authority to execute any agreements, instruments, documents and certificates on behalf of the Company as its authorized signatory and the signature of the Administrative Member, when acting pursuant to this Article V, will be sufficient to bind the Company.

## **Duties and Obligations of the Administrative Member**. In addition to the duties and services of the Administrative Member elsewhere in this Agreement,

### The Administrative Member shall take all action that may be necessary or appropriate for the continuation of the Company’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 authority to do business is, in the judgment of the Administrative Member, necessary or advisable.

### The Administrative Member shall prepare or cause to be prepared and shall file on or before the due date (or any extension) any federal, state or local tax returns required to be prepared or filed by the Company.

### To the extent of available funds of the Company, the Administrative Member shall cause the Company to pay any taxes or other governmental charges levied against or payable by the Company; provided, however, that the Administrative Member will not be required to cause the Company to pay any tax so long as the Administrative Member or the Company is in good faith and by appropriate legal proceedings contesting the validity, applicability or amount the tax and the contest does not materially endanger any right or interest of the Company.

### Notwithstanding any other provision of this Agreement or otherwise applicable provision of law or equity, whenever in this Agreement, the Administrative Member is permitted or required to make a decision (i) in its “sole discretion” or “discretion” or under a grant of similar authority or latitude, the Administrative Member will be entitled to consider only those interests and factors as it desires, including its own interests, and will, 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 Company or the Members, or (ii) in its “good faith” or under another expressed standard, the Administrative Member shall act under that express standard and will not be subject to any other or different standards. Unless otherwise expressly stated, for purposes of this Section 5.2(d), the Administrative Member will be deemed to be permitted or required to make all decisions hereunder in its sole discretion.

## **No Fiduciary Duty**. To the fullest extent permitted by applicable law, no Member, including the Administrative Member when acting as such, owes any fiduciary duties of any kind whatsoever to the Company, or to any of the Members, including, but not limited to, the duties of due care and loyalty, whether those duties were established as of the date of this Agreement or any time hereafter, and whether established under common law, at equity or legislatively defined. It is the intention of the Members and the Company that those fiduciary duties be affirmatively eliminated to the fullest extent permitted by Delaware law, including the Act, and the Members hereby waive any rights with respect to those fiduciary duties. Notwithstanding the foregoing, the Members have the duties, liabilities and obligations expressly set forth in this Agreement.

## **The Members May Engage in Other Activities.** Subject to the terms of any other agreement between a Member and the Company, no Member (including the Administrative Member) is obligated to devote all of its time or business efforts to the affairs of the Company, *provided* that the Administrative Member shall devote the time, effort and skill as it determines in its sole discretion may be necessary or appropriate for the responsibilities delegated to it under this Agreement. Subject to the foregoing, any Member may have other business interests and may engage in other activities in addition to those related to the Company. The Members and their respective Affiliates may acquire or possess interests in a Portfolio Company and the interests may be of a different class or type, with different rights and preferences, than those held by the Company. Likewise, the Members and their respective Affiliates may acquire or possess interests in other companies or business ventures that are competitive with a Portfolio Company or the Company. Neither the Company nor any Member will have the right, by virtue of this Agreement, to share or participate in other investments or activities of any other Member or to the income derived therefrom.

# ALLOCATIONS OF NET INCOME AND NET LOSS

## **Allocation of Net Income and Net Loss.** Except as otherwise provided in this Agreement, Net Income and Net Loss (including individual items of profit, income, gain, loss, credit, deduction and expense) of the Company will be allocated among the Members in a manner such that the Capital Account balance of each Member, immediately after making that allocation, is, as nearly as possible, equal (proportionately) to the Distributions that would be made to that Member pursuant to Section 10.4 if the Company were dissolved or terminated, its affairs wound up and its assets sold for cash equal to their Fair Market Value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Fair Market Value of the assets securing that liability), and the net assets of the Company were distributed in accordance with Section 10.4 to the Members immediately after making that allocation, adjusted for applicable special allocations, computed immediately prior to the hypothetical sale of assets.

## **Allocation Rules.** In the event that Members are issued Interests on different dates, the Net Income or Net Loss allocated to the Members for each Fiscal Year during which Members receive Interests will be allocated among the Members in accordance with Section 706 of the Code, using any convention permitted by law and selected by the Administrative Member. 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 other items will be determined on a daily, monthly or other basis, as determined by the Administrative Member using any method that is permissible under Section 706 of the Code and the Treasury Regulations. Except as otherwise provided in this Agreement, all individual items of Company income, gain, loss and deduction will be divided among the Members in the same proportions as they share Net Income and Net Loss for the Fiscal Year or other period in question.

## **Limitation on Allocation of Net Losses**. There will be no allocation of Net Losses to any Member to the extent that the allocation would create a negative balance in the Capital Account of that Member (or increase the amount by which that Member’s Capital Account balance is negative).

## **General Tax Allocations**. Except as otherwise provided in this Section 6.4, the taxable income or loss of the Company will be allocated pro rata among the Members associated therewith 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 Member for Capital Account purposes; provided, that in the event there is a difference between the “tax book” value of a Company asset and the asset’s adjusted tax basis at the time of the asset’s contribution or revaluation pursuant to this Agreement, all items of tax depreciation, cost recovery, amortization, and gain or loss with respect to such asset shall be allocated among the Members to take into account the disparities between the “tax book” values and the adjusted tax basis with respect to such properties in accordance with any method selected by the Administrative Member that is permitted by the Treasury Regulations promulgated under Sections 704(b) and 704(c) of the Code.

## **Special Tax Allocations.**

### *Minimum Gain Chargeback.* In the event there is a net decrease in the Company Minimum Gain during any Fiscal Year, the minimum gain chargeback provisions described in Sections 1.704-2(f) and (g) of the Treasury Regulations will apply.

