



# ANGEL FUNDS 101

**CMI<sup>2</sup>**



## **Civil-Military Innovation Institute, Inc.**

Angel Funds 101

May 2018

**MARTLET**  
STRATEGIES



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# Angel Funds 101

## Introduction

As discussed in our *Introduction to Diversification Financing* briefing, angel investing can be an important component of providing financial resources to support business growth and business diversification activities.

If you are an accredited investor, economic developer, or a community-minded entrepreneur, you may be wondering what you can do to try to catalyze angel investment in your region of the United States or throughout the entire country.

Creating angel investment funds is one option, which unites individual angels into a collective group to support streamlined decision-making and investment management – whether in the form of equity and/or debt.

In the subsequent sections of this Angel Funds 101 briefing, we will provide a glimpse into how angel funds are organized and operate to help provide some background for parties that might be interested in exploring such ventures.

In particular, we will showcase:

- Potential model limited liability company legal structures for angel funds;
- Sample checklists for angel fund investment presentations;
- A potential approach for angel fund investment due diligence;
- Sample due diligence request lists;
- Sample investment overview profiles; and
- Sample angel fund annual reports for investors.

***Please note that these documents are being provide as examples for educational purposes only and proper consultation of licensed legal counsel and accounting professionals should occur prior to any advancement of an angel fund. The University of Southern Mississippi and its affiliates and contractors bear no responsibility for any utilization of these materials that are provided solely for educational purposes.***

## Legal Structures

Many angel funds opt to organize as a limited liability company to support pass through losses and gains on investments, as well as to minimize the double tax scenario that can occur in other forms of businesses, like corporations. An operating agreement for an angel fund limited liability company might look something like this.

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THE LIMITED LIABILITY COMPANY INTERESTS EVIDENCED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER APPLICABLE STATE SECURITIES LAWS (THE "STATE ACTS"), AND MAY BE OFFERED OR SOLD BY A PURCHASER OF THE LIMITED LIABILITY COMPANY INTERESTS ONLY (1) UPON REGISTRATION OF THE LIMITED LIABILITY COMPANY INTERESTS UNDER THE ACT AND THE STATE ACTS OR PURSUANT TO AN EXEMPTION THEREFROM, AND (2) AFTER COMPLIANCE WITH ALL RESTRICTIONS ON TRANSFER OF LIMITED LIABILITY COMPANY INTERESTS IMPOSED BY THIS AGREEMENT, INCLUDING (WITHOUT LIMITATION) THE PROVISIONS OF ARTICLE IX.

### LIMITED LIABILITY COMPANY FUND OPERATING AGREEMENT

OF

Angel Fund, LLC

This Operating Agreement of [Angel Fund, LLC], [DEF Company], [GHI Company], LLC (the "Company") is entered into on the \_\_\_\_ day of \_\_\_\_\_, 201x, between [Angel Fund, LLC] a [\_\_\_\_\_ corporation], [DEF Company], [a \_\_\_\_\_ limited liability company], [GHI Company], a [\_\_\_\_\_ limited liability company] and [JKL].

### RECITALS

The Members desire to form a limited liability company pursuant to the \_\_\_\_\_ Limited Liability Company Act (the "LLCA"), as amended, or any successor statute; and

The Members desire to establish their respective rights and obligations in connection with forming the limited liability company.

In consideration of the mutual covenants and provisions contained in this Agreement, the Members agree as follows:

## ARTICLE I DEFINITIONS

### 1.01 Definitions

For purposes of this Agreement, the following terms have the following meanings:

**“Agreement”** means this Agreement, as amended, restated or supplemented.

**“Administrative Member”** has the meaning provided in Section 6.07 below.

**“Affiliate”** means, with respect to a Member, any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Member, for purposes of the preceding provisions of this sentence, the term “control” means, with respect to a corporation, the right to exercise, directly or indirectly, fifty percent (50%) or more of the voting rights attributable to the issued and outstanding capital stock of the corporation, and with respect to a Person other than a corporation, the direct or indirect power to direct or cause the direction of the management or policies of the controlled Person. “Affiliates” means more than one (1) Affiliate, as the context requires.

**“Articles of Organization”** means the Company's Articles of Organization filed on \_\_\_\_\_, 2001, with the State Department of Assessments and Taxation of the State of \_\_\_\_\_ pursuant to the LLCA, as amended or restated.

**“Bankruptcy”** of a Member means (a) the Member's filing a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under Title 11 of the United States Code (or corresponding provisions of future laws) or any other federal, state or foreign insolvency law, or a Member's filing an answer consenting to or acquiescing in any such petition, (b) the Member's making any assignment for the benefit of its creditors or the Member's admission in writing of its inability to pay its debts as they mature, or (c) the expiration of 60 days after the filing of an involuntary petition under Title 11 of the United States Code (or corresponding provisions of future laws), seeking an application for the appointment of a receiver for the Member's assets, or an involuntary petition seeking liquidation, reorganization, arrangement or readjustment of its debts under any other federal, state or foreign insolvency law, provided that the petition has not been vacated, set aside or stayed within the 60-day period.

**“Business Day”** means any day except Saturday, Sunday or a day that banking institutions in \_\_\_\_\_ are obligated by law, regulation or governmental order to close.

**“Capital Account”** means each capital account maintained for a Member pursuant to Section 4.03 of this Agreement.

**“Carried Interest Fee”** means the fee equal to the percentage of any gains in excess of cost that a Club realizes upon the disposition of any investment which the Club has made and any investment by investor members of a Club who made additional investments in any entity in which the Club invests that the Club has agreed to pay to the Company.

**“Cash Flow”** means, for any fiscal year, all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any noncash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements, and

replacements as determined by the Consent of the Members. Cash Flow shall be increased by the reduction of any reserve previously established. Cash Flow shall be determined for each fiscal year or portion thereof and shall not be cumulative.

**“Class A Member and Class B Members”** are those Members designated “Class A Members” and “Class B Members,” respectively, as set forth in Schedule II.

**“Club(s)”** has the meaning specified in Section 3.01 of this Agreement.

**“Code”** means the Internal Revenue Code of 1986, as amended, or any successor statute.

**“Company Year”** means the taxable year of the Company as determined pursuant to Section 8.01 of this Agreement.

**“Consent of the Members”** means the written consent of Members, holding, in the aggregate, more than 50% of the Percentage Interests of the Members.

**“Courier”** has the meaning specified in Section 14.01 of this Agreement.

**“First Closing”** means the consummation of the initial investor investment in a Club.

**“Indemnitee”** has the meaning specified in Section 6.05(a) of this Agreement.

**“Initial Capital”** means, for any Member, the capital contributed by such Member as of the date of this Agreement.

**“Interested Member”** means a Member which has a direct or indirect interest in or in connection with any Potential Investment.

**“Involuntary Withdrawal”** means, as to a Member, the occurrence of death, adjudication of insanity or incompetence, event of Bankruptcy, dissolution or liquidation.

**“Mandatory Tax Distribution”** means an amount equal to forty percent (40%) of the Company's net income for the year, as determined for United States federal income tax purposes, and allocated to the Class B Members under the terms of this Agreement.

**“Material Decision”** has the meaning specified in Section 6.02 of this Agreement.

**“Member”** means each of the Persons listed from time to time on Schedule I of this Agreement, and any transferee of a Member who is admitted to the Company as a Member in accordance with Article IX of this Agreement; and **“Members”** means two or more such Persons.

**“Membership Interest”** means a Member's aggregate rights in the Company, including, without limitation, the Member's share of the Company's profits and losses, the right to receive distributions from the Company and the right to vote and participate in the management of the Company.

**“Percentage Interest”** means a Member's Membership Interest in the Company as shown on Schedule II of this Agreement, as changed from time to time pursuant to a Transfer of all or any portion of the Member's Membership Interest in accordance with Articles IX and X of this Agreement; and **“Percentage Interests”** means the total Percentage Interests of all Company Members.

“**Person**” means any individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust, unincorporated organization, or other entity or organization, including any government or political subdivision or any agency or instrumentality of any entity.

“**Potential Investment**” has the meaning specified in Section 6.03(b) of this Agreement.

“**Potential Relationship**” has the meaning specified in Section 6.03(b) of this Agreement.

“**Surplus Cash**” means the Company's cash on hand less any amount reasonably determined by the Administrative Member to be necessary to satisfy planned capital expenditures and working capital requirements for the three-month period following the date of determination.

“**Surplus Cash Distribution**” means the amount remaining after each Mandatory Tax Distribution and the annual distributions to the Class A Member.

“**Transfer**” means any sale, assignment, exchange, gift, or other disposition of any kind, voluntary or involuntary, but excluding the creation or existence of any liens, whether direct or indirect, voluntary or involuntary.

## **ARTICLE II ORGANIZATIONAL AND OTHER MATTERS**

### **2.01 Formation; Admission**

The Members formed a limited liability company under the provisions of the LLCA by filing on \_\_\_\_\_, 201x, the Articles of Organization with the State Department of Assessments and Taxation of the State of \_\_\_\_\_. Each of the Members listed on Schedule I of this Agreement have been admitted to the Company as a Member. The rights and liabilities of the Members are as provided in the LLCA except as otherwise expressly provided in this Agreement.

### **2.02 Name**

The name of the Company is, and the Company's business will be conducted under the name of [DDD Company], [EEE Company], [FFF Company], LLC. Upon the Consent of the Members, (a) the Company's business may be conducted under any other name or names, and (b) the Company's name may be changed at any time.

### **2.03 Principal Office/Registered Agent**

The Company's principal place of business shall be [full address]. The Company's registered agent shall be [X]. The principal office and the registered agent of the Company may be changed by the Consent of the Members from time to time in accordance with the then applicable provisions of the LLCA and any other applicable laws. The Members may establish and maintain such other offices and additional places of business of the Company, either within or without the State of \_\_\_\_\_, as they deem appropriate.

### **2.04 Duration of the Company**

The Company shall have perpetual existence unless sooner dissolved in accordance with the provisions of Article XII of this Agreement or as otherwise provided by law.

### **2.05 Scope of Members' Authority**

Except as expressly provided for in this Agreement, no Member shall have any authority to act for, hold such Member out as the agent of, or assume any obligation or responsibility on behalf of, any other Member or the Company.

### **2.06 Title to Company Property**

All property owned by the Company, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member, individually, shall have any ownership of such property. The Company may hold any of its assets in its own name or in the name of its nominee, which nominee may be one or more individuals, partnerships, trusts or other entities.

## **ARTICLE III PURPOSE AND POWERS**

### **3.01 Company Purpose**

The general purposes of the Company shall be to engage in any lawful business permitted by the LLCA or laws of any jurisdiction in which the Company may do business and to enter into any lawful transaction and engage in any lawful activities in furtherance of the foregoing purposes and as may be necessary, incidental or convenient to carry out the business of the Company as contemplated by this Agreement. The specific purpose and business of the Company is to provide assistance, guidance and management to one or more private equity investment clubs of accredited investors (the "Clubs"), the first of which shall be called [Angel Fund, LLC], and to engage in all transactions reasonably necessary or incidental to the foregoing.

### **3.02 Company Powers**

Subject to all of the provisions of this Agreement, the Company shall have the power to do any and all acts and things necessary, appropriate, advisable, or convenient for the furtherance and accomplishment of the purposes of the Company, including, without limitation, to engage in any kind of activity and to enter into and perform obligations of any kind necessary to or in connection with, or incidental to, the accomplishment of the purposes of the Company, so long as said activities and obligations may be lawfully engaged in or performed by a limited liability company under the LLCA.

## **ARTICLE IV CAPITAL CONTRIBUTIONS**

### **4.01 Current Capital Contributions**

The Members have contributed in cash to the Company the amount of Initial Capital set forth in Schedule II of this Agreement.

### **4.02 Additional Capital Contributions**

No Member is required to make any additional capital contribution to the Company.

