**RF STANDARD**

**LIMITED LIABILITY COMPANY OPERATING AGREEMENT**

**FOR**

**LICENSING TRANSACTIONS**

[GENERAL INSTRUCTIONS:

* Only use this agreement with an investment in membership interests of a limited liability company where a Technology License Agreement is being executed and the limited liability company is being formed.
* If the limited liability is already formed and has an operating agreement, that operating agreement should be conformed as closely as possible to the terms of this operating agreement.
* Do not make changes to this form (other than as advised in this agreement) or agree to the terms of another operating agreement without contacting RF Office of General Counsel.
* do not circulate before deleting all instructions highlighted in yellow and all footnotes.
* Do fill in all blanks highlighted in yellow.
* Do check all section and article numbering throughout the document.
* Do complete Schedule A with all required information.

**OPERATING AGREEMENT OF**

[INSERT: Full name of limited liability company]

**A NEW YORK LIMITED LIABILITY COMPANY**

**Dated [\_\_\_\_\_\_\_\_\_\_\_\_\_], 20[\_\_]**

**OPERATING AGREEMENT**

This Operating Agreement of [INSERT: Full name of limited liability company] is effective as of the [\_\_\_\_] day of [\_\_\_\_\_\_\_\_\_\_\_\_\_], 20[\_\_], by and among the Company each of the Persons signing this Operating Agreement as Members.

**BACKGROUND**

[Tailor this section to reflect the actual background of the deal.]

A. Concurrently with the execution of this Operating Agreement, The Research Foundation of State University of New York, on behalf of **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**, a New York nonprofit corporation (“**Foundation**”), is entering into an Technology License Agreement with the Company effective as of [\_\_\_\_\_\_\_\_\_\_\_\_], 20[\_\_] (the “**License Agreement”**) under which Foundation is licensing to the Company certain technology owned by Foundation.

B. In partial consideration for the execution and delivery by Foundation of the License Agreement, the parties have agreed to enter into this Operating Agreement.

C. Concurrently with the execution of this Agreement, Foundation is entering into a Units Purchase Agreement with the Company effective as of [\_\_\_\_\_\_\_\_\_\_\_\_], 20[\_\_] (the “**Units Purchase Agreement**”) under which, in partial consideration for the execution and delivery of the License Agreement by Foundation, the Company has agreed to issue to Foundation certain Class A Units.

D. NOW THEREFORE, in consideration of the agreements and mutual promises and covenants set forth in this Agreement, the parties, intending to be legally bound, agree as follows:

# DEFINITIONS

As used in this Operating Agreement the following terms shall have the meanings indicated, other terms are defined elsewhere in this Operating Agreement:

“**Adjusted Capital Account Deficit**” shall mean, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments: (a) credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the next to the last sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) after taking into account any changes during such year in Company Minimum Gain and Member Minimum Gain; and (b) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations. The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

“**Articles of Organization**” shall mean the Articles of Organization of the Company filed with the Secretary of State of the State of New York pursuant to the New York L.L.C. Law.

“**Board**” shall mean the Board of Directors of the Company as described in **Article IV**, exercising their authority as managers under the L.L.C. Law in the manner set forth in this Agreement.

“**Book Depreciation**” shall mean the depreciation, cost recovery or amortization of assets allowable to the Company with respect to an asset for any period, except that if (a) with respect to any asset the Book Value of which differs from its adjusted tax basis for federal income tax purposes at the beginning of such period and which difference is being eliminated by use of the “remedial method” as defined by Section 1.704-3(d) of the Regulations, Book Depreciation for such period shall be the amount of book basis recovered for such period under the rules prescribed by Section 1.704-3(d)(2) of the Regulations, and (b) with respect to any other asset the Book Value of which differs from its adjusted basis for federal income tax purposes at the beginning of such period, Book Depreciation shall be an amount which bears the same ratio to such beginning Book Value as federal income tax depreciation, amortization, or other cost recovery deduction for such period bears to such beginning adjusted basis; provided, however, that in the case of clause (b) above, if the adjusted basis for federal income tax purposes of an asset at the beginning of such period is zero, Book Depreciation shall be determined with reference to such beginning Book Value using any reasonable depreciation method selected by the Board of Managers.

“**Book Gain or Book Loss**” shall mean the gain or loss that would be recognized by the Company for federal income tax purposes as a result of sales or exchanges of its assets if its tax basis in such assets were equal to the Book Value of such assets.

“**Book Value**” shall mean, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows and as adjusted in accordance with this Agreement:

(a) The initial Book Value of any asset contributed by a Member to the Company shall be the Agreed Value of such asset at the time of contribution;

(b) The Book Values of all Company assets shall be adjusted to equal their respective Agreed Values upon the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations, or as appropriate or necessary in the determination of the Manager to ensure that the Capital Accounts of the Members properly reflect their respective economic interests;

(c) Except as otherwise provided in subparagraph (b), the Book Value of any item of Company assets distributed to any Member shall be adjusted to equal the Agreed Value (taking Code Section 7701(g) into account) of such asset on the date of distribution;

(d) The Book Value of any item of Company assets shall be adjusted to equal its Agreed Value on the date of the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a Member capacity, or by a new Member acting in a Member capacity or in anticipation of becoming a Member; and

(e) The Book Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Regulations and subparagraph (f) of the definition of “Net Income” and “Net Losses”; provided, however, that the Book Values shall not be adjusted pursuant to this subparagraph (e) to the extent that an adjustment pursuant to subparagraph (ii) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (e).

(f) If the Book Value of an asset has been determined or adjusted pursuant to subparagraph (a), (b) or (d), such Book Value shall thereafter be adjusted by the book depreciation (pursuant to Section 1.704-1(b)(2)(iv)(g)(3) of the Regulations) taken into account with respect to such asset, for purposes of computing Net Income and Net Loss.

“**Capital Account**” shall mean the sum of the cash and the fair market value of any other property contributed by a Member, adjusted from time to time to reflect the Member’s share of any Net Income or Loss and any Distributions.

“**Capital Contributions**” shall mean the money contributed by a Member and the fair market value of any other property contributed by a Member in accordance with **Section 2.06** hereof.

“**Cash Available for Distribution”** shall mean cash from operations, sale of assets, borrowings, or otherwise available for distribution to the Members as determined by the Board in good faith, from time to time considering the needs of the Company for operating capital, the net profits or loss and net cash flow projected to be generated from operations of the Company, the borrowing power of the Company, as well as any debt reductions which may be required to be made, the need to establish cash reserves for any contingencies and such other criteria as the Board may deem appropriate under the circumstances.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended from time-to-time, and the corresponding regulations promulgated thereunder.

“**Company**” shall mean [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a New York limited liability company.

“**Company Minimum Gain**” shall have the meaning set forth in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

“**Director**” shall mean a manager (as defined in Section 102(p) of the L.L.C. Law) of the Company who is a member of the Board of Directors.

“**Distribution**” shall mean any transfer of money or other property to a Member, in his or her capacity as a Member, from the Company. For purposes of this Section, property is to be valued at its fair market value on the date of transfer.

“**Fiscal Period**” shall means from [January 1 to December 31] of each year or such portion thereof as the Company shall be in existence.

“**L.L.C. Law**” shall mean the New York Limited Liability Company Law, as amended from time to time.

“**Member Minimum Gain**” shall mean an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as Nonrecourse Debt, determined in accordance with Section 1.704-2(c)(i) of the Regulations.

“**Member Nonrecourse Debt**” shall have the meaning set forth in Section 1.704-2(b)(4) of the Regulations.

“**Member Nonrecourse Debt Minimum Gain**” shall mean an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if the Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

“**Member Nonrecourse Deductions**” shall have the meaning set forth in Section 1.704-(2)(i)(2) of the Regulations.

“**Members**” shall mean the Persons listed as Members at the end of this Operating Agreement.