### *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 will apply.

### *Qualified Income Offset.* In the event a Member 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 Member’s Capital Account, the “qualified income offset” provisions described in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations will apply.

### *Nonrecourse Deductions.* Nonrecourse Deductions will be allocated in accordance with and as required in the Treasury Regulations.

### *Member Nonrecourse Deductions.* Member Nonrecourse Deductions will be allocated to the Members as required in Section 1.704-2(i)(1) of the Treasury Regulations.

### *Intention.* The special allocations in this Section 6.5 are intended to comply with certain requirements of the Treasury Regulations and will be interpreted consistently. It is the intent of the Members that any special allocation pursuant to this Section 6.5 will be offset with other special allocations pursuant to this Section 6.5. Accordingly, special allocations of Company income, gain, loss or deduction will be made in such manner so that, in the reasonable determination of the Administrative Member, taking into account likely future allocations under this Section 6.5, after those allocations are made, each Member’s Capital Account is, to the extent possible, equal to the Capital Account it would have been were this Section 6.5 not part of this Agreement.

### *Recapture Items****.*** In the event that the Company has taxable income in any Fiscal Year that is characterized as ordinary income under the recapture provisions of the Code, each Member’s distributive share of taxable gain or loss from the sale of Company assets (to the extent possible) will include a proportionate share of this recapture income equal to that Member’s share of prior cumulative depreciation deductions with respect to the assets which gave rise to the recapture income.

### *Tax Credits and Similar Items.* Allocations of tax credits, tax credit recapture, and any items related thereto will be allocated in those items as determined by the Administrative Member considering the principles of Treasury Regulation Section 1.704-1(b)(4)(ii).

### *Consistent Treatment.* All items of income, gain, loss, deduction and credit of the Company will be allocated among the Members for federal income tax purposes in a manner consistent with the allocation under this Article VI. Each Member is aware of the income tax consequences of the allocations made by this Article VI and hereby agrees to be bound by the provisions of this Article VI in reporting its share of Company income and loss for income tax purposes. No Member will report on its tax return any transaction by the Company, any amount allocated or distributed from the Company or contributed to the Company inconsistently with the treatment reported (or to be reported) by the Company on its tax return nor take a position for tax purposes that is inconsistent with the position taken by the Company.

### *Modifications to Preserve Underlying Economic Objectives.* If, in the opinion of counsel to the Company, 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 Article VI it necessary or prudent to preserve the underlying economic objectives of the Members as reflected in this Agreement, the Administrative Member will make the minimum modification necessary to achieve that purpose.

## **Allocation of Excess Nonrecourse Liabilities**. “Excess nonrecourse liabilities” of the Company as used in Section 1.752-3(a)(3) of the Treasury Regulations will first be allocated among the Member pursuant to the “additional method” described in that section and then in accordance with the manner in which the Administrative Member expects the nonrecourse deductions allocable to those liabilities will be allocated.

## **Allocations in Respect of a Transferred Interest**. Except as otherwise provided in this Agreement, amounts of Net Income, Net Loss and special allocations allocated to the Members will be allocated among the appropriate Members in proportion to their respective Interests. If there is a change in any Member’s Interest for any reason during any Fiscal Year, each item of income, gain, loss, deduction or credit of the Company for that Fiscal Year will be assigned pro rata to each day in that Fiscal Year in the case of items allocated based on Interests, and the amount of that item so assigned to that day will be allocated to the Member based upon that Member’s Interest at the close of that day. Notwithstanding the immediately preceding sentence, the net amount of gain or loss realized by the Company in connection with a sale or other disposition of property by the Company will be allocated solely to the Members having Interests on the date of that sale or other disposition.

## **Allocations in Year of Liquidation Event**. Notwithstanding anything else in this Agreement to the contrary, the Parties intend for the allocation provisions of this Article VI to produce final Capital Account balances of the Members that will permit liquidating Distributions to be made pursuant to the order set forth in Section 10.4. To the extent that the allocation provisions of this Article VI would fail to produce the final Capital Account balances, the Administrative Member may elect, in its sole discretion, to (a) amend those provisions if and to the extent necessary to produce that result and (b) reallocate income and loss of the Company for prior open years (including items of gross income and deduction of the Company for those years) among the Members to the extent it is not possible to achieve that result with allocations of items of income (including gross income) and deduction for the current year and future years, as approved by the Administrative Member. This Section 6.8 will control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or related items by the Internal Revenue Service or any other taxing authority. Notwithstanding any provision of this Agreement to the contrary, the Administrative Member will have the power to amend this Agreement without the Consent of the other Members, as it reasonably considers advisable, to make the allocations and adjustments described in this Section 6.8. To the extent that the allocations and adjustments described in this Section 6.8 result in a reduction in the Distributions that any Member will receive under this Agreement compared to the amount of the Distributions that Member would receive if all those Distributions were made pursuant to the order set forth in Section 10.4, the Company may make a guaranteed payment (within the meaning of Section 707(c) of the Code) to that Member (to be made at the time that Member would otherwise receive the Distributions that have been reduced) to the extent that payment does not violate the requirements of Sections 704(b) of the Code or may take other action as reasonably determined by the Administrative Member to offset that reduction.

# DISTRIBUTIONS

## **Generally**.

### The Company will first use available assets to pay or set aside reserves for the payment of the costs, expenses, debts, liabilities and obligations of the Company as set forth in Section 4.5.

### Subject to Sections 7.4 and 7.5, the Company will make Distributions, at such times, in such amounts and of such types (i.e. in cash or in kind) as determined by a Majority in Interest. Distributions shall be made to the Members associated therewith *pro* *rata* in accordance with their respective Interests.

