

Negotiating an Equity Capital Infusion from Outside Investors

Technical Guide

David A. Carpenter



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Table of Contents

Acknowledgments	viii
About the Author	ix
Part I. Introduction	1
Part II. Sample Term Sheet	9
Part III. Shareholders Agreement	27
Article I Definition and Interpretation	31
Section 1.1 Definitions	31
Article II Representations and Warranties	34
Section 2.1 Mutual Representations, Warranties, and Covenants of the Parties	35
Article III Obligations of the Company	35
Section 3.1 Purpose and Main Objectives	35
Section 3.2 Capitalization of Reserves	35
Section 3.3 Fresh Issue of Capital	36
Section 3.4 Deviations from Business Plan	37
Section 3.5 Legal Status of the Company	37
Section 3.6 Appointment of Internal Auditor	37
Section 3.7 Compliance with the Foreign Corrupt Practices Act and OFAC	38
Article IV Management of the Company	39
Section 4.1 Board of Directors	39
Section 4.2 Management	43
Section 4.3 Stock Option Plan	44
Section 4.4 Matters Requiring Shareholder Action	45
Section 4.5 Directors and Officers Insurance	46
Article V Transfer Restrictions	46
Section 5.1 Prohibited Transfers	47
Section 5.2 Right of First Refusal	47
Section 5.3 Tag Along Rights	50
Section 5.4 Sale Right of Selling Shareholder	51
Section 5.5 Preemptive Rights	52
Section 5.6 Drag Along Rights	53

Section 5.7 Permitted Transfers	54
Section 5.8 Put Option	54
Section 5.9 Lock-In	56
Article VI Indemnification and Exculpation	56
Section 6.1 Indemnification by the Company	56
Section 6.2 Exculpation	57
Article VII Assistance with Exit	58
Section 7.1 Assistance with Exit	58
Section 7.2 Dividends	59
Article VIII Non-Competition Undertaking and Confidentiality	60
Section 8.1 Non-Competition Undertaking of the Founder	60
Section 8.2 Other Investments or Activities by Investors	60
Section 8.3 Confidentiality	62
Section 8.4 Publicity	63
Article IX Books and Records; Reports; Notices	64
Section 9.1 Books and Records	64
Section 9.2 Reports	64
Section 9.3 Income Tax	65
Section 9.4 Business Plan	65
Section 9.5 Bank Accounts	66
Section 9.6 Accounting and Cost Control Systems	66
Section 9.7 Statutory Auditors	66
Section 9.8 Notice of Winding Up or Other Legal Process	67
Section 9.9 Insurance	67
Section 9.10 Investor Rights to Inspect	67
Article X Termination	68
Section 10.1 Termination Options	68
Article XI Dispute Resolution and Governing Law	68
Section 11.1 Arbitration	68
Section 11.2 Governing Law	70
Article XII Miscellaneous	70
Section 12.1 Notice	70
Section 12.2 Severability	71
Section 12.3 Waiver	71
Section 12.4 Survival of Warranties	71
Section 12.5 Entire Agreement	71
Section 12.6 Assignments and Transfers, No Third-Party Beneficiaries	72
Section 12.7 Effective Date of Agreement	72
Section 12.8 Amendment to the Memorandum and Articles of Association	73
Section 12.9 Amendments	73