### **4.03 Capital Accounts**

The Company shall maintain a separate Capital Account for each Member. The term "Capital Account" means as to any Member the Member's amount of the Initial Capital in the Company, that is (i) increased by any additional capital contributions made by the Member, and income and gain allocated to the Member pursuant to Section 5.01(b) of this



Agreement, and (ii) decreased by distributions to the Member pursuant to Sections 5.03 and 12.02 and losses and deductions allocated to such Member pursuant to Section 5.01(a). The fair market value of any property contributed to the Company by a Member or distributed to a Member by the Company will be credited or debited to the Member's Capital Account. All determinations of fair market value under this Agreement shall be made by the Consent of the Members.

#### **4.04 No Interest**

Except as otherwise expressly provided in this Agreement, no interest will be paid by the Company on capital contributions, balances in Member's Capital Accounts or any other funds contributed to the Company or distributed or distributable by the Company under this Agreement.

#### **4.05 No Withdrawal**

Except as provided in Section 11.01 of this Agreement, no Member has the right to withdraw any portion of the Member's Capital Account without the consent of all the other Members. In accordance with the LLCA, a Member may, under certain circumstances, be required to return to the Company, for the benefit of the Company or the Company's creditors, amounts previously wrongfully distributed to the Member.

### **ARTICLE V PROFITS AND LOSSES; DISTRIBUTIONS**

#### **5.01 Allocation of Profits and Losses**

For purposes of maintaining Capital Accounts and in determining the rights of the Members among themselves, the Company's items of income, gain, loss deduction and credit shall be allocated among the Members for each fiscal year as follows:

(a) Losses for any fiscal year shall be allocated among the Members in the proportion to the positive balances in their respective Capital Accounts until each Member's Capital Account is reduced to zero. When no Member has a positive balance in its Capital Account, Losses shall be allocated to the Members in proportion to their Percentage Interests.

(b) Profits for any fiscal year shall be allocated among the Members in proportion to the amount, if any, of Cash Flow distributed to the Members for such fiscal year in accordance with Section 5.03 and, if no Cash Flow is distributed, or if the Profits exceed such Cash Flow distributed for a fiscal year, then among the Members in any amount equal to what would be distributable to such Members if Cash Flow in an amount equal to the Profits for such Fiscal year had been distributed.

#### **5.02 Determination of Profits and Losses**

Profits and Losses of the Company shall be determined in accordance with the accounting methods followed for federal income tax purposes and otherwise in accordance with sound accounting principles and procedures applied in a consistent manner. An accounting shall be made for each fiscal year by [EEE Company] or the accountant retained by the Administrative Member as soon as possible after the close of each such fiscal year, to determine the Members'

respective shares of Profits or Losses of the Company, which shall be credited or debited, as the case may be, to the Members' respective Capital Accounts.

### **5.03 Cash Flow**

Except as otherwise provided in this Section 5.03, distributions of Cash Flow, to the extent available as determined with the Consent of the Members, shall be made on at least a quarterly basis within a reasonable time after the end of each calendar quarter, in the following order of priority:

(a) first, to the Class A Member the sum of Ten Thousand Dollars (\$10,000), to be distributed to the Class A Member upon the full execution of this Agreement;

(b) second, to the Class A Member an amount equal to fifty percent (50%) of the fees received by the Company for organizational activities for each Club (less the distribution to the Class A Member under subsection (a)(i) above), which amount shall be distributed to the Class A Member within fifteen (15) days after receipt by the Company of such fees;

(c) third, to the Class A Member an amount equal to twenty percent (20%) of all management fees received by the Company from a Club for the ongoing support services provided by the Company to such Club, which amount shall be distributed to the Class A Member within fifteen (15) days after receipt by the Company;

(d) fourth, to the Class A Member an amount equal to twenty percent (20%) of any negotiated Carried Interest Fee received by the Company from a Club (provided that the Class A Member's share of the Carried Interest Fee shall not result in a fee to the Class A Member of less than three and two tenths percent (3.2%)), which amount shall be distributed to the Class A Member within fifteen (15) days after receipt by the Company of such fees;

(e) fifth, to the Class B Members in the amount of the Initial Capital as set forth in Schedule II of this Agreement;

(f) sixth, to the Class B Members in accordance with their respective Percentage Interests an amount equal to the Mandatory Tax Distribution;

(g) seventh, to the Class B Members in accordance with their respective Percentage Interests an amount equal to the Surplus Cash Distribution, which amount shall be distributed to the Class B Members by no later than February 28 in each year; and

(h) lastly, to the Class B Members in accordance with their respective Percentage Interests.

### **5.04 Special Allocations**

If the requisite stated conditions or facts are present, the following special allocations shall be made in the following order:

(a) Company Minimum Gain Chargeback. Notwithstanding the other provisions of this Article V, except as provided in Regulations Sections 1.704-2(f)(2) through (5), if there is a net decrease in Company minimum gain (as defined in Regulations Section 1.704-2(d)) during any Company taxable period, each Member shall be allocated items of Company income and gain for such period (and, if necessary, subsequent periods) in the manner and amounts provided in Regulation Sections 1.704-2(f)(6), 1.704-2(g)(2) and 1.704-2(j)(2)(i), or any successor provisions. For purposes of this Section 5.04, each Member's adjusted Capital Account balance shall be determined, and the

allocation of income or gain required hereunder shall be effected, prior to the application of any other allocation pursuant to this Article V with respect to such taxable period (other than an allocation pursuant to Section 5.04(e).

(b) Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt. Notwithstanding the other provisions of this Article V (other than Section 5.04(a)), except as provided in Regulations Section 1.704-2(i)(4), if there is a net decrease in minimum gain attributable to partner nonrecourse debt (as defined in Regulation Section 1.704-2(i)(3)) during any Company taxable period, any Member with a share of minimum gain attributable to partner nonrecourse debt at the beginning of such taxable period shall be allocated items of Company income and gain for such period (and if necessary, subsequent periods) in the manner and amounts provided in Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii), or any successor provisions. For purposes of this Article V, each Member's adjusted Capital Account balance shall be determined and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 5.04, other than Section 5.05(a) and other than an allocation pursuant to Section 5.04(e), with respect to such taxable period.

(c) Qualified Income Offset. If a Member unexpectedly receives any adjustments, allocations or distribution described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), then items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible, provided that an allocation pursuant to this Section. 5.04(c) shall be made if and only to the extent that the Member would have an Adjusted Capital Account Deficit after all others allocations provided for in this Article V have been tentatively made without considering this Section 5.04(c).

(d) Non-recourse Deductions. Non-recourse Deductions for any fiscal year or other period shall be allocated to the Members in accordance with their respective Percentage Interests.

(e) Partner Non-recourse Deductions. Partner Non-recourse Deductions shall be allocated to the Member(s) that bears the economic risk of loss, in accordance with Section 1.704-2(i) of the Regulations.

## **5.05 Curative Allocations**

Notwithstanding any other provisions of this Agreement, the special allocations set forth in Section 5.04 shall be taken into account in allocating items of income, gain, loss and deduction among the Members in the taxable year in which such special allocation occurs and subsequent years so that, to the extent possible, and over the entire term of the Company and taking into account likely future allocations, the net amount of the allocations of other items and the special allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the special allocations had not occurred.

## **5.06 Tax Allocations: Code Section 704(c)**

In accordance with Sections 704(b) and (c) of the Code and the Regulations thereunder, income, gain, loss and deduction with respect to property actually or constructively contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation at the time of the contribution between the adjusted basis of the property to the Company for federal incomes tax purposes and its fair market value. If the fair market of a Company asset is adjusted pursuant to Regulation Section 1.704-1(b)(2)(iv), then as provided in the Regulations promulgated under Code section 704(b), subsequent allocations of income, gain, loss and deduction with respect to that Company asset shall take account of any variation between the adjusted basis of the asset for federal income tax purposes and its fair market value in the same manner as under Code section 704(c) and the Regulations thereunder. Any elections or other decisions relating to those allocations shall be made with the

Consent of Members and the Company's accountant, in any manner that reasonably reflects the purposes and intent of this Agreement. Allocations of income, gain, loss and deduction pursuant to this Section 5.06 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses or other tax items or distributions pursuant to any provision of this Agreement.

#### **5.07 Allocation of Gain or Loss from Terminating Capital Transaction and Target Final Balances**

Subject to Section 5.09, Profits and Losses realized from a Terminating Capital Transaction or in connection with liquidation of the Company or any entity in which it owns an interest shall be allocated among the Members so that after such allocations and the other allocations under this Agreement, the final Capital Accounts balances of the Members are at levels ("Target Final Balances") which would permit liquidating distributions that are made in accordance with such final Capital Account balances to be equal to the distributions that would occur under Section 5.03. To the extent that the allocation provisions of this Agreement would not produce the Target Final Balances, the Members agree to take such actions as are necessary to amend such allocation provisions to produce such Target Final Balances. Notwithstanding the other provisions of this Agreement, allocations of income, gain, loss and deductions shall be made prospectively as necessary to produce such Target Final Balances (and, to the extent such prospective allocations would not effect such result, the prior tax returns of the Company shall be amended to reallocate income, gain, loss and deductions to produce such Target Final Balances).

#### **5.08 Allocation Upon Transfer**

If any interest in the Company is transferred, or is increased or decreased by reason of the admission of a new Member or otherwise, during any fiscal year of the Company, Profits, Losses, and each item of income, gain, loss, deduction, or credit of the Company for such fiscal year shall be allocated among the Members to take account of their varying interests in any manner determined by the Member to be permissible under Section 706 of the Code and the Regulations thereunder and approved by the Member.

#### **5.09 Agreement to Make Changes Required by Law**

The Members acknowledge that Regulations issued under Code section 704(b) require that certain provisions must be included in a Company agreement in order for the allocations set forth in the agreement to be considered to have substantial economic effect within the meaning of Section 704(b). The Members hereby adopt those provisions of the Regulations and incorporate them herein. The Members agree to exercise the utmost good faith in cooperating to amend this Agreement to effect changes recommended by the Company's professional tax advisers to cause compliance with those Regulations, with input from the tax advisers of each Member who desires to have any given in its behalf.

#### **5.10 Return of Contribution**

Except as required by the LLCA, no Member is personally liable for the return of its capital contributions, or any portion of them, or the return of any additions to the Capital Accounts of the other Members, or any portion of them, any return of capital as may be made at any time, or from time to time, will be made solely from the assets of the Company, and only in accordance with the terms of this Agreement.

### **ARTICLE VI MANAGEMENT AND OPERATION OF BUSINESS**

#### **6.01 Management by Members**

(a) The business and affairs of the Company shall be managed exclusively by the Members in accordance with the LLCA and the terms of this Agreement. Each Member shall devote such time and attention to the management and affairs of the Company as shall be reasonably appropriate for the efficient and timely conduct of its business, but no Member shall be required to devote its full-time services. Subject to Section 6.07 below, no Member shall have the right, power or authority to execute documents, agreements, or instruments on behalf or in the name of the Company or otherwise to bind the Company without the express consent and authorization of the Members as provided herein. The Members may appoint one or more individuals to serve as officers of the Company and may delegate and assign such duties to such officer as determined by the Members. In performing these duties hereunder:

(i) The Members shall comply with all applicable laws, rules, regulations, orders of any governmental authority, the non-compliance with which could materially adversely affect the Company's business, assets, or condition, financial or otherwise; and

(ii) Except as to matters being contracted in good faith and by appropriate proceedings promptly initiated and diligently conducted, and where reserves and other appropriate provisions under generally accepted accounting principles have been made, the Members shall vote their interests and otherwise use reasonable efforts to cause the Company (A) to promptly pay when due all indebtedness, liabilities, and obligations under, and fully, faithfully and punctually perform and fulfill all covenants and terms under, any material agreement to which the Company is a party or by which it or its assets are bound; (B) to promptly pay when due, in conformance with customary trade terms, all material indebtedness, liability and obligations incident to the conduct of the Company's business; (C) to fully, faithfully and punctually perform and fulfill each covenant, undertaking and agreement under any lease and/or other agreement to which the Company is a party or by which it or its assets are bound, the failure to fulfill or perform which could have a material adverse effect on the financial condition, business or any of the properties of the Company; (D) to preserve and keep in full force and effect at all times the Company's existence, rights, licenses, registrations and franchises and to comply with or cause to be complied with, all laws applicable to the same; (E) to conduct the Company's business as proposed to be conducted in all approved plans; (F) at all times, to establish, maintain, preserve and protect all licenses, franchises, trade name and other rights in and to its intangible property; and (G) at all times, to preserve, maintain, and keep all property used in the conduct in the Company's business in good repair, working order and condition, and from time to time, to make or cause to be made all needed repairs, renewals, replacement and improvements of such property so the Company's business may be properly and advantageously conducted at all times.