“**Net Income**” and “**Net Losses**” shall mean for any given fiscal year or other period, an amount equal to the Company’s taxable income or loss for such fiscal year, determined in accordance with Code Section 703(a) (and, for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax or otherwise taken into account in computing Net Income or Net Losses shall be added to taxable income or loss;

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

(c) In the event the Book Value of any Company asset is adjusted ant to the definition of Book Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Losses;

(d) Gain or loss resulting from any disposition of property with respect to gain or loss is recognized for federal income tax purposes shall be computed by reference Book Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deduction taken into account in computing such taxable income or loss, there shall be taken into account book depreciation for such fiscal year or other period, computed in accordance with the capital account maintenance rules of Section 1.704-1(b)(2)(iv)(g)(3) of the Regulations; and

(f) To the extent an adjustment to the adjusted tax basis of any Company pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Section 1.704-(1)(b)(2)(iv)(m) of the Regulations to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of Units, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition asset and shall be taken into account for purposes of computing Net Income or Net Losses.

“**Nonrecourse Debt**” shall have the meaning given to the term “nonrecourse liability” by Section 1.704-2(b)(3) of the Regulations.

“**Nonrecourse Deductions**” shall have the meaning set forth in Regulations Section 1.704-2(c).

“**Operating Agreement**” shall mean the operating agreement of the Company, as amended from time to time.

“**Person**” shall mean an individual, a corporation, a partnership, a limited liability company or partnership, a trust, an unincorporated organization or a government or any agency or political subdivision thereof.

“**Pro Rata Share**” shall mean a fraction, the numerator of which shall be the number of Units held by a Member and the denominator of which shall be the total number of Units held by all Members. “Pro Rata Share” with respect to any class of Units shall mean a fraction, the numerator of which shall be the number of such class of Units held by a Member and the denominator of which shall be the total number of such class of Units held by all Members.

“**Regulations**” shall mean the Treasury Regulations promulgated under the Code, as from time to time in effect.

“**Tax Distribution**” shall mean, with respect to each Member, an amount equal to (a) the amount by which the net profit (other than income and gain referred to in Section 3.01(c)) allocated to such Member for the most recently completed calendar quarter exceeds the cumulative net loss (if any) allocated to such Member since the inception of the Company multiplied by (ii) 40.0%.

“**Unit**” shall mean the membership interest of the Members in the Company, divided into Units, as set forth on **Schedule A** attached hereto.

The following terms have the meaning defined in the corresponding section identified in the chart below.

|  |  |
| --- | --- |
| **Term** | **Section** |
| [“**Additional Issuance**”] | **[2.05(d)]** |
| “**Co-Sale Exercised Units Amount**” | **6.03(c)** |
| “**Co-Sale Unsold Units Amount**” | **6.03(c)** |
| “**Co-Sale Notice**” | **6.03(a)** |
| “**Covered Person**” | **9.14** |
| “**Excess Amount**” | **6.02(c)** |
| “**Exercised Units**” | **6.02(d)** |
| “**Family Member**” | **6.01(b)** |
| “**Foundation**” | Background |
| “**Interest Certificate**” | **2.05(c)** |
| “**License Agreement**” | Background |
| “**Majority Member**” | **6.04(a)** |
| “**Maximum Amount**” | **6.02(c)** |
| “**Minimum Amount**” | **6.02(c)** |
| “**Notice of Acceptance**” | **6.02(d)** |
| “**Offered Units**” | **6.02(a)** |
| “**Offeree Members**” | **6.02(c)** |
| “**Participant**” | **6.03(b)** |
| “**Regulatory Allocations**” | **3.01(d)** |
| “**Remaining Offered Units**” | **6.02(c)** |
| “**ROFR Share**” | **6.02(c)** |
| “**Sale Notice**” | **6.02(a)** |
| “**Selling Member**” | **6.02(a)** |
| “**SUNY**” | **6.01(b)** |
| “**Tag-Along Acceptance Notice**” | **6.04(b)** |
| “**Tag-Along Notice**” | **6.04(b)** |
| “**Tag-Along Members**” | **6.04(a)** |
| “**Tag-Along Right**” | **6.04(a)** |
| “**Tag-Along Transaction**” | **6.04(a)** |
| “**Transfer**” | **6.01(a)** |
| “**Unit Purchase Agreement**” | Background |

# ORGANIZATION

## Name

. The name of the Company is [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

## Purposes

. The purpose for which the Company has been formed is to engage in (a) [INSERT: Description of the Company’s business], and (b) any lawful act or activity necessary or incidental to the foregoing for which limited liability companies may be formed under the L.L.C. Law.

## Principal Office

. The principal office of the Company shall be located at [INSERT: Address of the Company’s office] or at such other place as may be designated by written notice from the Board to the Members. The Company may have such additional place or places of business as the Board may from time to time deem advisable.

## Term

. The Company was formed on the day on which the Articles of Organization was filed with the Secretary of State of the State of New York and shall continue, unless sooner dissolved in accordance with the terms of this Operating Agreement or the laws of the State of New York.

## Units

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### Issuance of Units. The Company may issue Units, as, when and for such consideration, and possessing such rights and on such terms and conditions, as determined by the Board with any such approval of the Members as set forth herein. Units shall be either Class A Units or Class B Units, provided that the Board may authorize the issuance of other types or series of Units, according to the terms hereof.

### Class A Units. Class A Units shall be issued only to the Foundation (or any of its assignee) and to no other Person.

### Unit Certificates. The Company hereby irrevocably elects that all Units shall be securities governed by Article 8 of the Uniform Commercial Code as in effect on the date hereof in the State of New York and as in effect in any other applicable jurisdiction that presently or hereafter has a law that is substantially similar to such Article 8. Each Member shall be issued a certificate or certificates to evidence its interests in the Company (each, an **“Interest Certificate”**). All Interest Certificates shall be signed in the name of the Company by the Director or officer certifying the interests owned by the Member. Any or all of the signatures on an Interest Certificate may be by facsimile or electronic signature. Each certificate representing Units shall be endorsed with the following legend:

THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO, AND IN CERTAIN CASES PROHIBITED BY, THE TERMS AND CONDITIONS OF THE COMPANY’S OPERATING AGREEMENT. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

### [NOTE: The following clauses should be used if the Foundation gets Anti-Dilution Rights or Preemptive Rights. The Foundation should get one or the other. Anti-Dilution can be addressed in different ways, but the provision below is the most favorable to the Foundation.]

### Anti-Dilution. At any time during the term of the Company, should the Company issue any Units or other equity securities (including derivative securities) (an “**Additional Issuance**”) contemporaneously with any such Additional Issuance the Company shall issue to the holders of Class A Units, a number of Class A Units sufficient to assure that each such holder will have the same Pro Rata Share immediately following the Additional Issuance that such holder had immediately prior to the Additional Issuance. In the event that any holder of Class A Units participates in any Additional Issuance as an investor, the issuance contemplated by this **Section 2.05(e)** shall be in addition to any issuances to such holder made in connection with the subject transaction.

### Preemptive Rights. Should the Company desire to issue additional Units it shall first give written notice to each holder of Class A Units of the same, including the terms and conditions (including the per Unit price) to be paid by the person to whom such additional Units are to be issued. For a period of thirty (30) calendar days after delivery of such notice by the Company to each holder of Class A Units, each holder of Class A Units shall have the right (exercisable upon written notice delivered to the Company within such thirty (30) calendar day period) to purchase such additional Units in an amount sufficient to ensure that each holder of Class A Units will have the same Pro Rata Share immediately following the issuance of any additional Units that such holder of Class A Units had immediately prior to the issuance of such additional Units. The terms and conditions of any such purchase by a holder of Class A Units (including the per Unit price) shall be equal to the terms and conditions (including the per Unit price) to be paid by the person to whom such additional Units are to be issued.