### For the avoidance of doubt, prior to the dissolution of the Company pursuant to Section 10.1, the Company will not make Distributions in kind except to the extent of Liquidity Event Proceeds without the consent of the Administrative Member. Any expenses relating to brokerage commissions, escrow fees, clearing and settlement charges, custodial fees, and any other costs relating to the event giving rise to such Liquidity Event Proceeds and the receipt and Distribution of Liquidity Event Proceeds by the Company (“***Distribution Expenses***”) will be paid by the Company prior to any Distributions. The amount of Liquidity Event Proceeds distributable to the Members will be net of any Distribution Expenses.

## **Non-Cash Distributions**. Whenever a Distribution provided for in this Section 7.2 is payable in property other than cash, the value of the Distribution will be deemed to be its Net Fair Market Value as of the date of Distribution. The Capital Accounts of the Members will be adjusted accordingly as the result of any Distribution in kind.

## **Return of Distributions**. Any Member receiving a Distribution in violation of the terms of this Agreement shall return that Distribution (or cash equal to the Net Fair Market Value of any property so distributed, determined as of the date of Distribution) promptly following the Member’s receipt of a request to return the Distribution from the Administrative Member. No third party will be entitled to rely on or enforce the obligations to return Distributions set forth in this Agreement or to demand that the Company or any Member make any request for any such return.

## **Form of Distribution**. Distributions pursuant to this Article VII will be comprised of (a) assets and securities constituting Liquidity Event Proceeds, and/or (b) Distributable Cash. Notwithstanding the foregoing, no Distribution of securities will be made to any Member to the extent that Member would be prohibited by applicable law from holding those securities. Unless otherwise agreed to by the Administrative Member, Distributions will be made to its respective brokerage account; provided that any Distribution of Distributable Cash may, in the sole discretion of the Administrative Member, be made, in whole or in part, to the account from which such Member’s Capital Contributions were paid.

## **Amounts Withheld**. Any amounts withheld with respect to a Member pursuant to any federal, state, local or foreign tax law from a Distribution by the Company to the Member will be treated as paid or distributed, as the case may be, to the Member for all purposes of this Agreement. In addition, the Company may withhold from Distributions amounts deemed necessary, in the sole discretion of the Administrative Member, to be held in reserve for payment of accrued or foreseeable permitted expenses of the Company. Each Member hereby agrees to indemnify and hold harmless the Company from and against any liability with respect to income attributable to or Distributions or other payments to that Member (including, without limitation, any “imputed underpayment” within the meaning of Section 6225 of the Code attributable to such Member, as determined by the Administrative Member). Any other amount that the Administrative Member determines is required to be paid by the Company to a taxing authority with respect to a Member pursuant to any federal, state, local or foreign tax law in connection with any payment to or tax liability (estimated or otherwise) of the Member shall be treated as a loan from the Company to that Member. If that loan is not repaid within 30 days from the date the Administrative Member notifies that Member of that withholding, the loan will bear interest from the date of the applicable notice to the date of repayment at a rate at the lesser of (a) [10]% or (b) the maximum legal interest rate under applicable law, compounded annually. In addition to all other remedies the Company may have, the Company may withhold Distributions that would otherwise be payable to that Member and apply that amount toward repayment of the loan and interest. Any payment made by a Member to the Company pursuant to this Section 7.5 will not constitute a Capital Contribution. The obligations of a Member pursuant to this Section 7.5 shall survive the termination, dissolution, liquidation and winding up of the Company and the withdrawal of such Member from the Company or transfer of its interest.

## **Member Giveback**. Except as required by applicable law, Section 7.3 or Section 7.5, no Member will be required to repay to the Company, any other Member, or any creditor of the Company, all or any part of the Distributions made to that Member.

## **No Creditor Status**. A Member will not have the status of, and is not entitled to the remedies available to, a creditor of the Company with regard to Distributions that the Member becomes entitled to receive pursuant to this Agreement and the Act.

## **Limitations on Distributions**. Notwithstanding any provision to the contrary contained in this Agreement, no Distribution shall be made to any Member on account of its Interest if the Distribution would violate the Act or other applicable law.

# TRANSFERS

## **Transfers**. Except as otherwise expressly provided in this Article VIII, no Member may Transfer all or any portion of its Interests without (a) providing the Administrative Member with a written opinion of counsel that such Transfer would not be considered a securities transaction under applicable securities laws if required by the Administrative Member; (b) compliance with the provisions of Section 8.4; (c) the approval of the Administrative Member; and (d) the approval of such Members (which may include the Administrative Member) as represents two-thirds of the aggregate Interests in the Company. Any attempted Transfer in violation of this Article VIII will be null and void *ab initio* and will not bind the Company.

## **Permitted Transfers**. The consent of the Members pursuant to Section 8.1(d) will not be required for any Transfer (a) by a Member who is an individual to an entity controlled (which for this purpose shall require that the Member own more than 50% of the voting control and equity securities of that entity) by that Member and all of the remaining beneficial ownership of such entity is owned by the Family Members of such Member or (b) by a Member to another Member (each transferee, a “***Permitted Transferee***”); provided, however, that unless otherwise consented to by the Administrative Member, in connection with a Transfer permitted pursuant to clause (a) of this Section 8.2, the transferring Member shall remain jointly and severally liable for the obligations of the Permittee Transferee under this Agreement.

## **Admission of Transferee as a Member**. A Transfer permitted by this Article VIII will only transfer the rights of an assignee as set forth in Section 8.6 unless (a) the transferee is a Member or is admitted as a Member with the consent of the Administrative Member and otherwise complies with Section 4.1[[2]](#footnote-2) and (b) payment to the Company of a transfer fee in cash which is sufficient, in the Administrative Member’s sole determination, to cover all reasonable expenses incurred by the Company in connection with the Transfer and admission of the transferee as a Member.