(b) Each Member shall use reasonable efforts to conduct the business of the Company in a good and businesslike manner. Each Member shall be required to exercise good faith and integrity in handling the affairs of the Company. Whenever reasonably request by a Member, the Members shall render a just and faithful account of all dealings and transactions relating to the business of the Company, subject to Section 7.01 hereof.

## **6.02 Decisions**

The Members shall consult with each other in good faith and use commercially reasonable efforts to achieve agreement among all of the Members on any and all Material Decisions relating to the business and affairs of the Company. In the event that all the Members are unable to achieve such agreement within such time as reasonably determined by the Administrative Member, but except as otherwise required by the LLCA or this Agreement, including under Section 6.07 below, the Consent of the Members shall be sufficient to make any and all Material Decisions. The decision to do any of the following shall be deemed to be a Material Decision by the Company:

(a) file a voluntary petition or otherwise initiate proceedings to have the Company adjudicated insolvent or seek an order for relief of the Company as debtor under the United States Bankruptcy Code or any other federal

bankruptcy, insolvency, or other relief for debtors, or to seek the appointment of any trustee or receiver, or all or any substantial part of the Company's assets, or make any general assignment for the benefit of creditors of the Company;

- (b) merge or consolidate the Company in one or a series of related transactions;
- (c) sell, transfer, or assign substantially all of the Company's assets in one or a series of related transactions;
- (d) acquire, by purchase, exchange or otherwise, any real property or any interest therein;
- (e) sell, exchange or otherwise dispose of any Company assets valued in excess of Fifty Thousand Dollars (\$50,000);
- (f) assign, compromise or release any claim by the Company in excess of Fifty Thousand Dollars (\$50,000) against any Person, or consent to the arbitration of disputes or controversies involving the Company and another Person or Persons;
- (g) mortgage, hypothecate, refinance, or place any other lien or encumbrance on, any or all of the Company's assets, if the debt secured by such encumbrance exceeds Fifty Thousand Dollars (\$50,000);
- (h) borrow or commit to borrow any funds in excess of Fifty Thousand Dollars (\$50,000) in any twelve (12) month period;
- (i) confess a judgment, or adjust, settle, or compromise any claim, suit or judgment against the Company for the payment of funds in excess of Ten Thousand Dollars (\$10,000), or make an assignment for the benefit of creditors of the Company;
- (j) make any expenditure in excess of Fifty Thousand Dollars (\$50,000) (A) unless such expenditure is necessary or advisable to comply with any contracts properly made (in accordance with this Operating Agreement) by the Company or (B) unless such expenditure, when considered with all other expenditures made in the relevant fiscal year, will not be in excess of the total amount of expenditures contemplated in any annual budget approved by the Members for such fiscal year;
- (k) do any act in contravention of this Operating Agreement;
- (l) except as otherwise permitted herein, do any act which would make it impossible to carry on the ordinary business of the Company; or
- (m) possess any Company assets or assign any rights in specific Company assets other than for a Company purpose.

### **6.03 Duties and Responsibilities with Respect to Clubs.**

- (a) [FFF Company] shall provide the following services and support with respect to each Club:
  - (i) [FFF Company] will provide the following services in support of the formation of and the First Closing of an investment in each Club:
    - (A) Advice on critical success factors and the concepts for new Club start-up;

(B) Advice on timetable and start-up budget;

(C) Provide “start-up” kit including policy and procedures manual for Club operations (hard and electronic copies);

(D) Provide examples of legal documentation for Clubs, based on the Dinner Club, LLC or other relevant models;

(E) Provide marketing materials for pre-closing activities;

(F) Attend up to two (2) meetings of potential members of the Club; and

(G) Be available, on an as needed basis, for phone and e-mail consultation with the Company and its Members.

(ii) [FFF Company] will provide the following services in support of each Club’s active business operations following the First Closing as to each such Club:

(A) Attend the first meeting of each Club;

(B) Participate in due diligence committee conference calls for the initial two (2) companies selected by each Club for investment consideration;

(C) Provide reasonable advisory support on the first investment by each Club;

(D) Provide advisory support on bookkeeping and tax accounting matters, including software, procedures and templates;

(E) Attend up to two (2) monthly Club meetings annually for each Club, at the request of either the Company, [DDD Company] or [EEE Company], during the first two (2) years of operation of each Club;

(F) Be available, on an as needed basis, for phone and e-mail consultation with the Company and its Members, including on deal structures and investments;

(G) Make available certain current operational materials and updates for on-going operations;

(H) Make available educational information on relevant investment topics; and

(I) When [FFF Company] becomes aware of potential investment opportunities for a Club, whether through its involvement with other investment clubs not established in connection with this Agreement or otherwise, [FFF Company] will use commercially reasonable efforts to refer those opportunities on a non-exclusive basis to the Company for evaluation and potential consideration by the Club’s membership.

(iii) The services and support of [FFF Company] will be provided, on an as requested basis, by [FFF Company] personnel and representatives at times and locations mutually convenient to the Company and [FFF Company]. [FFF Company] services to be provided under subsections 6.03(a)(i) and (ii) will not require a specific time commitment beyond what may be negotiated and provided for in this Agreement, but shall require such time as is necessary to provide [FFF Company]’s services. To the extent the Company requires additional services from [FFF

Company], the fees for such services shall be agreed upon in advance. [FFF Company] agrees that it will use its best efforts to have [person name] attend two (2) meetings of potential members of each Club. If, despite such best efforts, [person name] is unable to attend these meetings, [FFF Company] and the Company will agree on another mutually acceptable individual to represent [FFF Company] at such meetings.

(b) All of the Members shall identify companies for potential investment by any Club (“Potential Investment”) and facilitate business introductions and relationship building with Potential Investments, investors or others in the local entrepreneurial community (collectively, a “Potential Relationship”).

(c) Members holding in the aggregate more than 50% of the Percentage Interests of the Members, excluding the Percentage Interest of the Interested Member, shall have the responsibility for determining whether to present to a Club a Potential Investment and to negotiate the terms and conditions of any Potential Investment.

(d) [FFF Company] shall perform the “back office” functions for each Club consistent with sound business practices, including opening and maintaining bank accounts, maintaining full and complete books and records in accordance with sound accounting principles and procedures applied in a consistent manner, separate Club members’ accounts, tax information retention and tax and financial reporting as reasonably required for investment clubs and the entities which manage such clubs. In the event that Evergreen fails to satisfactorily perform the foregoing responsibilities and the duties as provided in Section 7.01 and Section 8.01, as reasonably determined by the Administrative Member, the Administrative Member may assign such responsibilities to another Member or a third party, and the costs of performing such responsibilities shall be deducted from any distributions to which Evergreen may be entitled under this Agreement.

(e) [DDD Company] shall be the Member responsible for coordinating the legal representation of the Company and each Club, including the hiring of outside counsel, and the legal review and oversight, as may be required from time to time, of the business activities of the Company and each Club.

(f) [Company Name 1], [Company Name 2] and/or [name of person/company 4], as designated by the Administrative Member, shall be responsible for conducting the due diligence review with respect to each Potential Transaction.

(g) [DDD Company], [EEE Company] and/or [GGG], as designated by the Administrative Member, shall be responsible for monitoring investments made by each Club.

#### **6.04 Outside Activities**

Unless otherwise provided in this Agreement or in a separate agreement and subject to the provisions and restrictions outlined in Appendix A, which may be amended from time to time, the Members may, notwithstanding the existence of this Agreement, engage in the ownership, operation and management of businesses and activities, for the Member’s own account and for the account of others, and may own interests in the same properties as those in which the Company or the other Members own an interest, without having or incurring any obligation to offer any interest in the properties, businesses or activities to the Company or any other Member, and no other provision of this Agreement is deemed to prohibit any such Person from conducting such other businesses and activities. Unless otherwise provided in separate agreement and subject to the provisions and restrictions outlined in Appendix A, which may be amended from time to time, neither this Agreement nor any activity undertaken pursuant thereto shall prevent any Member from engaging in such activities or require any Member to permit the Company or other Member to participate in any such activities, and as a material part of the consideration of each Member’s execution hereof and admission of each Member, each Member hereby waives any such right or claim of participation. Notwithstanding the foregoing, each Member shall disclose in writing to the other Members and to the Company (a)



any and all conflicts of interest which may arise as a result of such Member's ownership of an Membership Interest in the Company and any interest such Member may have in an Potential Investment, Potential Relationship or any other business, club, property, entity or activity, and (b) any and all interests such Member may have in Potential Investments, Potential Relationships or any other business, property, entity or activity related to or in competition with the business of the Company or the Club.

#### **6.05 Indemnification of Members and Certain Other Persons**

(a) Except as otherwise set forth in this Agreement, no Member, including the Administrative Member, shall be liable, in damages or otherwise, to the Company or any Member for any act or omission on its part pursuant to the authority granted by this Agreement, except if the act or omission results from such Member's own bad faith, fraud, gross negligence or willful or wanton misconduct. To the fullest extent permitted by law, the Company shall indemnify and hold harmless each Member, its shareholders, members, officers, directors, agents and/or employees (an "Indemnitee"), from and against any and all losses, claims, demands, costs, damages, liabilities, expenses of any nature (including reasonable attorneys' fees and disbursements), judgments, fines, settlements, and other amounts ("Damages") arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which an Indemnitee may be involved, or threatened to be involved, as a party or otherwise, arising out of or incidental to the Company's business, regardless of whether an Indemnitee continues to be a Member, if (i) the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in, or not opposed to, the Company's interests, and, with respect to any criminal proceeding, had no reason to believe the Indemnitee's conduct was unlawful; and (ii) the Indemnitee's conduct did not constitute bad faith, fraud, gross negligence, or willful or wanton misconduct. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere, or its equivalent, does not, in and of itself, create a presumption or otherwise constitute evidence that the Indemnitee acted in a manner contrary to that specified in (i) or (ii) above.

(b) Expenses (including reasonable attorneys' fees and disbursements) incurred in defending any claim, demand, action, suit or proceeding, whether civil, criminal, administrative or investigative, subject to Section 6.05(a) will be paid by the Company in advance of the final disposition of such claim, demand, action, suit or proceeding on receipt of an undertaking by or on behalf of the Indemnitee to repay the amount if it is ultimately determined, by a court of competent jurisdiction from which no further appeal may be taken or the time for any appeal has lapsed (or otherwise, as the case may be) that the Indemnitee is not entitled to be indemnified by the Company as authorized.

(c) The indemnification provided by this Section 6.05 is in addition to any other rights to which each Indemnitee may be entitled under any agreement or vote of the Members, as a matter of law or otherwise, both (i) as to action in the Indemnitee's capacity as a Member and (ii) as to action in another capacity, and continues as to an Indemnitee who has ceased to serve in such capacity and inures to the benefit of the Affiliates, heirs, successors, assigns, administrators and personal representatives of the Indemnitee.

(d) The Company may purchase and maintain insurance on behalf of one or more Indemnitees and other Persons against any liability that may be asserted against, or expense that may be incurred by, any such Person in connection with the Company's activities, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(e) Any indemnification under these provisions will be satisfied only out of Company assets, and the Members will not be subject to personal liability by reason of these indemnification provisions.