## Capital Contributions

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### Each Member has contributed money or property to the Company in exchange for the number of Units set forth opposite such Member’s name as set forth on **Schedule A** attached hereto.

### No Member shall be entitled to the return of all or any part of his or her Capital Contribution, prior to the partial or total liquidation of the Company. Any return of Capital Contributions to the Members shall be solely from Company assets, and no Member shall have any liability for any such return.

### Except as otherwise specifically provided in the Operating Agreement, no Member shall have the right to withdraw or reduce his or her Capital Contribution or to demand and receive property other than cash from the Company in return for his or her Capital Contribution or as a Distribution.

### No Capital Contribution to the Company shall bear interest.

### No Member shall have any right of partition or similar right with respect to property owned by the Company or to institute a claim for judicial dissolution of the Company, and each Member hereby waives any such right.

### No Member shall be obligated to make loans to the Company or to repay any deficit in his or her Capital Account.

# ALLOCATIONS AND DISTRIBUTIONS

## Allocation

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### Allocations – Overview. The rules set forth below in this **Section 3.01** shall apply for the purposes of determining each Member’s allocable share of the items of income, gain, loss and expense of the Company comprising Net Income or Net Loss of the Company for each Fiscal Period, determining special allocations of other items of income, gain, loss and expense, and adjusting the balance of each Member’s Capital Account to reflect the aforementioned general and special allocations. For each Fiscal Period, the special allocations in **Section 3.01(c)** shall be made immediately prior to the general allocations of **Section 3.01(b)**.

### General Allocations.

(i) The items of income, gain, loss and expense of the Company comprising Net Income or Net Loss for a Fiscal Period shall be allocated among the persons who were Members during such Fiscal Period in a manner that will, as nearly as possible, cause the Capital Account balance of each Member at the end of such Fiscal Period to equal the excess (which may be negative) of:

(1) the amount of the hypothetical distribution (if any) that such Member would receive if, on the last day of the Fiscal Period, (x) all Company assets, including cash were sold for cash in an amount equal to their Book Value, taking into account any adjustments thereto for such Fiscal Period, (y) all Company liabilities were satisfied in cash according to their terms (limited, with respect to each Nonrecourse Debt or Member Nonrecourse Debt in respect of such Member, to the Book Value of the assets securing such liability), and (z) the net proceeds thereof (after satisfaction of such liabilities) were distributed in full pursuant to **Section 7.02**, as applicable, over

(2) the sum of (x) the amount, if any, without duplication, that such Member would be obligated to contribute to the capital of the Company, (y) such Member’s share of Company Minimum Gain determined pursuant to Regulations Section 1.704-2(g) and (z) such Member’s share of Member Nonrecourse Debt Minimum Gain determined pursuant to Section 1.704-2(i)(5) of the Regulations, all computed as of the hypothetical sale described in **Section 3.01(b)(i)(1)** above.

(ii) Notwithstanding anything to the contrary in this **Section 3.01(b)**, the amount of items of Company expense and loss allocated pursuant to this **Section 3.01(b)** to any Member shall not exceed the maximum amount of such items that can be so allocated without causing such Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Period, unless each Member would have an Adjusted Capital Account Deficit. All such items in excess of the limitation set forth in this **Section 3.01(b)(ii)** shall be allocated first, to Members who would not have an Adjusted Capital Account Deficit, pro rata, in proportion to their Capital Account balances, adjusted as provided in clauses (i) and (ii) of the definition of Adjusted Capital Account Deficit, until no Member would be entitled to any further allocation, and thereafter, to all Members, pro rata, in proportion to their Pro Rata Share.

### Special Allocations. The following special allocations shall be made in the following order:

(i) Company Minimum Gain Chargeback. Notwithstanding any other provision of this **Section 3.01**, if there is a net decrease in Company Minimum Gain during any Fiscal Period, each Member shall be specially allocated items of Company income and gain for such Fiscal Period (and, if necessary, subsequent Fiscal Periods) in proportion to, and to the extent of, an amount equal to such Member’s share of the net decrease in Company Minimum Gain, determined in accordance with Section 1.704-(2)(g)(2) of the Regulations. The items to be so allocated shall be determined in accordance with Section 1.704-2(f) of the Regulations. This **Section 3.01(c)(i)** is intended to comply with the minimum gain chargeback requirement of the Regulations and shall be interpreted consistently therewith.

(ii) Member Minimum Gain Chargeback. Notwithstanding any other provision of this **Section 3.01** except **Section 3.01(c)(i)**, if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Period, each Member with a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Fiscal Period (and, if necessary, subsequent Fiscal Periods) in proportion to, and to the extent of, an amount equal to such Member’s share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(4) of the Regulations. The items to be so allocated shall be determined in accordance with Section 1.704-2(i)(5) of the Regulations. This **Section 3.01(c)(ii)** is intended to comply with the Member minimum gain chargeback requirement of the Regulations and shall be interpreted consistently therewith.

(iii) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations, 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 such Member as quickly as possible, provided that an allocation pursuant to this **Section 3.01(c)(iii)**shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this **Section 3.01** have been tentatively made as if this **Section 3.01(c)(iii)** were not in the Agreement.

(iv) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Period which is in excess of the sum of (1) the amount such Member is obligated to restore pursuant to any provision of this Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this **Section 3.01(c)(iv)** shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this **Section 3.01** have been tentatively made as if this **Section** **3.01(c)(iv)** and **Section 3.01(c)(iii)** hereof were not in the Agreement.

(v) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Period or other period shall be specially allocated to the Members in accordance with each Member’s Pro Rata Share.

(vi) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal Period or other period shall be allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Section 1.704-2(i) of the Regulations.

(vii) Other. To the extent an adjustment to the adjusted tax basis of any Company asset, pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Section 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4) of the Regulations, to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member’s Units, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their Pro Rate Share in the event Section 1.704-1(b)(2)(iv)(m)(2) of the Regulations applies, or to the Member to whom such distribution was made in the event Section 1.704-1(b)(2)(iv)(m)(4) of the Regulations applies.

### Curative Allocations. The **“Regulatory Allocations”** consist of the allocations to a Member (or its predecessor) under **Sections 3.01(c)(i)** – **(vi)** hereof. Notwithstanding any other provisions of this **Article III** (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. The Board shall have reasonable discretion, with respect to each Fiscal Period, to (1) apply the provisions of this **Section 3.01(d)** in whatever order is likely to minimize the economic distortions that might otherwise result from the Regulatory Allocations, and (2) divide all allocations pursuant to this **Section 3.01(d)** among the Members in a manner that is likely to minimize such economic distortions.

### Tax Allocations; Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Book Value. In the event the Book Value of any Company asset is adjusted pursuant to subparagraph (ii) of the definition of Book Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for Federal income tax purposes and its Book Value in the same manner as under Code Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Board in any manner that reasonably reflects the intent of this Agreement. Allocations pursuant to this **Section 3.01(e)** 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 person’s Capital Account or share of Net Income, Net Losses, other items, or distributions pursuant to any provision of this Agreement.

### Additional Members. If additional Members are admitted to the Company on different dates during any Fiscal Period, the Net Income (or Net Losses) allocated to the Members for each Fiscal Period shall be allocated among them in accordance with the interests each holds in the Company from time to time in accordance with Code Section 706, using any convention permitted by law and selected by the Board.

### Allocations Relating to Taxable Issuance of Units. Any income, gain, loss or deduction realized as a direct or indirect result of the issuance of an interest by the Company to a Member shall be allocated among the Members so that, to the extent possible, the net amount of such items, together with all other allocations under this Agreement to each Member, shall be equal to the net amount that would have been allocated to each such Member if such items had not been realized.

## Distributions

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### General. From time to time as determined at the discretion of the Board, the Company shall distribute to the Members any Cash Available for Distribution to and among the Members in proportion to their Pro Rata Share.