## **Additional Restrictions**. Notwithstanding any other provision of this Agreement, no Transfer of an Interest (including any Transfer of an interest in Company profits, losses or distributions) shall be permitted unless the Administrative Member otherwise consents, in its sole discretion, if such Transfer would cause the Company (a) to have more than 100 partners, as determined for purposes Section 7704 of the Code; (b) to be treated as a publicly traded partnership within the meaning of Section 7704 of the Code; (c) to be required to be registered as an “investment company” under the Investment Company Act of 1940 (the “***40 Act***”); (d) to hold any “plan assets” under the Employee Retirement Income Security Act of 1974 (“***ERISA***”), or (e) in the Administrative Member’s sole determination, to be subject to any burdensome regulatory or reporting requirements, any adverse tax or fiscal consequences or otherwise in breach of any applicable law or agreement to which the Company is a party.

## **Involuntary Transfer of Interests**. In the event of any involuntary transfer of Interests to a Person, that Person will have only the rights of an assignee set forth in Section 8.6 with respect to those Interests.

## **Rights of Assignee**. An assignee has no right to vote, receive information concerning the business and affairs of the Company and is entitled only to receive Distributions and allocations attributable to the Interest held by the assignee as determined by the Member and in accordance with this Agreement.

## **Enforcement**. The restrictions on Transfers contained in this Agreement are an essential element in the ownership of an Interest. Upon application to any court of competent jurisdiction, the Administrative Member will be entitled to a decree against any Person violating or about to violate those restrictions, requiring their specific performance, including those prohibiting a Transfer of all or a portion of its Interests.

## **Death or Disability of a Member**. Upon the Disability or death of a Member, the provisions of Section 18-705 of the Act shall apply.

## **Compulsory Redemption**. A Majority in Interest may, with a by notice to any Member, force the sale of all or a portion of that Member’s Interest on terms as the Administrative Member determines to be fair and reasonable, or take other action as it determines to be fair and reasonable in the event that the Administrative Member determines or has reason to believe that: (a) that Member has attempted to effect a Transfer of, or a Transfer has occurred with respect to, any portion of that Member’s Interest in violation of this Agreement; (b) continued ownership of that Interest by that Member is reasonably likely to cause any of the events set forth in Section 8.4; (c) continued ownership of that Interest by that Member may be harmful to the business or reputation of the Company or the Administrative Member; (d) any of the representations or warranties made by that Member under this Agreement or its Subscription Agreement was not true when made or has ceased to be true; (e) any portion of that Member’s Interest has vested in any other Person by reason of the bankruptcy, dissolution, incompetency or death of that Member; (f) such Member has failed to fund any Additional Capital Contribution; or (g) it would not be in the best interests of the Company, as determined by the Administrative Member in its sole discretion, for that Member to continue ownership of its Interest.

# RECORDS, REPORTS AND TAXES

## **Books and Records**. The Administrative Member will maintain all of the information required to be maintained by the Act at the Company’s principal office, with copies available at all times during normal business hours for inspection and copying upon reasonable notice by any Member or its authorized representatives for any purpose reasonably related to that Member’s status as a member of the Company, including as applicable:

### true and full information regarding the status of the business and financial condition of the Company;

### promptly after becoming available, a copy of the Company’s federal, state and local income tax returns, if any, for each Fiscal Year;

### the Interest Register;

### a copy of this Agreement and all amendments, including any Exception Handling Addendum, together with executed copies of (i) any powers of attorney and (ii) any other document pursuant to which this Agreement or any amendments have been executed or have been deemed to be executed; and

### true and full information regarding the amount of Capital Contributions by that Member and the date on which that Member became a Member.

## **Reports**.

### *Governmental Reports*. The Administrative Member will cause to be prepared and filed, at the Company’s expense, all documents and reports required to be filed with any governmental agency in accordance with the Act.

### *Tax Reports*. The Administrative Member will cause to be prepared and duly and timely filed, at the Company’s expense, all tax returns required to be filed by the Company. The Administrative Member will send or cause to be sent to each Member within [90] days after the end of each Fiscal Year, or a later date as determined in the discretion of the Administrative Member, an Internal Revenue Service Schedule K-1 with respect to the Member’s interest in the Company (or substantially similar information if an Internal Revenue Service Schedule K-1 is not required to be provided to Members).

## **Tax Elections**. Except as otherwise expressly provided in this Agreement, the Company will make any tax elections as the Administrative Member may determine. The Administrative Member may, in its sole discretion, make an election under Section 754 of the Code.

## **Partnership Representative**. The Administrative Member will be the “partnership representative” within the meaning of Code Section 6223 (the “***Partnership Representative***”). The Partnership Representative will have all of the powers and authority of a “partnership representative” under the Code. The Partnership Representative will represent the Company (at its expense) in connection with all administrative and judicial proceedings by the Internal Revenue Service or any taxing authority involving any tax return of the Company, and may expend the Company’s funds for professional services and associated costs. The Partnership Representative will provide to the Members notice of any communication to or from or agreements with a federal, state or local authority regarding any return of the Company, including a summary of the provisions.

## **Confidentiality**. All information concerning the business, affairs and properties of the Company and all of the terms and provisions of this Agreement will be held in confidence by each Member and their respective Affiliates, subject to any obligation to comply with (a) any applicable law, (b) any rule or regulation of any legal authority or securities exchange, (c) any subpoena or other legal process to make information available to the Persons entitled thereto or (d) the enforcement of that Party’s rights under this Agreement in any legal process, arbitration, as a Member, or employee, as applicable. Confidentiality will be maintained until that time, if any, as the confidential information either is, or becomes, published or a matter of public knowledge (other than as a result of a breach of this Section 9.5); provided that each Party recognizes that the privilege each has to maintain, in its sole discretion, the confidentiality of a communication relating to the transactions, including a confidential communication with its attorney or a confidential communication with a federally authorized tax practitioner under Section 7525 of the Code, is not intended to be affected by the foregoing provisions of this sentence. Notwithstanding this Section 9.5, the Administrative Member may use confidential information about the Company and the Members in data aggregation, so long as the data use does not include the disclosure of information that could reasonably be used to identify any Member.