(f) An Indemnitee will not be denied indemnification in whole or in part under this Section 6.05 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(g) Notwithstanding the other terms of this Section 6.05, in the event that the Company, any Member(s) and/or such Members' shareholders, members, officers, directors, agents and/or employees (the "Member Indemnified Party") suffer any Damages as a result of a Member's own bad faith, fraud, gross negligence or willful or wanton misconduct (collectively, the "Member's Actions"), to the fullest extent permitted by law, such Member shall indemnify and hold harmless each Member Indemnified Party, from and against any and all Damages arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which a Member Indemnified Party may be involved, or threatened to be involved, as a party or otherwise, arising out of or incidental to such Member's Actions.

(h) The provisions of this Section 6.05 are for the benefit of each Indemnitee and its Affiliates, successors, assigns, administrators and representatives and do not create any rights for the benefit of any other Persons.

#### **6.06 Other Matters Concerning Members**

(a) Each Member may rely on and is protected in acting or refraining from acting on any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document that such Member reasonably believed to be genuine and to have been signed or presented by the proper party or parties.

(b) For purposes of this Agreement, each Member may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, other consultants and advisers such Member selects and any one or more of the Company's agents or employees, and may seek the Person's advice or opinion on matters that the Member reasonably believes to be within the Person's professional or expert competence, and any act or omission, if done or omitted to be done in reliance on any such advice or opinion, is conclusively presumed to have been done or omitted to be done in good faith and not to constitute fraud, gross negligence or willful or wanton misconduct.

(c) Each Member represents and warrants to each other Member and to the Company that such Member is acquiring such Member's interest in the Company for such Member's own account for investment and not with a view to distribution or with any present intention of distributing the interest, in each case, in violation of applicable securities laws.

#### **6.07 Administrative Member**

(a) At all times, one of the Members of the Company shall serve as the Administrative Member of the Company. The Administrative Member shall have the right and authority to (i) conduct and make all decisions (other than Material Decisions) relating to the business and affairs of Company, including all decisions relating to the day-to-day operations of the Company, and (ii) to perform the duties and exercise the rights expressly imposed upon or granted the Administrative Member under this Agreement; the Administrative Member may delegate to third parties ministerial authority to conduct the day-to-day operations of the Company.

(b) ATI is hereby appointed as the initial Administrative Member. The Administrative Member shall discharge its duties as Administrative Member until (i) it resigns or is removed pursuant to the provisions hereof, and (ii) a successor Administrative Member is approved. An Administrative Member may resign as such at any time. An Administrative Member may be removed at any time by a decision to do so approved by the Consent of the Members.

The Administrative Member may be removed as such if it is determined by a final arbitration award or decree under Section 16.03 below, that, in the performance of its duties under this Article VI, the Administrative Member has engaged in bad faith, fraud, gross negligence or willful or wanton misconduct. In addition, the Administrative Member shall be deemed to have resigned upon its withdrawal as a Member or upon its bankruptcy or dissolution.

(c) In the event of the resignation, removal, dissolution, insolvency or inability to act of an Administrative Member, another Member shall be designated as successor Administrative Member by Consent of the Members after exclusion of voting the Membership Interests held by the Administrative Member. Upon the approval of a successor Administrative Member in accordance with this Section 6.07, the Administrative Member or its legal representative shall execute such documents and take such action as may be required to permit the successor Administrative Member to act as an Administrative Member in accordance with the provisions hereof.

(d) Should the Successor Administrative Member resign or decline designation as the Administrative Member, the Company may also seek an independent consultant to provide such services by Consent of the Members.

#### **6.08 Delegation**

Each Member may delegate its approval rights and its management participation rights under this Agreement to any of its officers, directors, employees, partners or members or to any other representative of the Member to whom such rights are delegated by written instrument signed by the Member.

#### **6.09 Special Meetings**

Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Administrative Member or by any Member or Members having aggregate Percentage Interests of at least twenty percent (20%).

#### **6.10 Place of Meetings**

The Members may designate any place, either within or outside the State of \_\_\_\_\_, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting is otherwise called, the place of meeting shall be the principal executive office of the Company in \_\_\_\_\_.

#### **6.11 Notice of Meetings**

Except as provided in Section 6.12 below, written notice given pursuant to Section 14.01, stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered no fewer than three (3) business days before the date of the meeting, by or at the direction of the Administrative Member or person calling the meeting, to each Member entitled to vote at the meeting. If mailed, the notice shall be deemed to be delivered two business days after being deposited in the United States mail, addressed to the Member at the Member's address as it appears on the books of the Company, with postage thereon prepaid.

#### **6.12 Meeting of All Members**

If all of the Members shall meet at any time and place, either within or outside of the State of \_\_\_\_\_, and consent to the holding of a meeting at that time and place, the meeting shall be valid without call or notice, and at the meeting lawful action may be taken.

### **6.13 Record Date**

For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment of the meeting, or Members entitled to receive payment of any distribution, or to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring the distribution is adopted, as the case may be, shall be the record date for the determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this section, the determination shall apply to any adjournment of the meeting.

### **6.14 Proxies**

At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. The proxy shall be filed with the Administrative Member of the Company before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

### **6.15 Action by Members Without a Meeting**

Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by Members entitled to vote having the aggregate Percentage Interests required to take such action at a duly called Meeting and delivered to the Administrative Member of the Company for inclusion in the minutes or for filing with the Company records.

### **6.16 Waiver of Notice**

When any notice is required to be given to any Member, a waiver of the notice in writing signed by the person entitled to the notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of the notice.

## **ARTICLE VII BOOKS, RECORDS, ACCOUNTING AND OTHER INFORMATION**

### **7.01 Records and Accounting**

On behalf of the Company, [GHI Company] shall keep appropriate books and records as provided in Section 6.03(d) and in accordance with the LLCA with respect to the Company's business. The Company's books and records shall at all times be kept at the principal office of the Company or such other location as the Members determine.

### **7.02 Other Information**

For any purpose reasonably related to its Membership Interest, each Member and its representatives have free access during normal business hours to discuss the Company operations and business with the Company's employees or agents and including, but not limited to, the Administrative Member, and to inspect, audit or make copies of all books, records and other information relative to Company operations and business at its own expense; provided, however, that each Member must preserve the confidentiality of such information.

**ARTICLE VIII  
TAX MATTERS**

**8.01 Preparation of Tax Returns**

On behalf of the Company, [EEE Company] shall prepare and timely file all returns of Company income, gains, deductions, losses and other items necessary for federal, state, local and foreign income tax purposes and must use all reasonable efforts to furnish to the Members, within seventy-five (75) days after the close of the taxable year, the tax information reasonably required for federal, state, local and foreign income tax reporting purposes. The taxable year of the Company is the calendar year unless another year is required by the Code.

**8.02 Tax Controversies**

[EEE Company] is designated as the “tax matters partner” (as defined in Code Section 6231). The “tax matters partner” must not, without the Consent of the Members, (i) extend the statute of limitations on any taxable period of the Company, (ii) file suit on the Company's behalf with respect to any tax matter; or (iii) enter into a settlement agreement on the Company's behalf with any taxing authority concerning any Company tax matter. The “tax matters partner” shall inform each other Member of all significant tax matters that come to its attention and shall forward to each other Member copies of all written communications from taxing authorities which it receives in its capacity as “tax matters partner.” The “tax matters partner” will permit each Member to participate in any conferences or meetings with any taxing authority relating to any Company tax audit and any subsequent administrative or judicial proceedings. Nothing in this Section 8.02 limits any Member's ability to take any action in its individual capacity with respect to tax audit matters to the extent permitted by Code Sections 6221 through 6233 or any similar state or local provision of law. The “tax matters partner” may be replaced, at any time and from time to time, upon the Consent of the Members.

**8.03 Withholding**

Each Member authorizes the Company to withhold and pay over any taxes that are subject to such withholding and/or payable by the Company as a result of the Member's participation in the Company.

**ARTICLE IX  
TRANSFERS OF MEMBERSHIP INTERESTS**

**9.01 No Transfers**

No Member may make a Transfer of its Membership Interest or the economic rights attributable to it to any Person (other than such Member's Affiliates) without the Consent of the Members.

**9.02 Compliance With This Agreement and Applicable Securities Laws**

To the fullest extent permitted by law, any Transfer of, or creation or existence of a lien on, whether voluntary or involuntary, or by operation of law, any Membership Interest or portion of it (or any beneficial interest in it), that affects record or beneficial ownership in or possession of any Membership Interest or portion of it, in violation of any of the provisions of this Article IX is null and void, and the purported transferee is not entitled to (a) receive any distributions or profits in respect to it, (b) participate in any solicitation for, or otherwise participate in any vote, consent or approval with respect to any event set forth or referred to in this Agreement requiring the vote, consent or approval of any of the Members, or (c) become a substitute or additional Member of the Company. Any Transfer

of or creation or existence of a lien on any Membership Interest or portion of it (or any beneficial interest in it) that is otherwise in accordance with this Article IX must also be in compliance with all applicable federal and state securities laws.

**ARTICLE X  
ADMISSION OF ADDITIONAL OR SUBSTITUTE MEMBERS**

**10.01 Admission of Additional or Substitute Members**

The transferee of a Transfer of a Member's Membership Interests or portion of it made pursuant to Article IX must be admitted to the Company as an additional or a substitute Member.

**ARTICLE XI  
WITHDRAWAL OF MEMBERS**

**11.01 Withdrawal of Members**

Any Member shall have the right to withdraw upon not less than ninety (90) days prior written notice to the other Members. Upon any withdrawal (including an Involuntary Withdrawal), the withdrawing Member shall be deemed to have surrendered to the Company such Member's Membership Interest in the Company.

**11.02 Payment to Withdrawing Member**

Upon withdrawal pursuant to Section 11.01 or upon an Involuntary Withdrawal, a withdrawing Class A Member shall be entitled to receive a payment equal to the Class A Member's share of those fees to which the Class A Member would be entitled under Section 5.03 which have been accrued and/or received by the Company as of the date of such withdrawal. A withdrawing Class B Member shall be entitled to receive a payment equal to such Member's Percentage Interest in the Company's undistributed fees accrued and/or as of the date of such withdrawal. No withdrawing Member shall be receive any payment with respect to the Carried Interest Fee except to the extent that the Carried Interest Fee has been received by the Company. The payments to be made pursuant to this Section 11.02 shall be made without interest in equal monthly installments commencing no more than sixty (60) days from the date of withdrawal and over no more than sixty (60) months.

**ARTICLE XII  
DISSOLUTION AND LIQUIDATION**

**12.01 Dissolution**

The Company is dissolved and its affairs must be wound up on the first to occur of any of the following events:

- (a) The expiration of the Company's term as provided in Section 2.04 of this Agreement;
- (b) The Bankruptcy or dissolution of any Member; provided, however, that upon any such event, the Company is deemed dissolved, but the dissolution will not cause the Company's termination if, on the dissolution, all the remaining Members vote to continue to carry on the Company business pursuant to, and subject to, all of the terms and provisions of this Agreement;

- (c) The sale of all or substantially all of the Company assets; or
- (d) The Members' written consent.

## **12.02 Liquidation**

(a) The proceeds of the Company's liquidation will be applied in the following order of priority, unless otherwise required by applicable law:

(i) First, to the Company's creditors, including creditors who are Members, in order of priority provided by law, in satisfaction of all the Company's liabilities and obligations (of any nature whatsoever, including, without limitation, fixed or contingent, matured or unmatured, legal or equitable, secured or unsecured), whether by payment or the making of reasonable provision for payment; and

(ii) Second, to the distribution to [FFF Company] of such sums as provided in Section 5.03 not previously distributed to NVG; and

(iii) Third, to the distribution to [DDD Company], [EEE Company] and [GGG], of such sums as provided in Section 5.03 not previously distributed to them; and

(iv) Thereafter, in accordance with the Capital Accounts of [DDD Company], [EEE Company] and [GGG]

## **12.03 Waiver of Partition**

Each Member waives any rights to partition of Company property.