### Tax Distributions. In addition to **Section 3.02(a)**, a Tax Distribution shall be distributed to each Member quarterly on or as soon as possible after each April 1, July 1, October 1 and January 1 during the term of the Company. Distributions to a Member made under this **Section 3.02(b)** shall be treated as advance payments of, and shall reduce, payments otherwise distributable to such Member pursuant to this Agreement. Any distributions made to a Member pursuant to this **Section 3.02(b)** and not recovered against other distributions payable to such Member shall constitute a debt of such Member to the Company payable upon dissolution of the Company or such earlier time as the Member ceases to be a Member.

# MANAGEMENT

## Management by Members

. Except as authorized by the Board in accordance with this Agreement or as explicitly set forth in this Agreement, no Member (in his, her or its capacity as such) shall take part in the day to day management, or the operation or control, of the business and affairs of the Company. Except and only to the extent expressly delegated by the Board or specified in this Agreement, no Member shall be an agent of the Company or have any right, power or authority to transact any business in the name of the Company or to act for or on behalf of or to bind the Company. Nothing in this **Section 4.01**, however, is intended to restrict a Director or officer of the Company who is also a Member in the exercise of his or her power or authority as a Director or officer of the Company.

## Board of Directors

. The Board, consisting of one (1) or more Directors, shall be elected by the Members holding Class B Units as set forth in **Section 5.01(c)**. The business and affairs of the Company shall be managed by or under the direction of the Board, in the manner of managers as set forth in the L.L.C. Law.

[NOTE: Consider whether the Foundation desires to have observation rights]

## Powers and Authority of the Board

. Except where approval of the Members is expressly required by nonwaivable provisions of applicable law or as otherwise specifically provided in this Agreement, the Board shall have full, exclusive and complete discretion to direct and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company and to take all such actions as it deems necessary or appropriate to accomplish the foregoing and the purposes of the Company as set forth herein. The Board may delegate any of its powers, in whole or in part, to any officer or officers of the Company.

## Meetings; Quorum

### . (a) Meetings of the Board shall be held at least quarterly. Meetings may be called by order of the President or any Director. Notice of the time and place of each meeting shall be given by or at the direction of the Person or Persons calling the meeting by mailing the same at least twelve (12) business days before the meeting, or by sending the same by nationally recognized overnight courier service at least ten (10) business days before the meeting, or by telephoning, telecopying, e-mailing or delivering personally the same at least ten (10) business days before the meeting to each Director; provided, however, that notice of any special meeting of the Board may be given by nationally recognized overnight courier service, or by telephoning, telecopying, e-mailing (in each case confirmed on the same day by nationally or internationally, as appropriate, recognized courier service) or delivering personally the same, at least three (3) Business Days before the meeting to each Director. Except as otherwise specified in the notice thereof, or as required by the L.L.C. Law, the Articles of Organization or this Agreement, any and all business may be transacted at any meeting.

### At any meeting of the Board, the presence in person or by proxy of a least a majority of all Directors shall constitute a quorum for the transaction of any business. In the absence of a quorum those Directors present may adjourn the meeting to a specified date (which shall not be less than seventy two (72) hours after the date of the originally scheduled meeting). If a quorum is lacking at the adjourned meeting, that meeting may again be adjourned to a specified date (which shall not be less than seventy two (72) hours after the date of the first adjourned meeting). Notice of an adjourned meeting shall be given in the manner specified in **Section 4.04(a)**, except that (i) such notice need not be delivered more than seventy two (72) hours prior to the adjourned meeting, and (ii) notice of a second adjourned meeting shall be accompanied by a meeting agenda describing in general terms the matters to be discussed and approved at the meeting. At any adjourned meeting at which the requisite quorum is present any action may be taken which might have been taken at the meeting as originally called.

### The secretary of each meeting of the Board shall record the deliberations and determinations of the Board in written minutes which will be circulated by the secretary to the Directors after the meeting for their review and approval at or before the next meeting of the Board.

## Organization

. Every meeting of the Board shall be presided over by the Chairman of the Board who shall be appointed by the Members, or, in the absence of the Chairman, by such Director as shall be selected by the majority of the Directors present at the meeting. The Chairman, or the presiding Director, as the case may be, shall select a Person (who need not be a Director) to act as the secretary of the meeting. The President, if he or she is not a Director, shall be entitled to be present at all Board sessions, except as to matters affecting his or her employment, compensation or performance.

## Vote

. At any meeting of the Board, each Director shall be entitled to one (1) vote on any matter presented to the Board. Unless otherwise set forth herein, the vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

## Action Without Meeting; Telephone Meetings

. Unless otherwise restricted by the Articles of Organization or this Agreement, any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if consented to in writing by all Directors. Any one or more Directors, and the President of the Company shall be entitled to participate in a meeting of the Board by means of a conference telephone or similar communications equipment allowing all Persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

## Vacancies and Removal

. Any Director may be removed at any time, with or without cause, by the Members. Any vacancy occurring in the Board due to the death, resignation, incapacity, or removal, with or without cause, of a Director shall be filled by the Members.

## Committees

. The Board, by unanimous vote of all Directors, may designate committees of one or more individuals, which shall serve at the Board’s pleasure and have such powers and duties as the Board determines and as provided by this Agreement. Individuals designated by the Board to serve on any such committee are not required to be Directors, and the Board may designate by its own action as required pursuant to this Agreement committees comprised entirely of individuals who are not Affiliates of either Member and independent from both Members and the Board.

## Compensation of Directors

. No Director shall receive from the Company a salary or other compensation for services as a Director nor be entitled to reimbursement by the Company for expenses incurred in connection with the business of the Company, other than as set forth in and in accordance with the Company’s expense reimbursement policy.

## Status and Duties of Directors

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### Each Director shall be a “manager” for purposes of the L.L.C. Law, entitled to all rights, privileges and protections of a “manager” thereunder, provided however, that no Director shall, absent specific delegation or authorization by the Board, have the right or responsibility, acting individually, to manage the business or affairs of the Company or otherwise to act for or bind the Company as an agent, but may only act collectively through actions or determinations of the Board taken in accordance with the provisions of this Agreement.

### Each Director shall perform his or her duties as a Director in the manner set forth in Section 409 of the L.L.C. Law. In performing his or her duties, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by (i) one or more agents or employees of the Company, or (ii) counsel, public accountants or other Persons as to matters that such Director believes to be within such Person’s professional or expert competence.

## Limitations on Liability

. No Director shall be liable for any debt, obligation or liability of the Company, except as provided by law or as specifically provided otherwise herein. No Director shall be required to lend money to the Company or make any Capital Contribution to the Company in his or her capacity as a Director.

## Directors and Officers Liability Insurance

. The Company may, upon the unanimous approval of the Board and approval of the Members, purchase and maintain insurance for the benefit of any Covered Person who is entitled or permitted to receive indemnification under **Section 9.15**, against any liability asserted against or incurred by such Covered Person in any capacity or arising out of such Covered Person’s service with the Company.

## Officers

. The Board may elect a President and may elect such other officers of the Company, including a Chief Operating Officer, Chief Financial Officer, Secretary and Treasurer and such other or additional officers (including one or more Vice-Presidents (of such special rank and designation as the Board may specify), Assistant Secretaries and Assistant Treasurers) as the Board deems necessary or appropriate. The following individuals shall hold the office adjacent to their name until the earlier of their resignation or removal or until their replacement had been duly elected and qualified:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] President

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] Vice President

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] Secretary

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] Treasurer

## Term of Office; Removal and Vacancy

. Each officer shall hold office until his or her resignation or removal. Any officer or agent shall be subject to removal with or without cause at any time by the Board. Vacancies in any office, whether occurring by death, resignation, removal or otherwise, may be filled by the Board.