Section 12.10 Interpretation	74
Section 12.11 Further Assurances	74
Section 12.12 Counterparts	74
Section 12.13 Costs	75
Part IV. Share Subscription Agreement	81
Article I Definitions and Interpretation	86
Section 1.1 Definitions	86
Article II Issue and Allotment of Equity Shares	89
Section 2.1 Subscription of Equity Shares	90
Section 2.2 Payment of the Investment Amount	90
Article III Representations and Warranties of the Company and the Founder as to the Company	91
Section 3.1 Organization, Good Standing and Qualification	93
Section 3.2 Authorization	94
Section 3.3 Capitalization	94
Section 3.4 Valid Issuance of Equity Shares	95
Section 3.5 Subsidiaries	96
Section 3.6 Consents and Approvals; No Conflicts	96
Section 3.7 Exemption from Registration Requirements	97
Section 3.8 Litigation	97
Section 3.9 Confidential Information; Non-Compete	98
Section 3.10 Patents and Trademarks	98
Section 3.11 Permits	99
Section 3.12 Corporate Documents	99
Section 3.13 Title to Property and Assets	99
Section 3.14 Financial Statements	100
Section 3.15 Insurance	101
Section 3.16 Labor Agreements and Actions; Employee Compensation	101
Section 3.17 Employee Benefit Plans and Employment Agreements	102
Section 3.18 Compliance with Laws	102
Section 3.19 Compliance with Statutory Obligations	102
Section 3.20 Compliance with Financing Arrangements	103
Section 3.21 Related Party Transactions	103
Section 3.22 Absence of Changes	104
Section 3.23 Disclosure	105
Section 3.24 Brokers or Finders	105
Article IV Representations and Warranties of the Investors	105
Section 4.1 Organization and Authority	106
Section 4.2 Authorization and Validity	106

Section 4.3 No Conflicts	106
Section 4.4 Governmental Authorizations	107
Section 4.5 No Governmental Proceedings or Limitation	107
Section 4.6 No Brokers	107
Section 4.7 Investigation	108
Section 4.8 Further Representations by Foreign Investors	108
Article V Conditions to Investors' Obligations at Closing	109
Section 5.1 Representations and Warranties	109
Section 5.2 Performance	109
Section 5.3 Authorization of Issuance and Amendment to Memorandum and Articles of Association	110
Section 5.4 Authorizations and Consents	110
Section 5.5 Governmental Orders	111
Section 5.6 No Material Adverse Effect	111
Section 5.7 Closing Deliveries	111
Article VI Conditions to the Company's Obligations at Closing	112
Section 6.1 Representations and Warranties	112
Section 6.2 Performance	112
Section 6.3 Authorizations and Consents	112
Section 6.4 Governmental Orders	112
Section 6.5 Closing Deliveries	113
Article VII Covenants	113
Section 7.1 Implementing Agreement	113
Section 7.2 Conduct of the Business Pending the Closing	113
Section 7.3 Public Announcements	114
Section 7.4 Access to Information	115
Article VIII Closing	115
Section 8.1 Closing Date	115
Section 8.2 Location of Closing	116
Section 8.3 Closing Actions and Deliveries of the Company	116
Section 8.4 Closing Actions and Deliveries of the Investors	118
Section 8.5 Government Filings/Notices	118
Section 8.6 Multiple Closings	118
Article IX Indemnification and Termination	119
Section 9.1 Indemnification	119
Section 9.2 Termination	120
Section 9.3 Survival	121
Article X Dispute Resolution and Governing Law	121
Section 10.1 Arbitration	121
Section 10.2 Governing Law	123

Article XI Miscellaneous	123
Section 11.1 Notice	123
Section 11.2 Severability	123
Section 11.3 Waiver	123
Section 11.4 Survival of Warranties	124
Section 11.5 Entire Agreement	124
Section 11.6 Successors and Assigns	124
Section 11.7 Amendment to the Memorandum and Articles of Association	125
Section 11.8 Amendments	125
Section 11.9 Interpretation	126
Section 11.10 Further Assurances	126
Section 11.11 Counterparts and Controlling Language	126
Section 11.12 Costs	127

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Part I. Introduction

The purpose of this guide is to familiarize microfinance institutions (MFIs) with some of the issues that are commonly addressed in the negotiation of an equity capital infusion from outside investors. To facilitate this understanding, this guide includes a sample annotated equity offering Term Sheet (the document that is often used by an MFI in the early stages of an equity infusion negotiation) as well as a Shareholders Agreement and an annotated Share Subscription Agreement (two relatively customary documents that are executed by an MFI with outside investors to provide for the terms and conditions of a proposed investment and to govern the relationship among the MFI and the investors once an investment is made).