### **ARTICLE XIII AMENDMENT OF OPERATING AGREEMENT**

## **13. Amendment of Operating Agreement**

Amendments to this Agreement may be proposed by any Member. Any proposed amendment to this Agreement is effective only if adopted by the vote, consent or approval of any Member or Members having aggregate Percentage Interests of at least eighty percent (80%), provided, however, that no amendment shall materially affect distributions to a Member without such Member's consent.

### **ARTICLE XIV GENERAL PROVISIONS**

## **14.01 Notices**

All notices, requests, demands and other communications required or permitted in this Agreement must be in writing, must refer to this Agreement and, unless otherwise expressly provided elsewhere in this Agreement, may be delivered personally or sent by certified mail, return receipt requested, or by overnight air courier guaranteeing delivery within two business days ("Courier"), or by telecopy, to the party at its address or telecopy number set forth on Schedule I of this Agreement (or to such other address or telecopy number as may be designated by notice given in accordance with this Section 14.01). The notice, request, demand or other communication is deemed delivered (i) at the time

delivered by hand, if personally delivered; (ii) two Business Days after being deposited in the mail, postage prepaid, if mailed; (iii) the second business day after timely delivery to the Courier, if sent by Courier; and (iv) when receipt acknowledged, if telecopied.

#### **14.02 Specific Performance**

The parties to this Agreement agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with its specific terms or were otherwise breached. The parties agree that they are entitled to an injunction or injunctions to prevent breaches of this Agreement and to specifically enforce the terms and provisions in any United States court or any state having jurisdiction, in addition to any other remedy to which they are entitled at law or in equity.

#### **14.03 No Third-Party Beneficiaries**

The parties agree that this Agreement and the covenants made in it are made expressly and solely for the benefit of the parties (including any Person who agrees in writing to become a party to the Agreement as provided in Articles IX and X), and that no other Person, other than an Indemnitee and a Member Indemnified Party under Section 6.05 of this Agreement is entitled or deemed to be entitled to any benefits or rights under this Agreement, nor be authorized or entitled to enforce any rights, claims or remedies under or by reason of this Agreement.

#### **14.04 Successors and Assigns**

All of the terms and provisions of this Agreement inure to the benefit of and are binding on each of the parties to this Agreement and their respective transferees, if any; provided that, except as expressly provided elsewhere in this Agreement, no party may Transfer (or cause or permit to be created or existing any lien on) or assign its Membership Interest (or any portion of or any beneficial interest in it) or this Agreement or its rights, interests or obligations under this Agreement except in accordance with the terms of this Agreement.

#### **14.05 Entire Agreement**

This Agreement (including the appendix, schedules and exhibits) contains the entire agreement among the parties with respect to the subject matter and supersedes all prior agreements, proposals, representations, arrangements or understandings, written or oral, with respect to the subject matter.

#### **14.06 Severability**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction, shall be, in such jurisdiction, ineffective to the extent of the prohibition or unenforceability, and any prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable the provision in any other jurisdiction. If any provision of this Agreement is held or deemed to be or is inoperative or unenforceable as applied in any particular case because it conflicts with any other provision or provisions of this Agreement or any law, statute, ordinance, rule, regulation, order, writ, decree or injunction, or for any other reason, the circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provisions in this Agreement invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, sections or subsections of this Agreement shall not affect the remaining portions.



#### **14.07 Attorneys' Fees**

In any action or proceeding brought to enforce any provision of this Agreement, or where any provision is validly asserted as a defense, the successful party is entitled to recover reasonable attorneys' fees in addition to any other available remedy.

#### **14.08 Headings**

All section headings in this Agreement are for convenience of reference only and are not part of this Agreement, and no construction or inference may be derived from them.

#### **14.09 Gender and Number**

Whenever required by the context, the singular includes the plural, and the plural includes the singular.

#### **14.10 Applicable Law**

This Agreement is governed by and construed in accordance with the laws of \_\_\_\_\_ applicable to agreements made and to be performed entirely within the state, without regard to principles of conflict of laws.

#### **14.11 Counterparts**

This Agreement may be executed in one or more counterparts, each of which is deemed to be an original, but all of which together constitute one and the same instrument.

#### **14.12 Currency**

All references in this Agreement to dollars (\$) are to lawful money of the United States of America.

#### **14.13 Intellectual Property Protection and Restrictions**

(a) NVG hereby grants to the Company, the Clubs, [DDD Company] and [EEE Company] and their successors, assigns and affiliates (for purposes of this subsection 14.13, collectively, "Licensees"), and Licensees accept, a non-exclusive, non-transferable, non-sublicensable, and revocable right and license to use and display the [FFF Company] Proprietary Material (as defined herein) solely in connection with the formation and operation of Clubs with the support of [FFF Company]. The foregoing license gives Licensees limited rights to use the [FFF Company] Proprietary Material. Licensees do not become the owners of, and [FFF Company] shall retain title to, the [FFF Company] Proprietary Material, and all copies thereof. All rights not specifically granted, including Federal and International Copyrights, are reserved by [FFF Company]. Licensees acknowledge and agree that [FFF Company] holds all right, title and interest in and to the [FFF Company] Proprietary Material, including all copyrights and trade secrets pertaining thereto, and that this Agreement conveys to Licensees the right to access and use the [FFF Company] Proprietary Material as set forth herein. "[FFF Company] Proprietary Material" shall be defined as any written material (including electronic copies thereof) provided by [FFF Company] to Licensees under this Agreement, and related to the services to be provided by [FFF Company] as set forth under Article VI above and all written information relating thereto, including, but not limited to, the copyrighted materials, trademarks, service marks, copies in whole or part and any derivative works based thereon, which shall be confidential, proprietary and trade secrets of [FFF Company] and its affiliates. [FFF Company] Proprietary Material shall not include material or information that: (i) was in the public domain prior to disclosure to Licensees hereunder; (ii) is published or becomes part of the public domain through no breach of this Agreement by Licensees; (iii) is independently developed by Licensees without reference to

such [FFF Company] Proprietary Material; (iv) is disclosed to Licensees by a third party, who, to the knowledge of Licensees, is not under an obligation of confidentiality to [FFF Company] with regard to such material or information; or (v) is required by law, legal process or regulatory requirement to be disclosed. Upon termination of this Agreement, Licensees' access to and use of the [FFF Company] Proprietary Material shall cease as of the effective date of termination, and Licensees shall immediately return all [FFF Company] Proprietary Material to [FFF Company] (or at their election destroy such material).

(b) Any use by Licensees of the "[FFF Company]" name, brand, logo, and identifying marks and symbols shall be with the prior written approval of [FFF Company], which approval shall not be unreasonably withheld, conditioned or delayed, and shall conform to all [FFF Company] terms and conditions, including style guides and conventions, which [FFF Company] at its sole discretion shall establish. [FFF Company] shall not use any brand established by the Company except with the prior approval of the Company, which approval shall not be unreasonably withheld or conditioned.

(c) Any promotional or informational materials that the Company or any Club uses to (i) recruit potential Club members or (ii) make investments using Club funds shall include language that discloses the Company's and/or the Club's association with [FFF Company], as appropriate.

(d) [FFF Company] represents and warrants that (i) [FFF Company] is the owner of all right, title and interest, in and to the NVG Proprietary Information, (ii) [FFF Company] has the right to grant the rights granted to Licensees in this Agreement, and (iii) the [FFF Company] Proprietary Information does not infringe any proprietary or other intellectual property rights of any third party. To the fullest extent permitted by law, [FFF Company] indemnifies and holds harmless each Licensee, from and against any and all losses, claims, demands, costs, damages, liabilities, expenses of any nature (including reasonable attorneys' fees and disbursements), judgments, fines, settlements, and other amounts arising from any breach by [FFF Company] of the representations and warranties contained in this subsection (d).

(e) No party to this Agreement will make any untrue statement that is professionally or personally disparaging about, or otherwise adverse to the interests of, the other parties, a Club, or the Company, or any of their respective officers, directors, shareholders, members or employees. Further, no party to this Agreement will engage in any conduct that is intended to or results in inflicting harm upon the professional or personal reputation of the other parties to this Agreement, a Club, or the Company, or any of their respective officers, directors, shareholders, members or employees; provided, that the foregoing shall not limit a party's lawful actions to enforce its rights and to discharge its duties and obligations under this Agreement.

(f) Except as otherwise permitted with respect to new Clubs and as otherwise contemplated by this Agreement, [DDD Company], [EEE Company] and [GGG], their affiliates, directors, shareholders, officers or employees shall not compete with the business of [FFF Company] or its designated successors or assigns. For purposes of this subsection (f), regardless of any other activities, the business of [FFF Company] shall only be considered to be the establishment, of a network of Clubs whose members consist of accredited investors that play an active role in evaluating and selecting private equity investments for the Club. Notwithstanding anything to the contrary contained herein, [DDD Company], [EEE Company] and/or [GGG] shall be permitted to establish and operate private equity or venture capital funds (including Small Business Investment Companies) and shall also be permitted to hold membership interests in other investment clubs and/or to be compensated by other investment clubs. Commencing on the date of this Agreement, this non-compete provision shall remain in full force and effect for two (2) years.

(g) From and after the date of this Agreement and for a period of one (1) year following the termination thereof, [FFF Company], on the one hand, and [FFF Company], [EEE Company] and [GGG], on the other hand, shall not, to their actual knowledge, directly or indirectly without the prior consent of the other party, recruit or solicit for

the purpose of hiring or engaging, or hire or engage, any person employed by the other party during the one (1) year period prior to the termination of this Agreement.

**ARTICLE XV  
ADDITIONAL AGREEMENT**

**15.01 Additional Agreement**

Prior to the execution of this Agreement, all of the Members (other than [JKL]) entered into a certain Advisory and Support Services Agreement, dated December XX, 20XX. The Advisory and Support Services Agreement is expressly superseded in its entirety by the terms of this Agreement.

**ARTICLE XVI  
MEDIATION AND ARBITRATION**

**16.01 Mediation and Arbitration**

The Members agree that any and all disputes and controversies between then arising from or related to this Agreement or the breach hereof (the "Dispute"), shall be subjected to mediation and arbitration as described in this Article XVI. The Members may pursue preliminary injunctive relief through legal action provided that the merits of the Dispute shall be resolved through mediation or arbitration.

**16.02 Mediation**

(a) If any Member desires to mediate any Dispute, such Member (the "Requesting Member") shall notify the other Members of the Dispute desired to be mediated, including a brief statement of the matter in controversy. If the Members are not able to resolve the Dispute within five (5) days after the Requesting Member notifies the other Members of its desire to mediate (hereinafter designated "Mediation Notice"), then within five (5) days immediately after the expiration of the aforesaid five (5) day period, the Members shall attempt to agree upon an independent mediator. If the Members are unable to reach an agreement upon an independent mediator within such second five (5) day period, then any Member shall be entitled to request that the American Arbitration Association appoint an independent mediator who shall serve as mediator for all purposes hereof under its Commercial Mediation Rules. The Requesting Member shall pay one-half (1/2) of the cost of the mediator's services and the other Members shall pay a pro rata share of one-half (1/2) of the cost of the mediator's services.

(b) Within ten (10) days after selection of the mediator, the mediator shall call for and set a meeting among the Members and the mediator for the purpose of mediating the Dispute. If the Members are unable to resolve the Dispute within thirty (30) days after the Mediation Notice (hereinafter designated "Mediation Period"), the Dispute shall be decided by arbitration pursuant to Section 16.03 below.

(c) Any time period contemplated in the foregoing provisions of this Article XVI may be extended by mutual written agreement of the Members.

**16.03 Arbitration**

Upon demand by a Member and subject to the mediation requirements of Section 16.02 above, the Members agree that a Dispute not settled by mediation shall be settled by binding arbitration conducted by a neutral arbitrator selected by the Consent of the Members. The arbitration shall be conducted in \_\_\_\_\_, \_\_\_\_\_, according to the Commercial Arbitration Rules of the American Arbitration Association or such other procedures as may be

agreed upon by the parties (and which, in every such arbitration, shall include the right to inspect documents, submit interrogatories and take depositions, all on a reasonable and timely basis). The arbitration shall determine all rights and obligations under this Agreement and the award of the arbitrator shall be final, binding and enforceable in any court having jurisdiction thereof. Each party shall bear its own cost of the arbitration except as otherwise directed by the Arbitrator(s).