## Powers and Duties of Officers

. The President shall be the principal executive officer of the Company and shall in general supervise and have active management of all of the day-to-day business and affairs of the Company, unless otherwise directed by the Board of Directors or provided by this Agreement. The President shall report directly to the Board and shall see that all orders and resolutions of the Board are carried into effect. The President shall be the final arbiter of all differences among officers of the Company and his or her decision as to any matter affecting the Company shall be final and binding as between or among officers of the Company, subject only to the authority of the Board.

# MEETINGS OF MEMBERS AND VOTING

## Voting by Members

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### Whenever any vote or action is required to be taken by the Members holding any particular class of Units under the Operating Agreement, such vote or action shall be taken (i) at a meeting of the Members entitled to vote or act thereon called and held in accordance with this **Article V**, or (ii) by the Members entitled to vote or act thereon in accordance with the procedures set forth in **Section 5.07** hereof.

### Except as otherwise provided by this Operating Agreement, by statute, or by the Articles of Organization of the Company, all action taken by the Members (including Members holding any class of Units) shall be authorized by the vote of those Members holding a majority of all issued and outstanding Units (including of any class) entitled to vote.

### Directors shall be elected and removed by the vote of those Members holding a majority of the Class B Units.

### The Company may not take any of the following actions unless approved by Members holding a majority of the Class A Units:

(i) any amendment of the Articles of Organization,

(ii) any amendment to this Operating Agreement that would change or eliminate **Section 2.02** (Purpose), **Section 2.05(b)** (Class A Units), **Section 2.05(d)** ([Anti-Dilution][Preemptive Rights]), **Section 3.2** (Distributions), **Section 4.10** (Compensation of Directors), **Section 4.11** (Status and Duties of Directors), **Section 5.01(e)** (Voting of Members), **Section 7.02** (Winding up the Company), or **Article VI** (Transfer of Units) or **Article IX** (General),

(iii) the issuance of any Units or rights therein (including derivative securities) or the creation of any bonus payment or plan based upon the value of the Units, such as what is commonly referred to as a “phantom rights plans” or “unit appreciation plan”, in each case which would have preference in payment of distributions to Members holding Class A Units,

(iv) the purchase or redemption of any Units (including pursuant to **Section 6.02(b)** (Right of First Refusal)),

(v) any merger, conversion, consolidation, share exchange or other business combination,

(vi) any (1) voluntary dissolution (including pursuant to **Article VII**) or liquidation, (2) filing of a petition in bankruptcy, (3) appointment of a receiver, or (4) assignment for the benefit of creditors of the Company,

(vii) paying or making any dividend or distribution to any Member other than as expressly provided in this Agreement,

(viii) any change in accounting or tax policies, other than changes required by United States generally accepted accounting practices, including any change or revocation of the Company’s entity classification election under the Code, or any similar provision enacted in lieu thereof, or any corresponding provision of state tax laws,

(ix) incurring any debt on behalf of the Company, other than payments for (1) goods delivered and services rendered to the Company in the ordinary course of business, and (2) credit facilities for operating capital from a commercial bank, and

(x) any matter that would cause the holders of Class A Units to be liable for any debt or liability of the Company.

## Meetings of Members

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### An annual meeting of the Members may be held in such month of each year, as determined by the Board, if called by any Member or by a Director for the purpose of reviewing the business of the Company with the Members and for the transaction of such other business as may come before the meeting. If no annual meetings are called, the Members need not hold annual meetings. Special meetings of the Members, for any purpose or purposes, may be called from time to time by the Board.

### When assembled at an annual meeting, the Members may vote or act upon any matter with respect to which they are entitled to vote or act under the terms of this Operating Agreement or under the L.L.C. Law to the extent consistent with this Operating Agreement. When assembled at a special meeting, the Members may vote or act upon any matter described in the immediately preceding sentence which was set forth in the notice calling the meeting or notice of which was or is thereafter waived in accordance with this Operating Agreement.

### Members may participate in any meeting by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other. Such participation shall constitute presence in person at the meeting.

## Place of Meeting

. The Board may designate any place, either within or without the State of New York, as the place of the meeting for any annual or special meeting of Members; provided, however, that if any Member objects to such location, the meeting shall be held at the principal offices of the Company.

## Notice of Meeting

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### When calling a meeting the Board shall cause a written or printed notice of such meeting to be given to each Member of record entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting. Such notice shall state (i) the place, date and hour of the meeting, (ii) that it is being issued by or at the direction of the Person calling the meeting and, (iii) in the case of a special meeting, the purpose or purposes for which the meeting is called.

### Notwithstanding paragraph (a) hereof, notice of meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy. The attendance of a Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice of such meeting by such Member.

## Quorum

. The Members holding a majority of all issued and outstanding Units entitled to vote shall constitute a quorum at a meeting of Members for the transaction of any business, provided that if such business involves any matter set forth in **Section 5.01(d)**, in order to constitute a quorum the Members holding at least a majority of the Class A Units shall also be required to be in attendance. If such Members are not present at a meeting, the Members present may adjourn the meeting despite the absence of a quorum.

## Proxies

. At all meetings of Members, a Member may vote by proxy executed in writing by the Member or by his or her duly authorized attorney-in-fact. In order to be effective, such proxy shall (a) be signed in the exact name of the Member on record with the Company, and (b) be filed with the Board 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.

## Action by Members Without a Meeting

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### Any action required or permitted to be taken by vote at a meeting of the Members (including Members holding any class of Units) may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing setting forth the action so taken shall be signed by the Members who hold the voting interests having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote therein were present and voted and shall be delivered to the principal office of the Company or to the Board.

### Every written consent shall bear the date and signature of each Member who signs the consent, and no such consent shall be effective to take the action referred to therein unless within sixty (60) days of the earliest date a consent is delivered in the manner described in paragraph (a) of this **Section 5.07**, written consents signed by a sufficient number of Members to take the action are similarly delivered to the Company.

### Prompt notice of the taking of the action without a meeting by less than unanimous written consent shall be given to those Members who have not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

# TRANSFER OF UNITS INTERESTS

## Assignment or Transfer of Units

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### General Restriction. Except as expressly permitted by this Operating Agreement, no Member shall sell, transfer, assign, give, bequeath, hypothecate, pledge, create a security interest in, or lien on, encumber, place in trust (voting or other) or otherwise dispose of all or any portion of the Units, or any interest therein, now owned or hereafter acquired, held or controlled by such Member, whether voluntarily or through any bankruptcy or other insolvency proceedings, adjudication of insanity, death or otherwise, and intending to apply to transfers of any and every nature, kind and description including without limitation any withdraw from the Company or petition for judicial dissolution of the Company (sometimes herein referred to as a **“Transfer”**), unless and until each of the terms and conditions of this Agreement shall have been met. The Company shall not cause or permit the transfer of any Units to be made on its books unless the transfer is permitted by this Agreement, and has been made in accordance with its terms. Any Transfer that does not comply with this Article VI is void.

### Permitted Transfers. The restrictions set forth in this **Article VI** shall not apply to the following Transfers of Units:

##### gifts, bequests or transfers by any individual Members, either during his or her lifetime or on death by will or intestacy, to his or her spouse, siblings, lineal antecedents or descendants, children or grandchildren (natural or adopted) or nieces or nephews (natural or adopted) (collectively, “**Family Members**”), (ii) trusts for the benefit of the Member or any Family Member, or (iii) entities controlled by the Members or any Family Member; and

##### in the case of transfers by Foundation, transfers by Foundation to the State University of New York (“**SUNY**”) and any employee or former employee of Foundation or SUNY, and any institution that is a party to an inter-institutional agreement with Foundation or SUNY in connection with the technology licensed in the License Agreement.