# DISSOLUTION AND LIQUIDATION

## **Dissolution**.

### The Company. The Company will be dissolved and its affairs wound up solely upon the first to occur of any of the following:

#### the disposition (which may include by Distribution to the Members) of the final Investment of the Company;

#### the determination by a Majority in Interest to dissolve the Company; or

#### the entry of a judicial decree of dissolution of the Company pursuant to the Act.

## **Date of Dissolution**. Dissolution of the Company will be effective on the day on which the event occurs giving rise to the dissolution, but the Company will not terminate or cease to exist until the assets of the Company have been liquidated and distributed as provided in this Agreement and a Certificate of Cancellation for the Company has been filed in accordance with Section 10.8. Notwithstanding the dissolution of the Company, prior to the termination of the Company, the business of the Company and the rights and obligations of the Members will continue to be governed by this Agreement.

## **Winding Up**. Upon the occurrence of any event specified in Section 10.1, the Company will 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 Members in accordance with this Agreement. The Liquidating Trustee will be responsible for overseeing the winding up and liquidation of the Company and will cause the Company to sell or otherwise liquidate all of the Company’s assets except to the extent the Liquidating Trustee determines to distribute any assets to the Members in kind, discharge or make provision for all liabilities of the Company and all costs relating to the dissolution, winding up, and liquidation and distribution of assets, establish reserves as may be necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Members, the amounts of those reserves will be deemed to be an expense of the Company and will be deemed income to the extent it ceases to be reserved), and distribute the remaining assets to the Members, in the manner specified in Section 10.4. The Liquidating Trustee will be allowed a reasonable time for the orderly liquidation of the Company’s assets and discharge of its liabilities, so as to preserve and upon disposition maximize, to the extent possible, the value of the Company’s assets.

## **Liquidation**. The Company’s assets, or the proceeds from the liquidation of the Company’s assets, will be paid or distributed in the following order:

### first, to creditors to the extent otherwise permitted by applicable law in satisfaction of all liabilities and obligations of the Company, including expenses of the liquidation (whether by payment or the making of reasonable provision for payment), other than liabilities for which reasonable provision for payment has been made and liabilities, if any, for Distributions to Members;

### next, to the establishment of those reserves for contingent liabilities of the Company 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 Members and former Members under the Act);

### next, to Members and former Members in satisfaction of any liabilities for Distributions under the Act, if any;

### next, to the Members, on a *pro rata* in accordance with their Interests.

## **Distributions in Kind**. Any non-cash asset distributed to one or more Members will first be valued by the Administrative Member at its Fair Market Value to determine the Net Income, Loss and special allocations that would have resulted if that asset had been sold for that value, which amounts will be allocated pursuant to Article VI, and the Members’ Capital Accounts will be adjusted to reflect those allocations. The amount distributed and charged to the Capital Account of each Member receiving an interest in the distributed asset will be the Net Fair Market Value of that interest.

## **No Liability**. Notwithstanding anything in this Agreement to the contrary, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member 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 that liquidation occurs), neither that Member nor the Liquidating Trustee will have any obligation to make any contribution to the capital of the Company, and the negative balance of that Member’s Capital Account will not be considered a debt owed by that Member or any Liquidating Trustee to the Company or to any other Person for any purpose; provided, however, that nothing in this Section 10.6 will relieve any Member from any liability under any promissory note or other affirmative commitment that Member has made to contribute capital to the Company.

## **Limitations on Payments Made in Dissolution**. Except as otherwise specifically provided in this Agreement, each Member will be entitled to look only to the assets of the Company for Distributions (including Distributions in liquidation) and the Parties will have no personal liability for any Distributions.

## **Certificate of Cancellation**. Upon completion of the winding up of the Company’s affairs, the Liquidating Trustee will cause to be filed a Certificate of Cancellation, in accordance with the Act, of the Certificate of Formation.

# LIMITATION OF LIABILITY; STANDARD OF CARE; INDEMNIFICATION

## **Limitation of Liability**. Unless explicitly agreed upon, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, will be solely the debts, obligations and liabilities of the Company, and will not be those of the Members, or the Covered Persons.

## **Standard of Care; Liability**. Neither the Members nor the Covered Persons will have any personal liability whatsoever to the Company, any Member, or their Affiliates on account of that Person’s role within the Company or by reason of that Person’s acts or omissions in connection with the conduct of the business of the Company so long as that Person acts in good faith for a purpose which the Person reasonably believes to be in, or not opposed to, the best interests of the Company. Notwithstanding the preceding, nothing contained in this Agreement will protect that Person against any liability to which that Person would otherwise be subject by reason of (a) any act or omission of that Person that involves gross negligence, willful misconduct, bad faith, fraud, or willful and material breach of a material provision of this Agreement or any Subscription Agreement or any management agreement or other agreement with or for the benefit of the Company; (b) any transaction from which that Person or its Affiliate derives any improper personal benefit; or (c) a breach of any representation or warranty by such Member made in this Agreement or its Subscription Agreement.

## **Indemnification**. To the fullest extent permitted by applicable law, the Members and the Covered Persons will be entitled, out of the Company assets, to be indemnified against and held harmless from any and all liabilities, judgments, obligations, losses, damages, claims, actions, suits or other proceedings (whether civil or criminal, pending or threatened, before any court or administrative or legislative body, and as the same are accrued, in which a Member or Covered Person may be or may have been involved as a party or otherwise or with which he, she or it may be or may have been threatened (a “***Proceeding***”)) and reasonable costs, expenses and disbursements (including legal and accounting fees and expenses) of any kind and nature whatsoever (collectively, “***Covered Losses***”) that may be imposed on, incurred by, or asserted at any time against a Member or Covered Person (whether or not indemnified against by other parties) in any way related to or arising out of this Agreement, the administration of the Company, or the action or inaction of a Member or Covered Person (including actions or inactions pursuant to Article X on the Company’s dissolution or termination) or under contracts with the Company, except that the Members and Covered Persons will not be entitled to indemnity for Covered Losses with respect to any matter as to which such Member or Covered Person has been finally adjudicated in any action, suit, or other proceeding, or otherwise by a court of competent jurisdiction, to have committed an act or omission involving his, her or its own gross negligence, willful misconduct, bad faith, fraud, willful and material breach of a material provision of this Agreement or any Subscription Agreement or any management agreement or other agreement with or for the benefit of the Company, or from which such Person derived an improper personal benefit. The indemnities contained in this Article XI will survive the termination of this Agreement.