IN WITNESS, the parties have entered into this Agreement as of the date first above written.

[Angel Fund, LLC],  
a [\_\_\_\_\_ limited liability company]

[GHI Company],  
a [\_\_\_\_\_ corporation]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

[DEF Company],  
a [\_\_\_\_\_ limited liability company]

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
[JKL]

**SCHEDULE I**

**List of Members**

<u>Name of Member</u>	<u>Address of Member</u>
<u>Class A Member:</u>	
[Angel Fund, LLC]	Address City, State ZIP Telecopy No.: (xxx) xxx-xxxx
<u>Class B Members:</u>	
[DEF Company]	Address City, State ZIP Telecopy No.: (xxx) xxx- xxxx
[GHI Company]	5094 Dixon Rd, Suite 104 City, State ZIP Telecopy No.: (xxx) xxx-xxxx
[JKL]	Address City, State ZIP Telecopy No.: (xxx) xxx-xxxx

**SCHEDULE II**

**Initial Capital Contributions, Percentage Interests**

<u>Name of Member</u>	<u>Class of Memberships</u>	<u>Capital Contribution</u>	<u>Percentage Interest</u>
[FFF Company]	A	\$0	20%
[DDD Company]	B	\$5,500	37.5%
[EEE Company]	B	\$5,500	37.5%
[GGG]	B	\$0	5%

## APPENDIX A

### ADDITIONAL DUTIES & RESPONSIBILITIES WITH RESPECT TO CLUBS

1. Club Territory. While a Club may have members from any location, the club territory (“Club Territory”), which is the location where the Club holds its meetings, shall be defined as the State of \_\_\_\_\_. ABC, DEF and/or GHI may establish Clubs inside or outside the Club Territory, subject to the right of first refusal as provided below, which right of first refusal shall apply for a period of two (2) years from the date of this Agreement.

2. Right of First Refusal

(a) Should [FFF Company] identify opportunities to establish any new Club (“Proposed Club”) or individual(s) or entity(ies) to provide management services to a Proposed Club (“Proposed Club Sponsor”) within the Club Territory, [FFF Company] shall give written notice of same to [DDD Company] and [EEE Company], which notice shall include the name of the Proposed Club and/or Proposed Club Sponsor, the location and territory of the Proposed Club, and the material terms associated with establishment of the Proposed Club, including details regarding the services to be provided by the Proposed Club Sponsor, compensation to be provided to [FFF Company] and other terms related to the operation and management of the Proposed Club as the Company shall reasonably request. [FFF Company] shall not be required to provide notice to the Company for any activities regarding Proposed Clubs or Proposed Club Sponsors outside the Club Territory.

(b) Should [DDD Company], [EEE Company] and/or [GGG] identify opportunities to establish any Proposed Club or Proposed Club Sponsor outside the Club Territory, [DDD Company], [EEE Company] and/or [GGG], as applicable shall give written notice of same to [FFF Company], which notice shall include the name of the Proposed Club and Proposed Club Sponsor, the location of the Proposed Club, and the material terms associated with establishment of the Proposed Club, including details regarding the services to be provided by the Proposed Club Sponsor, compensation to be provided to [DDD Company], [EEE Company] and/or [GGG] and other terms related to the operation and management of the Proposed Club as [FFF Company] shall reasonably request.

(c) Following receipt of notice under Sections 2(a) or (b) above, as the case may be (the “Offer Notice”) from a party (“the Proposing Party”), the Company or [FFF Company], as the case may be (the “Responding Party”), shall have the option, exercisable in writing, for 30 days from receipt of the Offer Notice (the “Consideration Period”) to elect to sponsor and manage such Proposed Club along with the Proposing Party under terms and conditions substantially similar to those set forth under this Agreement.

(d) If by the end of the Consideration Period, the Responding Party shall fail to elect in writing to participate in a Proposed Club or as a Proposed Club Sponsor described in the Offer Notice, then the Proposing Party shall be free to establish the Proposed Club and/or enter into an agreement with Proposed Club Sponsor upon the terms and conditions and as described in the Offer Notice as supplemented by requested additional information, with no further obligation, fiduciary or financial, to the Responding Party, provided that if such Proposed Club is not closed and ready to invest in companies within one (1) year of the Offer Notice, the terms of this Section 2 shall again apply to such Proposed Club.

3. Other Responsibilities.

(a) The Members in performing their duties for the Company will comply with all state and federal securities law with respect to the any offering related to the establishment of any Club (the “Club Offering”). It is the intent of the Company that any interests in any Club shall only be offered to and placed with sophisticated investors (each a “Potential Club Member,” collectively “Potential Club Members”) who are “accredited” investors as that term

is defined in Regulation D of the General Rules and Regulations (“Regulation D”) of the Securities and Exchange Act of 1933, as amended (the “Act”). It is also the intent of the Company that any Club Offering shall be exempt from the registration requirements under the Act and the availability of such offering exemption shall be determined prior to initiating any Club Offering.

(b) The Members will ensure any Potential Club Member shall complete a subscription agreement and investor questionnaire. Assuming the accuracy of the representations and warranties of any Potential Club Members in the Club Offering Investor Questionnaire and the Subscription Agreement to be provided by and/or entered into by each Potential Club Member, any offering and sale of the Securities will be exempt from registration under the Act of 1933, and the Members will assist any Club to take any action necessary to comply with the applicable exemption under the Act, including but not limited to any filings which may be required. Neither the Members and their affiliates or any Club will take any action in connection with the Club Offering which would cause the Club not to comply with Regulation D, and will make a timely filing of Form D pursuant to the requirements of Rule 503 of Regulation D.

(c) The Members agree to execute or cause to be executed all such other documents conforming to this Agreement and to do or cause to be done all such federal and state securities laws filings and all such filing, recording, publishing and other acts as may be appropriate to comply with the requirements of law in any jurisdiction of organization for any Club.

(d) The Members will not take any action to render themselves or the Company a broker, dealer or financial advisor as defined under any securities law.

(e) Neither the Members nor any Club will offer or sell any securities in any Club Offering except in strict compliance with any available exemption under Regulation D of the Act or by means of any form of general solicitation or general advertising, including but not limited to the following:

(i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar news medium or broadcast over television or radio; or

(ii) any seminar or meeting whose attendees have been invited by any general solicitation or advertising.

(f) The Members and any Club shall not give any information or make any representation in connection with any Club Offering other than those contained in a Private Placement Memorandum or such other material as may be approved or provided by the Company, the Members and any Club.

## Presenter Checklist

Generally, angel funds will invite companies in which they are considering investment to appear and present before their fund members. It is usually best for each angel fund to develop a standard checklist for executives from potential investments to utilize prior to their presentations. An example follows.

- 1) Company description
- 2) What products(s) / service(s) are offered
- 3) Market
  - a) Overall size
    - (i) revenue forecast
    - (ii) time frame
  - b) Near term addressable market size
    - (i) revenue forecast
    - (ii) time frame
- 4) Plan for infiltrating market
- 5) Management team
  - a) Key Employees
  - b) Board members / advisors
- 6) Current company financials
- 7) Projected Revenue over the next 5 years
- 8) Financing
  - a) Desired capital raise (amount)
  - b) What type(s) of financing have you received in the past
  - c) Proposed allocation for raised funds (percentage breakdown)
- 9) Presentation time frame
  - a) 20 minute PowerPoint presentation or other technology (15-20 slides)
  - b) 10 minutes for questions and answers
- 10) Special requests – Please inform us of any special requests.



## Due Diligence Approach

Following a presentation, the angel fund membership would consider whether an investment might still be under consideration. If there is a positive recommendation by the angel fund members to proceed with due diligence on a company, the Managers will collect names of volunteer members for the Due Diligence Committee who will initiate the due diligence process and begin to survey prospective co-investors.

The Committee will seek to make an investment recommendation within the four (4) week period between meetings but can make a recommendation at any time.

Typical due diligence efforts by the managers will involve among other things:

- coordinating the Due Diligence Committee,
- examining relevant materials from the company,
- asking for additional material from the company and prior investors (if any),

Typical due diligence efforts by the Committee will involve among other things:

- Reviewing materials submitted by the company,
- Coordinating with other potential co-investors,
- contacting customers, competitors, partners and references,
- interviewing management, preferably during organized on site visit.
- consulting with other Fund members about the opportunity.
- participating in a committee site visit, and
- any other activity related to evaluating the opportunity that the committee deems appropriate.

Once the committee has completed its process and makes its recommendation, this is communicated by written report (if positive) to the Fund by a committee spokesperson to the company, co-investors and the management.

The objective of this process is several-fold. 1) To evaluate whether investment opportunities merit a Fund investment. 2) To educate members about the opportunity and early stage private equity investing in an enjoyable and structured atmosphere. 3) To be responsive and responsible to our partners (entrepreneurs, fellow funds, etc.) in discharging this responsibility. 4) To learn about the space for possible alternative or future investments.

## Due Diligence Checklist

The following is a checklist of items which will be reviewed in the course of due diligence. Items will be deleted or added as deemed appropriate by the managers and/or Committee.

Checklist	Category	Detail
	Management	<p>Management experience: years, early stage, large enterprise</p> <p>Domain expertise: degrees, work experience, number of years</p> <p>Investing in company, amount and manner</p> <p>Intangible attributes: charisma, listening, communication, responsiveness, manner, etc.</p> <p>Management contracts, references and ongoing litigation</p> <p>Board of Director information</p> <p>Management and Board compensation history</p>
	Market	<p>Size, growth potential, immunity to macroeconomic change</p> <p>What “space” is the company in?</p> <p>What space will it be in / enter using the proceeds of the funding?</p> <p>Where will it go long term?</p> <p>What is the target market(s) size?</p> <p>For each of these market spaces, who else could go into the space?</p> <p>Who would want to be a potential rival/partner?</p>
	Competitors	<p>Breadth of field, positioning,</p> <p>Competitor’s brand, strength, access to resources (competition analysis)</p> <p>Industry studies on competitors (including their partners and funding if known), business models, revenue models, and relevant industries.</p> <p>What are the Company’s sustainable compatible advantages</p>
	Product/Services	<p>Value proposition</p> <p>Comparative attributes</p> <p>Technology diagram, architecture, design documents and enterprise-grade software features (web-based, multithreaded, failsafe, etc.)</p> <p>Scalability, reliability, robustness, inter-operability issues</p> <p>Development schedule for products</p> <p>Development methodologies (version control, documentation, etc.)</p>

Checklist	Category	Detail
		<p>Experience of staff</p> <p>Intellectual property, strength, relevance</p> <p>Pricing strategy</p> <p>Reliance on third parties</p> <p>Compatibility, integration and implementation issues to current marketplace technologies/systems</p> <p>Proprietary position</p>
	Marketing & Sales	
		<p>Methods of selling &amp; strategy: direct, indirect, channels, partners</p> <p>Customer list, contacts, contracts, and analysis</p> <p>Customer experiences/references</p> <p>Sales cycle analysis, access routes</p> <p>Sales pipeline</p> <p>Marketing strategy, budget and collateral (all press releases, marketing, advertising, sales, and promotional material) for the last year</p> <p>Industry adoption studies (how will the system interact with legacy systems and what costs are associated with this issue? How non-adopters will work with the system and what costs that adds?)</p> <p>Management of outside agencies, current firms</p> <p>Strategic partners and potential strategic partners</p>
	Business model	
		<p>Revenue model including assumptions</p> <p>All current and projected pro forma financials</p> <p>Three scenarios: best, likely &amp; worst case including underlying assumptions, cash flows and capital expenditures</p> <p>Comparable models and valuations on model, if available</p> <p>Monthly comparison of projected vs. actual revenue and expenses for the last 12 months (if available)</p>
	Deal	
		<p>Co-investors, term sheet and contact information</p> <p>Potential exit strategies</p> <p>Detailed implementation and use of proceeds plan</p> <p>Approximate valuation</p>