## Right of First Refusal.

### Offer to Sell Units. Except as otherwise permitted under this Agreement, if any Member desires to transfer any or all of such Member’s Units, such Member (the “**Selling Member**”) will first deliver a written notice (the “**Sale Notice**”) to the Company with respect to the proposed transfer of such Units (the “**Offered Units**”) stating in reasonable detail the identity of the prospective transferee or prospective transferees and the terms and conditions of the proposed transfer (including, without limitation, the proposed date of the consummation of the proposed transfer, if known), and containing an offer to sell the Offered Units to the Offeree Members (as defined below) that will be irrevocable and open to acceptance for a period of thirty (30) days after the Company’s receipt of the Sale Notice. The date of consummation of the proposed transfer may not exceed a date that is ninety (90) days after the Company’s receipt of the Sale Notice.

### Option of the Company. For a period of ten (10) days after receipt of the Sale Notice by the Company, the Company may elect to purchase any or all of the Offered Units upon the same terms and conditions as those set forth in the Sale Notice by delivering written notice of such election to the Selling Member stating the number of Offered Units the Company will purchase, if any.

### Option of Offeree Members. To the extent that the Company does not elect to purchase all of the Offered Units in accordance with **Section 6.02(b)** above, the Company will deliver to all Members other than the Selling Member (collectively, the “**Offeree Members**”), within ten (10) days after its receipt of the Sale Notice, a copy of the Sale Notice and a written notice stating: (i) the number of Offered Units that it has elected not to purchase (the “**Remaining Offered Units**”), (ii) the number of Units held by each Member as reflected in the Company’s records, and (iii) the date the Company received the Sale Notice. The Offeree Members may elect to purchase any or all of the Remaining Offered Units at the price and upon the terms set forth in the Sale Notice by delivering to the Company, within twenty (20) days after the Company’s receipt of the Sale Notice, written notice specifying: (1) the number of Remaining Offered Units (up to such Member’s ROFR Share (defined below)) that such Offeree Member irrevocably commits to purchase (the “**Minimum Amount**”), and (2) the maximum number of Remaining Offered Units in excess of such Offeree Member’s ROFR Share that such Offeree Member irrevocably commits to purchase (the “**Excess Amount**”). The Remaining Offered Units will automatically be deemed to be accepted by the Offeree Members who specified a Minimum Amount in their respective notice of acceptance, allocated among such Offeree Members (with rounding to avoid fractional shares) in proportion to their respective ROFR Share. If one or more Offeree Members declined to participate in such purchase or elect to purchase less than such Offeree Member’s ROFR Share, then the Remaining Offered Units remaining will automatically be deemed to be accepted by the Offeree Members who specified an Excess Amount in their respective notice of acceptance, allocated among such Offeree Members (with rounding to avoid fractional shares) in proportion to their respective ROFR Share; provided, however, that in no event will Remaining Offered Units greater in number than an Offeree Member’s Excess Amount be allocated to such Offeree Member. Any Remaining Offered Units remaining will then be allocated among the remaining Offeree Members whose specified Excess Amount has not been satisfied (with rounding to avoid fractional shares) in proportion to each Offeree Member’s respective ROFR Share, and such procedure will be employed until the entire Excess Amount of each Offeree Member has been satisfied or all Remaining Offered Units have been allocated. For the purposes of this Agreement, “**ROFR Share**” means the percentage of Remaining Offered Units being offered to an Offeree Member that the Offeree Member is entitled to purchase, and is determined by dividing the aggregate number of Units held by such Offeree Member by the aggregate number of Units held by all of the Offeree Members. An Offeree Member’s failure to give timely written notice regarding its election to purchase any Remaining Offered Units under this section will be deemed an election by such Offeree Member to not purchase any Remaining Offered Units.

### Notice of Acceptance. If the offer to purchase Offered Units is accepted by the Company or any Offeree Member under **Sections 6.02(b)** or **Section 6.02(c)**, the Company, on behalf of itself and all purchasing Offeree Members, will provide the Selling Member with written notice of such acceptance (the “**Notice of Acceptance**”) within thirty (30) days after the Sale Notice is received by the Company specifying the number of Offered Units that the Company and each Offeree Member is purchasing (collectively, the “**Exercised Units**”). Nothing contained herein will prejudice any person’s right to maintain any cause of action or pursue any other remedies available to it as a result of such default.

### Offeree Member Closing. The closing of any purchase of the Exercised Units by the Company or any Offeree Member under **Sections 6.02(b)** or **Section 6.02(c)**, will take place at the principal offices of the Company, or any other location as the parties may agree, no later than the fifth (5th) day after the Notice of Acceptance is provided to the Selling Member. At such closing, the Company and each of the Offeree Members who has elected to purchase Offered Units will deliver payment in immediately available funds in the appropriate amount to the Selling Member against delivery of certificates duly endorsed for transfer or with executed membership interest powers attached representing the Offered Units to be purchased. The Exercised Units will be delivered free and clear of all liens and encumbrances other than those imposed by this Operating Agreement and applicable federal and state securities laws.

### Sale to Prospective Transferee. If, thirty (30) days after the Sale Notice is received by the Company, the Company and the Offeree Members have not elected to purchase, in the aggregate, all of the Offered Units, then the Selling Member will be free, subject to the co-sale provisions of **Section 6.03** of this Operating Agreement, for a period of ninety (90) days after the Company’s receipt of the Sale Notice, to sell any or all of the Offered Units to the prospective transferee that were not purchased by the Company and the Offeree Members (the “**Unsold Units**”) at the price and upon the terms and conditions set forth in the Sale Notice; provided, however, that such prospective transferee will execute and deliver to the Company those documents required pursuant to **Section 6.05** and **Section 6.06** . Promptly after any transfer pursuant to this **Section 6.02(f)** is completed, the Selling Member will notify the Company of the consummation thereof and will furnish such evidence of the completion and time of completion of such transfer and of the terms thereof as the Company may request. If any Unsold Units are not sold within such sixty (60) day period, then the Selling Member will not be permitted to sell such Unsold Units without again complying with the terms of this **Article VI**. If the Selling Member determines at any time during such sixty (60) day period that the transfer of any or all of the Offered Units on the terms contained in the Sale Notice is impractical, the Selling Member may terminate all attempts to transfer such Offered Units and recommence the procedures of this **Article VI** in their entirety without waiting for the expiration of such sixty (60) day period by delivering written notice of such decision to the Company.

## Right of Co-Sale.

### Notice of Proposed Sale. If a Selling Member wishes to transfer Units to a prospective transferee and the Selling Member has complied with the applicable provisions of **Section 6.02**, the Selling Member will first provide a written notice (the “**Co-Sale Notice**”) to the Offeree Members within five (5) days of receipt of the Notice of Acceptance disclosing: (i) the type and number of Units proposed to be sold to the prospective transferee, (ii) the number of Exercised Units, (iii) the number of Unsold Units, and (iv) the aggregate number of Units held by each of the Offeree Members, along with a copy of the Sale Notice.

### Right of Participation in Sales. Upon receipt of the Co-Sale Notice from the Selling Member, the Selling Member and each Offeree Member will have the right to sell to the prospective transferee, at the same price per unit and on the same terms and conditions set forth in the Co-Sale Notice, that type and number of Units equal to the sum of: (i) the Co-Sale Exercised Units Amount (as defined below), and (ii) the Co-Sale Unsold Units Amount (as defined below). Each Offeree Member that elects to exercise its co-sale rights hereunder will be referred to herein as a “**Participant**.”

### Definitions. The “**Co-Sale Exercised Units Amount**” for an Offeree Member is equal to the Exercised Units multiplied by a fraction, (i) the numerator of which is the aggregate number of Units (including the Offered Units purchased or designated for purchase, if any, by that Offeree Member pursuant to **Section 6.02**) held by such Offeree Member, and (ii) the denominator of which is the aggregate number of Units (including the Offered Units purchased or designated for purchase, if any, by the Offeree Members pursuant to **Section 6.02**) held by the Offeree Members entitled to participate in and who elect to participate in such sale to the prospective transferee. The parties hereto acknowledge and agree that the Co-Sale Exercised Units Amount for the Selling Member will be zero.