## **Contract Right; Expenses**. The right to indemnification conferred in this Article XI will be a contract right. A Member’s or a Covered Person’s right to indemnification under this Agreement includes the right to require the Company to advance the expenses incurred by that Member or Covered Person in defending any Proceeding in advance of its final disposition subject to an obligation to return the amount so advanced if it is ultimately determined that the Member or Covered Person has not met the standard of conduct required for indemnification.

## **Nonexclusive Right**. The right to indemnification and the payment of expenses incurred in defending a Proceeding in advance of its final disposition conferred in this Article XI will not be exclusive of any other right which any Person may have or later acquire under any statute or agreement, or under any insurance policy obtained for the benefit of any Administrative Member, Partnership Representative or officer of the Company (it being understood that if any such insurance policy is obtained, it shall be at the expense of the Company).

## **Severability**. If any provision of this Article XI is determined to be unenforceable in whole or in part, that provision will nonetheless be enforced to the fullest extent permissible, it being the intent of this Article XI to provide indemnification to all Persons eligible under this Agreement to the fullest extent permitted by applicable law.

## **Insurance**. The Administrative Member may cause the Company to purchase and maintain insurance on behalf of any Covered Person who is or was an agent of the Company against any liability asserted against that Covered Person capacity as an agent.

# REPRESENTATIONS, WARRANTIES AND COVENANTS

## **Representations and Warranties of the Members**. Each Member is fully aware that the Company and the Administrative Member are relying upon the truth and accuracy of the following representations by each of the Members. Each of the Members hereby represents, warrants and covenants to the Administrative Member and the Company that:

### (i) In the case of any entity, 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 Agreement in accordance with its terms or (ii) in the case of an individual, he or she has the full legal capacity to enter into and to perform this Agreement in accordance with its terms;

### This Agreement is a legal, valid and binding obligation of that Member, enforceable against that Member 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;

### Its Interest is being acquired for its own account, for investment and not with a view to the distribution or resale, subject, however, to any requirement of law that the disposition of its property will at all times be within its control;

### It is not a participant-directed defined contribution plan;

### It is not an *“investment company”* registered under the 40 Act;

### It is not a *“benefit plan investor”* under Section 3(42) of ERISA and its ownership of an Interest does not cause the Company to hold “*plan assets*” under ERISA;

### It will conduct its business and affairs (including its investment activities) in a manner that it will be able to honor its obligations under this Agreement;

### It understands and acknowledges that the investments contemplated by the Company involve a high degree of risk. The Member has substantial experience in evaluating and investing in Portfolio Company Securities and is capable of evaluating the merits and risks of its investments, including an investment in its Interest, and has the capacity to protect its own interests. The Member, by reason of its business or financial experience, has the capacity to protect its own interests in connection with Investments. The Member has sufficient resources to bear the economic risk of its investment in its Interest and the underlying Investments, including any diminution in value, and will solely bear such economic risk.;

### It has undertaken its own independent investigation, and formed its own independent business judgment, based on its own conclusions, as to the merits of investing in the Company and any Investments to be acquired by the Company. The Member is not relying and has not relied on the Administrative Member or any of their Affiliates for any evaluation or other investment advice in respect of any Investments or the advisability of investing in the Company and has had all questions answered and requests fulfilled that the Member has deemed to be material to the Member’s decision to invest in the Company.

### It has had the opportunity to consult with legal counsel of its choice and has read and understands this Agreement.

### It has received and carefully reviewed all code for the Designated Smart Contract sufficiently in advance of signing this Agreement. It is a Person who is, or in connection with this Agreement and the matters contemplated thereby has received the advice of Persons who are, knowledgeable, sophisticated and experienced in making, and qualified to make, evaluations and decisions with respect to the quality, security and intended and expected functionality of the Designated Smart Contract and the other matters contemplated by this Agreement.

## **Derivative Transactions.** No Member may, without providing the Administrative Member with a written opinion of counsel satisfactory to the Administrative Member regarding the compliance of the proposed transfer with all applicable securities laws, and the prior written consent of the Administrative Member (which may be granted, withheld, conditioned or delayed in its sole discretion), directly or indirectly, (a) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise assign, transfer or dispose of any Interests or Portfolio Company Securities, or publicly disclose the intention to make any offer, sale, pledge or disposition, or (b) engage in any short selling of any Interests or Portfolio Company Securities. Notwithstanding the foregoing, any permitted transfers of Interests that are approved by the Members will be governed by Article VIII.

## **Further Instruments and Cooperation of Members**. Each Member will furnish, from time to time, to the Administrative Member within 5 Business Days after receipt of the Administrative Member’s request (or other amounts of time as specified by the Administrative Member) any further instruments (including any designations, representations, warranties, and covenants), documentation and information as the Administrative Member deems to be reasonably necessary, appropriate or convenient: (a) to facilitate the Closing or satisfy any Closing Conditions; (b) to satisfy applicable anti-money laundering requirements; (c) for any tax purpose, including, for the avoidance of doubt, a Form W-9; or (d) for any other purpose that is consistent with the terms of this Agreement.