The annotated sample Term Sheet, Shareholders Agreement, and Subscription Agreement, collectively referred to as Definitive Agreements, are intended to introduce an MFI to provisions commonly encountered in the documents governing the issuance of equity interests, along with explanations of why these provisions are sought by an MFI and/or investors in an MFI and the potential impact of the provisions on the MFIs and/or investors. The Definitive Agreements do not purport to be exhaustive of all provisions typically found in documents used in the issuance of equity interests by an MFI. Because the purpose of the Definitive Agreements is to explain a variety of common provisions found in such agreements, the Definitive Agreements include provisions that do not favor the MFI. As a result, an MFI may try to resist inclusion of many of these terms in the process of negotiating its Definitive Agreements. In certain cases, alternative drafting suggestions that might be more favorable or at least neutral to the MFI are suggested.

An MFI that is issuing shares may find that its potential investors will propose using their own forms of agreements as the basis for negotiations, and such forms may differ significantly from the Definitive Agreements. An understanding of the basic provisions found in these Definitive Agreements, however, should provide an MFI with a better basis to negotiate the terms of other forms of agreements that an investor may propose. Furthermore, the Definitive Agreements have been based on general practices and legal principles and are not based on the law of any particular jurisdiction, and they have been drafted as a learning tool with a general global audience in mind. An MFI will no doubt find that the law and custom of each jurisdiction vary greatly in the manner in which an institution can issue equity securities, the type of securities that

can be issued, and the provisions that govern the relationship between the MFI and its investors. **Accordingly, any MFI considering an equity offering should consult with local legal and financial advisers on the specific terms and conditions of a proposed issuance of equity securities based on its particular business needs, local custom, and legal requirements.**

Initial Considerations

The process of seeking and securing third-party financing is often lengthy. For an MFI that is seeking outside capital for the first time, it may take as long as six months or more to complete the process. Investors will typically conduct a thorough due diligence investigation of the financial, operational, and legal affairs of the MFI before definitively committing capital. The primary objective of the due diligence investigation is to verify, to the extent possible, that there are no significant impediments to an MFI achieving its business plan. While the due diligence process is ongoing, an investor will have access to significant confidential and proprietary information regarding the MFI; this process will usually begin before a Term Sheet has been negotiated. It is for this reason that the execution of a confidentiality agreement between the MFI and the investors is often the first formal step taken to initiate the process.

The Hypothetical Investment

This guide provides documentation and commentary based on a hypothetical equity investment by the consortium of investors described here. Note, however, that each investment will have its own unique characteristics, and therefore, the discussion and documentation that follow should be read as being merely illustrative of the kinds of issues that are typically discussed in an equity offering.

In this guide, it is assumed that XYZ Microfinance is a joint stock company that was incorporated prior to this contemplated equity investment (in some cases, the MFI may have been formed as a limited liability company and the investment structure would therefore vary). Its assets, which largely make up its loan portfolio, were contributed to it by a founding nongovernmental organization (NGO) that originally operated the business using a not-for-profit model. In return for the contribution of these assets, the founding NGO received equity securities of XYZ.

XYZ is now looking for additional equity capital to support its growth. XYZ is also being pressured to find additional equity investors by its bank regulatory authority, which requires diversified ownership of its regulated deposit-taking institutions.

Investor Profiles

For purposes of the Definitive Agreements, the investors are intended to represent typical types of investors that may be interested in making equity investments in MFIs. The investment goals and interests of each investor may differ significantly. Such differences make it important, yet sometimes difficult, for the MFI to ensure that there is an alignment of interests among the investors, governance bodies, and management team. These differing investment goals and interests will shape the negotiation and, ultimately, will also shape the governance structure of the MFI. An MFI that is intent on securing equity investors may find that some of its potential investors share characteristics with more than one of the investors described in the Definitive Agreements.