## The “**Co-Sale Unsold Units Amount**” for an Offeree Member and the Selling Member is equal to the Unsold Units multiplied by a fraction, (i) the numerator of which is the aggregate number of Units (if an Offeree Member, including the Offered Units purchased or designated for purchase, if any, by that Offeree Member pursuant to **Section 6.02** or, if the Selling Member, not including the Offered Units sold or designated for sale, if any, by the Selling Member pursuant to **Section 6.02**) held by the Selling Member or such Offeree Member, as applicable, and (ii) the denominator of which is the aggregate number of Units (if an Offeree Member, including the Offered Units purchased or designated for purchase, if any, by that Offeree Member pursuant to **Section 6.02** less the Co-Sale Exercised Share Amount for that Offeree Member or, if the Selling Member, not including the Offered Units sold or designated for sale, if any, by the Selling Member pursuant to **Section 6.02**) held by the Selling Member and the Offeree Members entitled to participate in and who elect to participate in such sale to the prospective transferee, as applicable.

### Process. If an Offeree Member wishes to participate in any sale under this **Section 6.03**, the Offeree Member will notify the Selling Member in writing of such intention within ten (10) days of receiving the Co-Sale Notice. On the date of the consummation of the proposed transfer as designated in the Sale Notice, each Participant will affect its participation in the transfer by delivering to the prospective transferee one or more unit certificates, properly endorsed for transfer or with executed membership interest powers attached, which represent the type and number of Units which such Participant elects to transfer calculated in the manner set forth in **Section 6.03**. Upon written request and surrender of unit certificates representing Units at the offices of the Company by a Participant, the Company will reissue unit certificates representing the Units in the same name as the surrendered unit certificate and in such denominations as the Participant may reasonably request in order to deliver a unit certificate to the Selling Member which represents the type and number of Units which such Participant elects to sell. On the date of the consummation of the proposed transfer as designated in the Sale Notice, each Participant will deliver its Units for sale calculated in the manner set forth in **Section 6.03** to the prospective transferee and pursuant to the terms and conditions specified in the Co-Sale Notice, and the prospective transferee will concurrently therewith remit to such Participant that portion of the sale proceeds to which such Participant is entitled by reason of its participation in such sale. To the extent that any prospective transferee prohibits such assignment by the Selling Member or otherwise refuses to purchase Units from a Participant exercising its rights of co-sale hereunder, the Selling Member will not sell to such prospective transferee any Units unless and until, simultaneously with such sale, the Selling Member agrees to purchase such Units from such Participant on the same terms as described in the Co-Sale Notice. Each Participant hereby agrees that it will become a party to, and execute, at the reasonable request of the Selling Member, any customary agreements with the prospective transferee to effect the sale of such Units, so long as the terms of such agreements which impose obligations on such Participants are no more onerous than similar terms in such agreements imposing obligations on the Selling Member; provided, however, that in no event will any Participant be required to make any representations and warranties jointly and severally with any other Member, or make any representations and warranties other than reasonable and customary representations and warranties relating to authority, enforceability, title to its Units, the absence of restrictions, liens and encumbrances on its Units (other than those imposed by this Agreement and applicable federal and state securities laws), and securities laws matters.

## Tag-Along Right.

### Tag-Along Right. Notwithstanding anything to the contrary contained in **Section 6.02** and **Section 6.03** of this Operating Agreement, if at any time any one or more Members (individually and collectively, the “**Majority Member**”) wish to transfer Units representing more than fifty percent (50%) of the then outstanding Units in a sale consummated in a single transfer or a series of related transfers to a prospective purchaser or group of prospective purchasers as part of a single transaction or group of related transactions (the “**Tag-Along Transaction**”), the other Members (the “**Tag-Along Members**”) will have the right (the “**Tag-Along Right**”) to participate in such Tag-Along Transaction for the same consideration and on the same terms and conditions as the Majority Member by including in the Tag-Along Transaction the same percentage of the Tag-Along Member’s Units as the weighted-average percentage of Units being sold by the Majority Member in such transfer.

### Notice of Exercise. The Majority Member will provide, within fifteen (15) days prior to the consummation of the Tag-Along Transaction, a written notice (a “**Tag-Along Notice**”) to each Tag-Along Member containing: (i) the name and address of the prospective purchasers, (ii) the proposed purchase price per unit, terms of payment and other material terms and conditions of the proposed Tag-Along Transaction, and (iii) all such other documents, instruments and information as may be required to enable the Tag-Along Members to effectuate the transfer of their Units. If a Tag-Along Member wishes to participate in the Tag-Along Transaction, the Tag-Along Member must deliver to the Majority Member, within ten (10) days of receiving the Tag-Along Notice, written notice (the “**Tag-Along Acceptance Notice**”) of the Tag-Along Member’s desire to participate in the Tag-Along Transaction. If the Tag-Along Member does not provide a Tag-Along Acceptance Notice to the Majority Member within the applicable time period, the Tag-Along Member will be treated as having waived its right to participate in the Tag-Along Transaction. The Tag-Along Acceptance Notice will state the number of Units that such Tag-Along Member proposes to sell in the Tag-Along Transaction and will constitute an irrevocable commitment by the Tag-Along Member to participate in the Tag-Along Transaction on the terms contained in the Tag-Along Notice.

### Cooperation. The Tag-Along Members will cooperate in the Tag-Along Transaction by providing the Majority Member with all materials (including executed purchase and sale agreements and stock transfer documentation) as the Majority Member may reasonably request in order to consummate the Tag-Along Transaction. The Tag-Along Member will, if provided with an opportunity to do so, consent to and vote in favor of the Tag-Along Transaction.

### Abandonment. The Majority Holder and any other party to any such Tag-Along Transaction will have the right, in its sole discretion, at all times prior to consummation of the Tag-Along Transaction, to abandon, rescind, annul, withdraw or otherwise terminate the Tag-Along Transaction prior to consummation of the Tag-Along Transaction, whereupon all Tag-Along Rights in respect of the Tag-Along Transaction will become null and void, and neither the Majority Member nor any other such party will have any liability or obligation to the Tag-Along Members with respect thereto. Nothing herein will be construed to obligate the Majority Member to accept any offer or terms for, or to consummate, any Tag-Along Transaction.

### Closing. The closing of the Tag-Along Transaction will take place at such time and location as the parties to the Tag-Along Transaction may agree. At such closing, each of the Tag-Along Members who has elected to sell Units in the Tag-Along Transaction will deliver unit certificates duly endorsed for transfer or with executed membership interest powers attached representing the Units to be sold against payment in immediately available funds in the appropriate amount by the prospective purchasers. The Units will be delivered free and clear of all liens and encumbrances other than those imposed by this Agreement and applicable federal and state securities laws. Each Tag-Along Members who has elected to sell Units in the Tag-Along Transaction also hereby agrees that it will become a party to, and execute, at the reasonable request of the Majority Member, any customary agreements with the prospective transferee to effect the sale of such Units; provided, however, that in no event will any Tag-Along Member be required to make any representations and warranties jointly and severally with any other Member, or make any representations and warranties other than reasonable and customary representations and warranties relating to authority, enforceability, title to its Units, the absence of restrictions, liens and encumbrances on its Units (other than those imposed by this Agreement and applicable federal and state securities laws), and securities laws matters.

## Form of Assignment

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### No assignment of all or any portion of a Member’s Units, though otherwise permitted by **Article VI** shall be valid and effective and the Company shall not recognize the same for the purpose of Distributions or for the allocation of Net Income or Loss with respect to such Units until there is filed with the Company an assignment or similar instrument in writing which is in form reasonably acceptable to the Board.

### After receiving an executed assignment or similar instrument as described in paragraph (a) of this **Section 6.05**, the Company shall make all further Distributions and allocate any Net Income or Loss to the assignee with respect to the Units transferred.