# POWER OF ATTORNEY

## **Function of Power of Attorney.** Each Member, by its execution of this Agreement, hereby irrevocably makes, constitutes and appoints each of the Administrative Member and the Liquidating Trustee, if any, in the capacity as Liquidating Trustee (each is 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 (a) this Agreement and any amendment to this Agreement that has been adopted as provided in this Agreement; (b) the original Certificate of Formation and all amendments required or permitted by law or the provisions of this Agreement; (c) all instruments or documents required to effect a transfer of Interest; (d) all certificates and other instruments deemed advisable by the Administrative Member or the Liquidating Trustee, if any, to carry out the provisions of this Agreement, and applicable law or to permit the Company to become or to continue as a limited liability company wherein the Members have limited liability in each jurisdiction where the Company may be doing business; (e) all instruments that the Administrative Member or the Liquidating Trustee, if any, deems appropriate to reflect a change, modification or termination of this Agreement or the Company in accordance with this Agreement including, the admission of additional Members or substituted members pursuant to the provisions of this Agreement, as applicable; (f) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Company; (g) all conveyances and other instruments or papers deemed advisable by the Administrative Member or the Liquidating Trustee, if any, including, those to effect the dissolution and termination of the Company (including a Certificate of Cancellation); (h) all other agreements and instruments necessary or advisable to consummate any purchase of Investments; (i) all forms, instruments, or documents required to make certain elections pursuant to the Code or state law governing the taxation of limited liability companies; and (j) all other instruments or papers that may be required or permitted by law to be filed on behalf of the Company. Notwithstanding the foregoing, the Administrative Member may not exercise this power of attorney with respect to matters as to which this Agreement requires the consent of the Members until such consent has been received.

## **Additional Functions.** The foregoing power of attorney:

### is coupled with an interest, is irrevocable and will survive the subsequent death or Disability of any Member or any subsequent power of attorney executed by a Member;

### may be exercised by the Attorney, either by signing separately as attorney-in-fact for each Member or by a single signature of the Attorney, acting as attorney-in-fact for all of them;

### will survive the delivery of an assignment by a Member of all or any portion of its Interest; except that, where the assignee of all of that Member’s Interest has been approved by the Administrative Member for admission to the Company, as a substituted Member, the power of attorney of the assignor will survive the delivery of that assignment for the sole purpose of enabling the Attorney to execute, swear to, acknowledge and file any instrument necessary or appropriate to effect that substitution.

## **Delivery of Power of Attorney.** Each Member must execute and deliver to the Administrative Member within 5 Business Days after receipt of the Administrative Member’s request, any further designations, powers-of-attorney and other instruments as the Administrative Member reasonably deems necessary to carry out the terms of this Agreement.

# MISCELLANEOUS

## **Ministerial and Administrative Amendments.** Amendments that under this Agreement are expressly permitted to be made by the Administrative Member, ministerial or administrative amendments to cure ambiguities or inconsistencies as may in the discretion of the Administrative Member be necessary or appropriate and those amendments as may be required by law may be made from time to time without the Consent of any of the Members. Other amendments may be made to this Agreement only with the Consent of a Majority in Interest. Notwithstanding the foregoing, (a) no amendment will be adopted pursuant to this Section 14.1 unless that amendment would not alter, or result in the alteration of, the limited liability of the Members or the status of the Company as a “partnership” for federal income tax purposes and (b) no amendment that increases the liabilities or duties of a Member (including the Administrative Member under this Agreement may be made without the consent of that Member.

## **Amendment Recordation.** Upon the adoption of any amendment to this Agreement, the amendment will be executed by the Administrative Member and, if required, will be recorded in the proper records of each jurisdiction in which recordation is necessary for the Company to conduct business. Any adopted amendment may be executed by the Administrative Member on behalf of the Members pursuant to the power of attorney granted in Section 13.1.

## **Offset Privilege.** The Company may offset against any monetary obligation owing from the Company to any Members or Administrative Member any monetary obligation then owing from that Member or Administrative Member to the Company; provided, however, that the offset right will only apply to any monetary obligation owed to that Member or Administrative Member in their capacity as a Member or Administrative Member.

## **Notices**.

### Any notice or other communication to be given to the Company, the Administrative Member or any Member in connection with this Agreement will be in writing and will be delivered or mailed by registered or certified mail, postage prepaid, sent by facsimile or electronic mail or otherwise delivered by hand or messenger.

### Each Member hereby acknowledges that the Administrative Member is entitled to transmit to that Member exclusively by e-mail (or other means of electronic messaging) all notices, correspondence and reports, including, but not limited to, that Member’s Schedule K-1s.

### Each notice or other communication to the Administrative Member will for purposes of this Agreement be treated as effective or having been given upon the earlier of (i) receipt, (ii) the date transmitted by email, with evidence of transmission from the transmitting device, (iii) acknowledged receipt, (iv) when delivered in person, (v) when sent by electronic facsimile transfer or electronic mail at the number or address set forth below and receipt is acknowledged by the Administrative Member, (vi) 1 Business Day after having been dispatched by a nationally recognized overnight courier service if receipt is evidenced by a signature of a person regularly employed or residing at the address set forth below for that Party or (vii) 3 Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid.

### Any notice must be given, if (x) to the Company, to the Company’s email address, to the attention of the Administrative Member and (y) to any Member, to that Member’s address or number specified in the Interest Register of the Company. Any Party may by notice pursuant to this Section 14.4 designate any other physical address or email address to which notice to that Party must be given.

## **Waiver**. No course of dealing or omission or delay on the part of any Party in asserting or exercising any right under this Agreement will constitute or operate as a waiver of any right. No waiver of any provision of this Agreement will be effective, unless in writing and signed by or on behalf of the Party to be charged with the waiver. No waiver will be deemed a continuing waiver or future waiver or waiver in respect of any other breach or default, unless expressly so stated in writing.

## **Governing Law**. This Agreement will be construed, performed and enforced in accordance with the laws of the State of Delaware, without giving effect to its conflict of laws principles to the extent those principles or rules would require or permit the application of the laws of another jurisdiction.