The following are profiles of the investors used in the Definitive Agreements:

- **Institutional Equity Fund.** The institutional equity fund is concerned first and foremost about its financial return. As a new player in microfinance, the fund is nervous about the investment because of the limited exit options (e.g., ways to withdraw from the investment and make money), lack of historical performance data of the MFI, and the relatively small investment size compared to the amount of due diligence and transaction costs required. Still, the fund is very interested in the potential of microfinance as a new asset class and is mindful of the potential positive press it will get from this deal. To the extent this fund tries to assume an active role on the board of directors or with the management of XYZ, it will be to protect its financial interest in its investment and anticipated financial returns. Most likely, if management conducts the business of the MFI appropriately, the fund will refrain from interfering with management. Examples of institutional equity funds include a variety of mutual funds and private equity/venture capital funds. These types of funds have not been overly active investors in MFIs to date, but such investors are beginning to play a more active role in the sector as the sector matures.
- **Domestic Bank.** The domestic bank investor is a large bank with a national presence in XYZ's country of operations although it has no international presence. The domestic bank offers significant expertise on the local regulatory landscape and long-standing experience in offering financial services to a variety of customers. However, it has little knowledge or experience serving the very poor or microentrepreneurs. This investment is therefore an opportunity for the bank to learn more about the microfinance sector and decide how it wants to be involved in the future, whether by offering financial services to the poor or microentrepreneurs directly, making additional investments in MFIs or acquiring MFIs outright.

- **Microfinance Fund.** The microfinance fund manages a portfolio of roughly \$15 million invested in a handful of MFIs. The managers of the fund have a mix of experience among them, including several years of experience working at major commercial banks, management consultancies, development organizations, and other MFIs. The managers look for investments that offer stable financial returns as well as high social returns. This fund wishes to play an active governance role and is eager to contribute its industry and strategic expertise to help XYZ grow. For more information on the growing number of specialized microfinance investment vehicles (MIVs), see CGAP 2008 MIV Survey Main Findings (September 2008) and MIV Survey—High Growth and Improving Returns for Microfinance Funds (October 2008), accessible online at <http://www.cgap.org/p/site/c/template.rc/1.26.1430>.
- **Socially Responsible Investor.** The socially responsible investor may have accumulated a great deal of wealth in his or her career as an investment manager, technology entrepreneur, or venture capitalist and is now interested in making an investment in an MFI due to its promise of both financial and social returns. The socially responsible investor is willing to take a lower financial return but wants to make a significant impact to improve the lives of the poor and wants to see the microfinance business run as efficiently and as effectively as possible.
- **Founding NGO.** XYZ recently acquired the assets and liabilities of the founding NGO in exchange for equity (commonly referred to as the “transfer approach” to transformation), but as the founding NGO has little or no other operations or revenue, it is unable to invest additional funds in this current investment round. The founding NGO’s shares are voted by the founder, and under the structure set forth in the Definitive Agreements, the founding NGO is able to play an ongoing role in maintaining XYZ’s commitment to its social mission. Unfortunately, the founding NGO will likely not be able to invest in future investment rounds. Thus, as XYZ grows and issues additional equity securities, the founding NGO’s ownership share of XYZ will be diluted, and over time, it is likely that its influence on XYZ will wane, unless the founding NGO develops a voting coalition with other like-minded investors in XYZ. The Term Sheet and Definitive Agreements assume that the founding NGO and founder are the only existing shareholders.
- **Founder.** The founder, the individual that established the founding NGO, remains the chief executive officer of XYZ, and XYZ has been propelled by his or her vision, energy, and long hours. In some situations, but not all, to maintain the participation of the founder in XYZ, the investors may agree to permit the founder to secure a significant ownership stake most commonly through bonuses, and/or discounted allocations to an employee stock option plan for his or her benefit, but potentially also by making low-interest loans

to the founder that can be invested in the MFI or by allowing the founder to acquire discounted shares in the future from bonus compensation. In most cases, the investors will want the founder to have a significant ownership stake so that his or her interests are aligned with those of the investors. However, certain investors may not agree to significant ownership or compensation of the founder, and this will be a point of negotiation.