## Admission of Members

. The transferee of Units in the Company, whether permitted by **Article VI** or otherwise, may be admitted as a Member of the Company only with the approval of the Members holding a majority of all issued and outstanding Units entitled to vote (without giving effect to any Units being sold)and upon furnishing to the Board all of the following:

### acceptance, in form reasonably satisfactory to the Board, of all the terms of this Operating Agreement;

### such other documents or instruments as may be required by the Board or by applicable law in order to effect admission as a Member; and

### payment by the transferee of such reasonable expenses as may be incurred in connection with admission as a Member; and

### an opinion from a reputable lawyer or law firm that the transfer of Units complies with applicable laws.

Upon compliance with all conditions and provisions hereof applicable to such transferee becoming a Member, such transferee and the other Members (including, without limitation, the transferor) shall execute and deliver such amendments hereto and/or to the Articles of Organization as are necessary or desirable to constitute such transferee as a Member of the Company.

If a transferee of Units is not admitted as a Member such transferee shall be entitled only to receive the distributions and allocations of Net Income or Loss pertaining to the Units so transferred, but shall have no other rights.

# DISSOLUTION

## Dissolution

. In addition to any other causes stated herein, the Company shall be dissolved upon the vote of the Members holding at least two-thirds (2/3) of all issued and outstanding Units to dissolve the Company and the consent of the members holding a majority of the Class A Units as set forth in **Section 5.01(d)**. The Company shall continue upon the bankruptcy, death, dissolution, expulsion, incapacity or withdrawal of any Member so long as there is at least one remaining Member.

## Winding up the Company

. Upon dissolution, the Company shall immediately commence to wind up its affairs and distribute its assets. The Members shall continue to share in Distributions and Net Income or Loss during the period of liquidation in the same proportions as before the dissolution. The property and proceeds from liquidation of Company assets shall be applied as follows:

(a) first, to the payment of creditors of the Company, including Members who are creditors, to the extent permitted by law;

(b) and then, to pay the expenses of winding up the Company;

(c) and finally, to each Member in accordance with their Pro Rata Share.

## Termination

. The dissolution of the Company shall be effective on the date that the event causing such dissolution occurs, but the Company shall not terminate until all of its assets have been distributed in accordance with **Section 7.02** hereof.

## Final Statement

. As soon as practicable after the dissolution of the Company, a final statement of its assets and liabilities shall be prepared and furnished to all Members.

# BOOKS AND ACCOUNTS

## Books

. The Board shall keep or cause to be kept books of account in which shall be entered fully and accurately in all material respects the transactions of the Company. All books and records and this Operating Agreement and all amendments thereto shall at all times be maintained at the principal office of the Company and shall be open to the inspection and examination of each Member or his or her representatives during ordinary business hours upon reasonable notice. The Board shall furnish or cause to be furnished to all Members a report of the affairs of the Company at least annually and shall timely furnish such additional information as the Members may need to prepare their income tax returns.

## Accounting Method

. The accounting method for both book and tax purposes shall be the cash receipts and disbursements methods, unless another permissible method is elected by the Board.

# GENERAL

## Notices

. To be effective, any notices which may or are required to be given hereunder by any party to another shall be in writing and sent to the intended recipient by (a) personal delivery, (b) certified or registered United States mail, postage prepaid, or (c) nationally by recognized overnight courier, delivery fees prepaid; in each case to the address of the intended recipient set forth opposite such Person’s name on **Schedule A** at the end of this Operating Agreement. Any Member may change its address by giving written notice to the other Members in a manner conforming to the notice provisions hereof. Notice will be deemed given immediately upon personal delivery or the next business day following the date on which such notice is mailed or sent by recognized overnight courier in accordance with this **Section 9.01**.

## Captions

. The Section titles and captions contained in this Operating Agreement are for convenience only and shall not be deemed part of the context of this Operating Agreement.

## Interpretation

. The terms of this Agreement are intended to supersede any waivable term of the L.L.C. Law that is different from or inconsistent with the terms of this Agreement. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation,” (b) the word “or” is not exclusive and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (i) to Articles, Sections, Exhibits and Schedules mean the Articles and Sections of, and the Exhibits and Schedules attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement and (iii) to a statute or regulation means such statute or regulation as amended from time to time and includes any successor legislation thereto and any regulations promulgated there under, including any amendments to such regulations or successor regulations.

## Entire Agreement

. This Operating Agreement contains the entire understanding among the Members, and supersedes any prior understandings or written or oral agreement between or among any of them, respecting the within subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between or among any of the Members relating to the subject matter of this Operating Agreement which are not fully expressed herein. The provisions of this Agreement may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. There are no conditions precedent to the effectiveness of this Agreement, other than those expressly stated in this Agreement.

## No Waiver

. No delay on the part of any Member in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Member of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

## Further Actions

. The Members shall execute and deliver all documents, provide all information and take or forebear from all such action as may be necessary or appropriate to achieve the purposes of the Company.

## Binding Effect

. This Operating Agreement shall be binding upon and inure to the benefit of the Members and their permitted successors and assigns.

## Creditors

. None of the provisions of this Operating Agreement shall be for the benefit of, or enforceable by, any creditor of the Company or any creditor of a Member.

## Validity

. In the event that any provision of this Operating Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Operating Agreement.

## Governing Law

. This Operating Agreement shall be governed by the laws of the State of New York, without regard to conflicts of law principles.

## Amendment

. Subject to **Section 417(b)** of the Act and other than as set forth herein, this Operating Agreement may be amended or modified only by the affirmative written consent of the Members.

## Counterparts

. This Operating Agreement may be executed in counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all the parties hereto, notwithstanding that all parties shall not have executed the same counterparts.

## Severability

. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

## Indemnification

. To the maximum extent permitted by law, the Company shall indemnify any Member or Director (each a **“Covered Person”**), as a matter of right, against any claim, liability, loss, damages or expense (including reasonable attorneys’ fees) incurred by such Covered Person in connection with any claim, whether pending or threatened, against such Covered Person because such Covered Person is or was a Member or Director; provided, however, that no such indemnification may be made to or on behalf of any Covered Person if a judgment or other final adjudication adverse to such Indemnified Person established that (a) such Covered Person’s acts were committed in bad faith or were the result of active and deliberate dishonesty, in each case, that was material to the cause of action so adjudicated; or (b) such Covered Person personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

## Specific Performance. The parties hereby declare that it is impossible to measure in money the damages that will accrue to a party hereto by reason of a failure to perform any of the obligations under this Agreement. Therefore, if any party hereto shall institute any action or proceeding to enforce the provisions hereof, any person against whom such action or proceeding is brought, hereby waives the claim or defense therein that such party has or have any adequate remedy at law and the party instituting the action or proceeding shall be entitled to specific performance of the terms of this Agreement. Such remedy shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy which the parties may have.

## WAIVER OF JURY TRIAL. EACH PARTY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE UNITS OR THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, this Operating Agreement of [\_\_\_\_\_\_\_\_\_\_\_\_\_] is executed as of the date first set forth above.

**company**

[INSERT: COMPANY]

By:

Name:

Title:

**Members**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

THE RESEARCH FOUNDATION OF STATE UNIVERSITY OF NEW YORK on behalf of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

By:

Name:

Title:

**APPENDIX A**

**MEMBER AND UNITS INFORMATION**

|  |  |  |  |
| --- | --- | --- | --- |
| **Member Name** | **Address** | **Number/Type of Units** | **Capital Contribution** |
| THE RESEARCH  FOUNDATION OF  STATE UNIVERSITY  OF NEW YORK on  behalf of [\_\_\_\_\_\_\_\_\_\_] |  | [\_\_\_\_\_\_\_\_\_\_\_] Class A Units |  |
|  |  |  |  |
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