The following are typical additional legal and financial information requests that will be reviewed in coordination with the Fund's counsel or a lead investor:

- Certificates and Articles of incorporation, including all amendments
- Fully diluted capitalization table (pre-investment) listing all investors with an indication that the whereabouts of all stockholders and stock certificates are known.
- Stock option table and copy of option plan.
- Copies of any contractual restrictions, agreements or rights attaching to any securities having preference over common stock, as well as any debt convertible into any equity of the company.
- Funding history.
- Principal Officers' contact information, resumes, salaries, compensation, references and reference contact information.
- Company benefit plans.
- Organization chart of corporate structure with department head count.
- For any material amounts, provide accounts receivable and accounts payable against schedule and other obligations due to/from the Company and its Affiliates.
- Brief description of any prepaid or deferred income and expenses.
- Auditors' (internal and external) letters and reports to management, and management's responses
- Name of person responsible for financial accounting and reporting, as well as the name and contract information of the outside accountant
- Tax returns and statement indicating whether the company has had or anticipated having any correspondence with any state or federal taxing authority.
- List and explain any loan agreements or any other financing instruments, with related documentation, to which the company was, is, or will be a party (including documentation of any liens, etc. to which any property of the company is subject).
- List significant vendors and service providers who, for whatever reason, expressly decline to conduct business with the Company or any subsidiary.
- Copies and status of all patents, trademarks, copyrights (pending and current), including patent filing numbers and documentation.
- Copies of all material contracts.
- Schedule of all litigation, arbitration and governmental proceedings to which the Company or the Company's directors, officers or employees are or have been a party within the last three years or which are threatened against any of them.
- Contact information for all outside relationships (lawyers, accountants, bankers, references, investors)
- Relevant government regulations and an assessment of their effect; potential new regulations that may affect the company.

## Investment Decision and Process

Following the due diligence investigation, the Committee would develop and distribute a brief written report summarizing the basis for a positive or negative decision.

With a positive recommendation the Managers prepare an investment package that is circulated to the Fund, usually in advance of a meeting or if between meetings via facsimile or e-mail. The Managers, along with the committee, then present the opportunity, lead a discussion and conduct a vote at the Fund meeting.

With a positive investment decision, the Managers execute on the investment, coordinating with the company, co-investors and managing the process in the best interests of the Fund. Side-by-Side funds are also gathered at this point. The Managers authorize the transfer of funds and execute investment documents.

The objective of this process is: 1) to inform the Fund about the investment opportunity evaluated by the Managers and the committee and allow them the opportunity to vote on it; and 2) to execute the investment approved by the Fund.

## Sample Investment Package

An investment package includes four documents: an investment announcement, investment terms summary, due diligence summary, ballot, and side-by-side form.

### Investment Package \_\_\_\_\_, 2017

To: Fund Members  
From:  
Subject: \_\_\_\_\_ Series B Investment Vote

\_\_\_\_\_ a X Fund potential portfolio company has received a term sheet for a \$1.7 million Series A convertible preferred stock investment from a lead investor, VC Capital. The Managers have been following the company for the past six months and conclude, along with the Fund's Due Diligence Committee, that an investment in the series B round is a favorable opportunity for the Fund. \$500,000 is available to the Fund and the Manager's propose that \$300,000 be approved by the Fund and \$200,000 be made available for side-by-side investors. Should a quorum of the Fund be present this evening there will be a vote following the managers' report and discussion.

As you remember, \_\_\_\_\_ applies computer principles to achieve better than state-of-the-art video compression ratios. The company's patent-pending technology separates foreground and background objects, compresses them individually, and transmits those objects as needed. This separation can produce transmission efficiencies anywhere from two-to-ten times current state-of-the-art technologies, although there are some types of video where there is minimal compression improvement. The company's technology will shortly be available as software and in the future could be applicable to hardware devices such as camcorders and PCs.

The company has built out a world-class management and technical team, have met the release timeframe for their product development, and have entered into discussions and agreements with leading players in the video creation and distribution marketplace.

The demand for video is just beginning on the web – and limited bandwidth has been one of the significant obstacles thus far. The marketplace will reward those companies that generate bandwidth efficiencies by decreasing the size and amount of video data being transmitted. Unlike most of its competitors, \_\_\_\_\_’s technology yields better video quality over both narrow and broadband connections.

The Series B financing is scheduled to close X, and all Series A investors will be participating. In addition to VC Capital, the X Fund and others are interested in participating in the Series B financing. The pre-money valuation on the round is \$6.0 million.

The following pages provide a summary of the due diligence findings completed by the Managers and the Due Diligence Committee over the last month. A ballot is provided for your vote on the Fund’s commitment. Members have five (5) working days to indicate the amount of additional investment they desire, if any, to the Managers and provide a check made out to “the Fund” (\$10,000 minimum for side-by-side investments.) If side-by-side opportunities are over-subscribed, Members will be allowed to invest their pro-rata share in the opportunity.

Thank you for keeping this information confidential.

### **Investment Terms**

\_\_\_\_\_ expects to conclude a final term sheet with VC Capital in the next few days. It is expected that this term sheet will be for a \$2.2 million Series B investment round at a \$6.0 million pre-money valuation. The Managers propose that the Fund exercise its right to invest \$500,000 by investing \$300,000 from the Fund and \$200,000 in side-by-side investments.

After conducting due diligence, the Managers and the Due Diligence Committee recommend an investment in \_\_\_\_\_ based on the company’s success in meeting milestones set by the earlier investors, growing confidence in the robustness of its technology, the size of the market opportunity and the strength of the co-investors. The Managers submit the terms below for Fund approval.

Security:	Series B Convertible Preferred Stock
Amount:	\$2,200,000 total offering
Valuation:	\$6,000,000 pre-money
Structure:	Preferred Stock, normal venture capital terms and conditions
Purpose:	Product build-out, sales & marketing ramp-up, general corporate purposes
Fund Opportunity:	\$500,000; \$300,000 from the Fund, with side-by-side investments of \$200,000.
Closing:	Anticipated on or before Month X, 20XX
Co-Investors:	VC Capital, X Fund

## Due Diligence Request

Having addressed the due diligence and investment analysis process, it is important to revisit the beginning on this portion of the process to ensure that it is clear how the due diligence information should be collected from the potential investment. If the angel fund relies on a standard investment due diligence approach, it would generally provide a request for specific due diligence information to support its analysis activities. A sample of a due diligence request follows.

### ABC COMPANY, INC.

#### PRELIMINARY DUE DILIGENCE INFORMATION REQUEST LIST

We are sending you this list in connection with our due diligence review relating to the proposed investment in ABC COMPANY, Inc. (""). We would appreciate your making available for our review at your earliest convenience originals or copies of the following documents. Where not otherwise indicated, documents requested should be made available for all periods subsequent to August 1, 20XX.

Unless otherwise indicated and to the extent applicable, we would like to examine types of documents listed below as they relate to (i) the Company's assets, and (ii) the conduct of the business and the assets used in connection therewith.

The following list is intended to be illustrative rather than exhaustive. We recognize that some of the items requested may not be applicable to the Company or may already have been provided. We would greatly appreciate it if you would update this list to indicate the date responsive documents were provided (or, if there is no responsive documentation or information, indicate that a request is not applicable) and return a cumulatively annotated, copy of this list with each due diligence response. If any particular response is a partial response, please so indicate until all responsive materials have been provided.

#### A. Corporate Records

1. Articles or Certificates of Incorporation and Bylaws of the Company, as amended to date.
2. A list of all jurisdictions in the United States and elsewhere in which the Company is qualified to do business and in which it has offices, owns property, or transacts business.
3. A list of the current directors of the Company.
4. Summary of business and personal relationships and affiliations among directors, officers, shareholders, creditors, customers, suppliers and other business affiliates of the Company.
5. All agreements relating to the voting of any stock or other security of the Company or granting stock or other security of the Company or relating to the Company's ability to undertake significant transactions.

6. Letters from lawyers to the Company's auditors in connection with the lawyers' work on matters for the Company.

B. Contracts and Commitments

1. Copies of all material contracts for the Company including, but not limited to, the following:

- (a) loan and credit agreements;
- (b) promissory notes, indentures and other debt instruments;
- (c) security agreements;
- (d) financial or performance guaranties;
- (e) indemnifications;
- (f) agency or commission agreements;
- (g) sales, marketing and advertising agreements;
- (h) insurance contracts;
- (i) joint venture agreements;
- (j) licensing and royalty agreements;
- (k) collective bargaining or other labor agreements;
- (l) leases with respect to real estate, equipment or other personal property;
- (m) employment, termination or consulting agreements;
- (n) management agreements; and
- (o) financing, service and other agreements with affiliates; and
- (p) confidentiality, nondisclosure or similar agreements.

2. List of all current transactions or arrangements involving the Company and any affiliate or associate or any present or former officer, director or employee and copies of any agreement or documents respecting the foregoing.

3. A schedule of all of the Company's customers and suppliers indicating materials and/or services supplied or purchased and copies of any agreements relating to any such customers and suppliers.

4. Copies of any loan agreements, line of credit agreements, indentures of other debt instruments (including any guarantees of such loans to another person), and copies of all correspondence related thereto between the parties to such agreements, including, but not limited to, compliance letters, notices of default, etc.

5. Debt schedule summarizing short-term and long-term debt and capital lease obligations with original principal amounts, interest rates, outstanding balances and maturity dates for all assets of the Division.

6. All agreements entered into by the Company out of the ordinary course of business, including development, partnership and joint venture agreements.

7. All employment contracts with management and former senior employees, deferred compensation and similar agreements, and all general employment or collective bargaining agreements with employees, as well as any other agreement and historical background of negotiations with labor unions.



8. All insurance policies, including key-man product liability, casualty, liability, title, workers' compensation, errors and omissions, director indemnification, and environmental insurance of the Company, or insurance summaries thereof; and loss summaries for the last five years for general, products and automobile liability insurance and for workers' compensation insurance and all reservations of rights and denials of coverage received from any insurance carrier relating to pending claims.

9. All marketing, advertising, sales, distribution and franchise agreements and a list of any independent sales persons or distributors.

10. Closing documents, agreements, correspondence, and any other documents pertaining to any material transactions of the Company in the last three years.

11. All lease agreements, nondisturbance agreements, sale and leaseback agreements, installment purchase contracts, consignment agreements, financing leases, licensing and franchise agreements, joint venture agreements, and distributor agreements relating to the business of the company or to which the Company is a party.

12. All agreements not to compete to which the Company is or was (within the last three years) a party (whether with an individual or another business organization).

13. All material supply or requirements contracts to which the Company is a party.

14. All contracts with major customers of the Company and the percentage of revenues attributable to each.

15. All maintenance contracts on the Company's plant and equipment.

16. All independent contractor, consulting, commission, agent, service, production, manufacturing, sale, agency, distribution, purchase, marketing, consignment, finder, broker, advertising, and similar contracts to which the Company is a party.

17. Samples of standard form purchase orders, service or retail purchase contracts, sales agreements, invoices, warranties and other standard form agreements used by the Company.

18. All other material contracts not otherwise described herein (including guarantees, agreements with competitors and any agreements containing termination or other provisions triggered by a change in control).

C. Litigation

1. A schedule of all pending or threatened legal proceedings (including any arbitration proceedings) to which the Company is a party, providing a brief description of the following information:

- (a) parties;
- (b) nature of the proceeding;
- (c) date and method commenced; and
- (d) amount of damages or other relief sought.

2. All pleadings and correspondence relating to all pending or threatened litigation or claims involving the Company as plaintiff or defendant.

3. Copies of any orders, judgments or decrees (including consent decrees) of any court or governmental body applicable to the Company.

4. Any file concerning pending or threatened litigation or administrative proceedings, inquiries, or investigations involving the Company or its agents, including copies of pleadings, briefs, depositions, correspondence, etc.