## **Dispute Resolution**. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach of this Agreement, except for any claim or action that the Administrative Member or Company may elect to commence to enforce any of its rights or the Members’ obligations under this Agreement, will be settled by binding arbitration, before three arbitrators, administered by the American Arbitration Association under and in accordance with its Commercial Arbitration Rules. The decision of the arbitrators shall be non-appealable, binding and conclusive upon all parties thereto and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction.

### *Location*. Any arbitration will be held in the Arbitration Location.

### *Costs****.*** Each of the Parties will equally bear any arbitration fees and administrative costs associated with the arbitration. The prevailing Party, as determined by the arbitrators, will be awarded its costs and reasonable attorneys’ fees incurred in connection with the arbitration.

### *Consent to Jurisdiction.* The Parties hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any courts located in the Arbitration Location, for recognition or enforcement of any award determined pursuant to this Section 14.7.

**NOTICE: By becoming a party to this Agreement, each Party is agreeing to have all disputes, claims or controversies arising out of or relating to this Agreement decided by neutral binding arbitration, and is giving up any rights it might possess to have those matters litigated in a court or jury trial. By becoming a party to this Agreement, each Party is giving up its judicial rights to discovery and appeal except to the extent that they are specifically provided for under this Agreement. If any Party refuses to submit to arbitration after agreeing to this provision, that Party may be compelled to arbitrate under federal or state law. By becoming a party to this Agreement, each Party confirms that its agreement to this arbitration provision is voluntary.**

## **Remedies**. In the event of any actual or prospective breach or default of this Agreement by any Party, the other Parties will be entitled to seek 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 Agreement is not specifically enforced, since (among other things) the Interests are not readily marketable. All remedies under this Agreement are cumulative and not exclusive, may be exercised concurrently and nothing in this Agreement will 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.

## **Severability**. The provisions of this Agreement are severable and in the event that any provision of this Agreement is determined to be illegal, invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions of this Agreement will not be affected, but will, subject to the discretion of that court, remain in full force and effect, and any illegal, invalid or unenforceable provision will be deemed, without further action on the part of the Parties, amended and limited to the extent necessary to render that provision, as so amended and limited, legal, valid and enforceable, it being the intention of the Parties that this Agreement and each provision will be legal, valid and enforceable to the fullest extent permitted by applicable law.

## **Counterparts**. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. A facsimile, PDF or DocuSign (or similar service) signature will be deemed an original. The Parties hereby Consent to transact business with the Company and each of the other via electronic signature (including via DocuSign, eSignLive, or a similar service). Each Party understands and agrees that their signature page may be disassembled and attached to the final version of this Agreement.

## **IRS Circular 230 disclosure**. Any discussion of United States federal tax issues contained in this Agreement, or concerning the investment in the Company, by the Company, Administrative Member, and their respective counsel, is not intended or written to be relied on by the Parties for purpose of avoiding penalties imposed under the Code. Each Party should seek advice from an independent tax adviser based on their particular circumstances.

## **Further Assurances**. Each Party shall promptly execute, deliver, file or record those agreements, instruments, certificates and other documents and take other actions as the Administrative Member may reasonably request or as may otherwise be necessary or proper to carry out the terms and provisions of this Agreement and to consummate and perfect the transactions contemplated hereby.

## **Assignment**. The rights, interests or obligations of a Party may not be assigned by such Party except in accordance with a Transfer permitted by Article VIII. Any purported assignment without such Consent will be null and void *ab initio*.

## **Binding Effect**. This Agreement will be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and permitted assigns. This Agreement is not intended, and will not be deemed, to create or confer any right or interest for the benefit of any Person not a party to this Agreement.

## **Titles and Captions**. The titles and captions of the Articles and Sections of this Agreement are for convenience of reference only and do not in any way define or interpret the intent of the Parties or modify or otherwise affect any of the provisions hereof and shall not have any effect on the construction or interpretation of this Agreement.

## **Construction**. This Agreement will not be construed against any party by reason of that party having caused this Agreement to be drafted.

## **Entire Agreement**. This Agreement, the Subscription Agreements of each Member and any side letter with a Member constitutes the entire understanding and agreement among the Parties and supersedes all prior and contemporaneous understandings and agreements whether written or oral. The Administrative Member and the Company may enter into side letters with any Member or prospective Member which contain terms different from those in this Agreement or amend and supplement provisions of this Agreement as it applies to such Member. In the event of any inconsistency between the terms of this Agreement and the terms of any side letter, the terms of the side letter shall control.

(Signature Page Follows)

IN WITNESS WHEREOF, the undersigned has executed this Agreement effective as of the Effective Date.

**COMPANY:**

**[FULL ENTITY NAME],** a Delaware limited liability company

By:

Name:

Title: Administrative Member

IN WITNESS WHEREOF, the undersigned has executed this Agreement effective as of the Effective Date or as of the date of such Member’s Closing.

**ADMINISTRATIVE MEMBER:**

Name: [Print Administrative Member’s Name]

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Member Signature Page**

The undersigned Member hereby executes the Limited Liability Company Operating Agreement of the Company, dated as of the Effective Date, and hereby authorizes this signature page to be attached to a counterpart of that document executed by the Administrative Member of the Company.

(Print Name of Member)

Dated: \_\_\_\_\_\_\_\_\_\_

(Signature of Member or Authorized Signatory)

Exhibit A

**FORM OF SUBSCRIPTION AGREEMENT**

1. Note to draft: Tax advisors to review and confirm. The Operating Agreement would need to be substantially revised if the entity is not taxed as a partnership for U.S. federal income tax purposes or if a Series LLC is used. [↑](#footnote-ref-1)
2. ## Note: If a transferee is an entity, the form of the Subscription Agreement and the representations in the Subscription Agreement will need to be updated to reflect that is it in respect of an entity not an individual.

   [↑](#footnote-ref-2)