5. Any file concerning disputes between the Company and its suppliers, vendors, customers, or competitors.

6. All consent decrees, judgments, injunctions, other decrees, orders, settlement agreements, other agreements, arbitrations and arbitration findings to which the Company is subject or by which it is bound or that prohibit or require future activities.

7. All information concerning any significant claim asserted or threatened by any taxing authority against the Company or other entity for whose taxes the Company could be liable, whether directly, indirectly, as transferee, or under a tax indemnity or tax-sharing agreement.

D. Employee Matters

1. Copies of all employee contracts, employee or management compensation plans and incentive plans and documentation of actual payments made or accrued under such plans in the last three years.

2. All employment contracts, consulting agreements, or similar agreements to which the Company or any of its subsidiaries is a party.

E. Governmental Regulations and Filings

1. Lists or copies of all licenses, permits, consents, approvals, authorizations, registrations, and filings from, with, or to any federal, state, or local governmental authority (including, without limitation, the Interstate Commerce Commission, equal employment agencies, environmental protection agencies, labor relations agencies, and trade practice agencies) relating to the Company. Please indicate which of those items expire, require a new application, consent or notification upon change of control.

2. All reports filed and significant correspondence with any local, state, or national regulatory agencies by the Company during the past four years, including OSHA, EPA and EEO.

3. Copies of all material correspondence, if any, with federal, state, provincial or similar regulatory authorities or agencies by which the Company is regulated.

4. Any reports, notices or correspondence relating to any violation or infringement by the Company of federal, provincial or local government regulations, including, but not limited to, the areas of fair trade, products liability, environmental regulation, import administration, equal employment opportunity, and occupational safety and health, and copies of all other material correspondence with federal or provincial regulatory agencies.

5. A statement of whether any governmental consent is necessary to consummate the proposed merger, asset purchase, or other transaction. Also, a statement of whether any current permits or licenses will be invalidated by a change in control of the Company.

6. A list of any import or export restrictions that affect the Company's operations and any customs permits that are required.

F. Environmental Concerns

1. List environmental permits and licenses, if any, under which the Company's facilities operate.

2. All notices and demands of environmental authorities relating to the operations or property of the Company.

3. Describe all assets or property of the Company that have ever been or are now being used for the generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous substance, as those terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq. ("CERCLA"). Also describe any hazardous substances used in the Company's operations.

4. Describe current disposal practices and historical relationships and practices with waste haulers and waste disposal facilities with respect to the storage, treatment, and disposal of wastes generated.

5. Make available all records regarding compliance history with environmental permits including air, water, underground storage, waste and sewer permits under federal, state and local rules and regulations. Set forth any known events of noncompliance with permits or other environmental regulations. Include copies of all correspondence with any federal, state or local environmental agencies.

6. Describe any environmental litigation or investigations, known Superfund exposure, contingent environmental liabilities, or continuing indemnification obligations.

G. Financial Information and Projections

1. All separate annual and quarterly (or other periodic) financial statements for the Company for the past three years.

2. Auditors' management letters, management's replies thereto and lawyers' audit response letters.

3. All debt instruments, including loan agreements, revolving credit agreements, indentures, mortgages, deeds of trust, security or pledge agreements, guarantees, and other documents involving the Company as borrower, lender, or guarantor (including any such documents or instruments over \$100,000 that have been paid or satisfied in the last three years).

4. Letters of counsel relating to litigation and other contingent liabilities of the Company to the Company's accountants delivered in connection with the latest audits of financial statements in the past three years.

5. Any waivers or agreements canceling claims or rights of substantial value other than in the ordinary course of business or any documents relating to material write-downs and write-offs of notes or accounts receivable other than in the ordinary course of business. Also, any documents relating to write-downs or inventory carrying values.

6. Documentation relating to accounting policies and procedures, record keeping procedures, production planning procedures, formal and informal internal controls.

7. Documentation relating to other appropriate financial reporting issues, including those relating to orders, shipments, etc.

8. Current and past levels of accounts receivables, aging and write-off policies, and special cases.

9. Current asset levels, working capital and liquidity including expected cash from operations, bank lines of credit and budgeted expenditures.

10. Inventory levels of raw materials, work-in-progress and finished goods, valuation policies, average turnover and obsolescence rates.

#### H. Taxes

1. Copies of all tax sharing and other tax-related agreements.

2. All federal, state, local and other tax returns and reports filed by or on behalf of the Company, or copies of extensions of time within which to file such reports as have been obtained, for the last three fiscal years, and any years prior thereto that remain open and subject to adjustment, audit, or review by the IRS or any state or local taxing authority, and copies of all audit, determination, and other correspondence pertaining thereto.

3. All information related to any audit of any return or report filed by or on behalf of the Company for the last three fiscal years and pending audits for any prior periods that could affect the tax liability, credits, or other tax attributes of the Company.

4. For state franchise or similar tax liabilities of the Company, a schedule setting forth, for each state in which such payments were made, the most recent period for which a franchise tax or similar tax payment was made and the date on which such payment is due and payable each year.

5. For personal and real property taxes, a schedule setting forth, for each location in which such payments were made, the most recent period for which such a tax payment was made and the date on which such payment is due and payable each year.

6. Documentation that the Company is current on sales, unemployment, Social Security, excise, and other tax payments.

7. A schedule describing any ongoing tax disputes, together with copies of revenue agents' reports, correspondence, etc. with respect to any pending federal, state, provincial or similar tax proceedings, with regard to open years or items relating to the Company.

#### I. Properties

1. All lists of equipment held by the Company.

2. Description and age of principal items or classes of equipment and a schedule of costs, depreciation reserve, depreciation rates and methods, present book value, and all liens and encumbrances applicable to each.

3. List and briefly describe any patents, trademarks, service marks, tradenames, fictitious business names, brands, copyrights and other similar proprietary rights issued to, applied for by, licensed by, owned by, or used by the Company or any of the employees or affiliates of the Company in the business of the Company, and all licenses, leases, and transfers of patents, trademarks, tradenames, copyrights, and other proprietary rights to which the Company is a party (whether granting the right or receiving it). Also, list and briefly describe any design, formulas, manufacturing processes, trade secrets, or technical know-how which is owned or used by the Company or any employee in the conduct of the business of the Company.

J. Information Technology ("IT")

For the Division's facilities, and for the relevant IT organization(s) related thereto, please describe and provide the following:

1. Is the IT facility at such location a stand-alone facility or is it tied into the corporate network? What functions/applications are accessed/supported at the corporate level?

2. What phone/voicemail system is in place? Provide a detailed asset list of all telephone equipment included in this transaction. What is the expandability of the phone system? What are the quantity and type of circuits? Who are the carriers telephone service providers (local, long-distance, trunk line, etc.)? What voicemail system is used, including operating system and version?

3. What is the LAN/WAN (local area network/wide area network) equipment at this location (including make, model number and utilization/capacity)? What types of servers and operating systems are deployed? What network protocols are in use?

4. What Internet service provider is used for the location? What is the monthly cost? How many users have Internet access?

5. What software packages are used for the enterprise (word processing, spreadsheet, e-mail, Internet and intranet portal access, accounting, manufacturing, design, etc.). What is the manner in which this software is licensed and deployed (local or shared)? Is it owned or leased?

6. List all IT equipment that does not fall under any specific category, such as printers, CAD/CAM (computer-aided design/computer-aided manufacturing) equipment, plotters, FAX machines and copiers (include: device type, manufacture, model #, serial #, OS and version).

7. Describe applicable procedures and agreements for the following:

- (a) Employee technology use agreement (e-mail, Internet, security, etc.)
- (b) Third party support agreements (are they assumable?)

K. Miscellaneous

1. A schedule of all insurance covering the Company, its assets and properties and any of its employees, together with copies of related policies.

2. All customer and independent contractor complaints or demands received within the last twelve months with respect to the Company or the services thereof.

3. All complaints to the Company received within the last twelve months regarding any employee or agent associated with the Company, whether such complaint is by another employee or a person not an employee.

4. All other documents viewed by the officers and directors of the Company as material to the business, financial condition, or operations of the Company.

5. Internal reports and studies concerning matters which are material to the ongoing business of the Company or the operation or ownership of their real property (whether owned or leased).

This is an adaptation of our standard list of items to be reviewed in our due diligence examination. Please advise me if any requests are overly burdensome, inapplicable, immaterial or irrelevant.

If you have any questions regarding the above requests, please do not hesitate to contact X via email or by phone.

## Investment Overview Profile

Following due diligence and investment placement (which is an involved process that generally requires legal counsel), many angel funds will prepare (and later update) investment profiles for their portfolio companies. A sample profile follows.

### Company Investment Overview Profile

**Company Name:** ABC Company

**Address:** 123 North Street, Any town, MS

**Source of Deal:**

**Amount Invested:** \$150,000

**Total Value:** \$150,000

**Company Description:** ABC Company provides a service that delivers advertisements to mobile phones based on the end-user's interests and location. The company's technology platform learns user preferences and ensures relevant and timely delivery of marketing offers and content. The precise delivery of this content increases the effectiveness of the marketing and improves customer satisfaction. The platform allows advertisers to enter a few parameters for their advertising campaigns, such as geography and time, and the platform will deliver the content to the target audience at the best time based on pre-set user preferences. The company has an experienced management team and is co-founded by Mason Johnson, the founder of Ingenuity.

To date, ABC Company has developed both a direct and indirect sales strategy. With significant wins like CDE Company and FGH Company, and channel partner IJK, this two-tier strategy leverages strategic partners to

accelerate time to market, but at the same time ensures that we are not dependent on any third party for our success in the marketplace.

**What Drove the CEO Fund I Investment Decision:**

**Who Lead the Deal:**

**Co-Investor:**

**Total Round Size:**

**Board Seat:**

**Additional value that the Fund contributed:**

**Company Operations Summary:**

**Perform to Plan (Yes or No):**

**Explain:**

**Company Exit Strategy:**

## Angel Fund Annual Report

Similar to the investment profile, most angel funds prepare annual reports – or even more regular reports – for their investors. A sample of a brief annual report letter follows.

### CEO Annual Report

April 13, 20XX

We are pleased to present the 20XX Annual Report of the [ABC Company].

There have been nine exits of the eleven investments made through 20XX. In 20XX, [DEF Company] exited in a sale to [GHI Company]. In, 20XX we received a partial, small escrow payout which was distributed. The more significant remaining General Indemnification Escrow is set to be released in April, 20XX.

[X Company] and [Y Company] discontinued or materially downsized operations in the past year which resulted in the loss of the investment in those companies.

[Z Company] was sold in 2013. There remains a final escrow payment which is expected once they have resolved a post-closing issue. Based on communications with the Trustee, this is anticipated to be paid out in the second quarter of 20XX.

We have two remaining companies in the portfolio - [JKL Company] and [MNO Company]. [JKL Company] generated revenues of \$1.34 million in 20XX and operated at close to cash flow breakeven. They raised \$500,000 in 20XX on a pre-money valuation of \$9.5M in late 20XX. This represents a significant uptick in valuation. Additionally, the company has just executed on a sizable contract with the USDA Port Facilities. [MNO Company] has not provided financial information for 20XX at this time. They do continue to make progress in their recycling capabilities and are pursuing two sizeable contracts based on input from management. The first project is developing a wet Mixed Waste Processing center in City, State. The second project enables wet mixed waste processing facility at a site within the city of City, State. Both projects will enable the recovery and cleaning of recyclable plastics and metals that would otherwise be contaminated by other elements of the waste stream. We anticipate financial information from [MNO Company] in the next month or so and will forward this upon receipt.

The Club's dissolution date is September 30, 20XX. We will collect and distribute the remaining escrow funds from the [DEF Company] sale to [GHI Company] and the [Z Company] transaction prior to the close based on information provided by both of these companies in the past month. We will continue to manage our remaining investments in [JKL Company] and [MNO Company]. We are working to have these two entities issue shares directly to each investor in 20XX as part of the dissolution process. We will keep you apprised of our efforts on this matter later in 20XX.

The financial statements for 20XX are attached for your review.

Best Regards,

[ABC Company] Management