There are several other types of potential investors an MFI may encounter that are not included in this hypothetical investment. For example, multilateral donors or international financial institutions, such as the International Finance Corporation and the European Bank for Reconstruction and Development, have made direct investments in MFIs and also have indirectly invested in MFIs by participating in funds that invest in microfinance. In the Definitive Agreements, multilateral donors and international financial institutions are not included as investors because they often impose a number of complicated and specific social and environmental standards that are beyond the scope of this guide's discussion. Despite their omission here, however, such investors can be very valuable partners.

Second, governments or governmental entities at times act as direct investors in MFIs, though this is typically because of the way original grants or funds were channeled and not because the government subscribed to an ownership stake. Government involvement may help with achieving funding, complying with regulations, and assisting with public relations, but might also introduce additional bureaucracy or alarm certain private sector investors. Prior to government investment, the MFI and its current stakeholders should understand the manner in which the government intends to participate in the MFI. In certain jurisdictions, government entities may seek to own or control a majority or large stake of the MFI in exchange for assistance with funding and legal compliance. Where the MFI and its stakeholders desire to have most of the control in the MFI's business and future transactions, other nongovernment investors may be more appropriate.

Third, a broad swath of smaller investors and local stakeholders may be interested in investing in the MFI. These types of investors may provide further valuable links to the community where the MFI works, particularly if clients or staff of the MFI are allowed to invest, but these types of investors may introduce various conflicts of interest, trigger regulatory concerns, and lack the funds necessary to participate in future rounds of funding.

Equity Documentation

For the investors' subscription to newly issued equity securities of an MFI, several documents will be required to evidence the obligations of the parties and clarify the terms on which the investment is being made. At minimum, a Term Sheet, Share Subscription

Agreement, and Shareholders Agreement should be used. An MFI that is intent on issuing equity securities also will need to consult with local counsel to determine whether additional documentation will be required based on the legal form of the MFI and applicable law. An equity offering, for example, will often require modifications to an MFI's organizational documents to ensure that sufficient authorized capital is available for a contemplated equity issuance. In addition, in some jurisdictions, the organizational documents of an MFI will need to be amended to reflect the terms of a Shareholders Agreement for the Shareholders Agreement to be binding on the parties.

Term Sheet

Most investments begin with the negotiation of the Term Sheet (sometimes referred to as a Letter of Intent or Memorandum of Understanding). The Term Sheet provides an outline of the basic terms and conditions that will be included in the Definitive Agreements. The Term Sheet guides the drafting of the Definitive Agreements and demonstrates a desire by all parties to negotiate in good faith to finalize the definitive terms of the investment set forth in the Term Sheet unless the results of an investor's due diligence investigations reveal concerns of which the investor was not previously aware. Once the parties have agreed to a Term Sheet, there should be limited room to alter those material terms of the investment addressed by the Term Sheet unless the investors are confronted with unknown risks or liabilities that impact their willingness to proceed with a transaction. As a result, all parties should view the Term Sheet as a critical component of the proposed investment and should consult with legal and financial advisors at this stage of the process. Even though it is typically countersigned by all parties, the Term Sheet will generally purport to be nonbinding and, therefore, one party will have limited remedies in the event of a breach of the Term Sheet by another party. This is because a Term Sheet is not intended to cover all aspects of an investment that may be important to an MFI or the investors. Instead, it provides a framework to negotiate or clarify the key terms of the deal at the early phase of the process. Negotiation of the Term Sheet allows both the MFI and its potential investors to determine whether they have a similar vision of the investment before committing the time and resources needed to negotiate the Definitive Agreements.

Share Subscription Agreement

The Share Subscription Agreement (also known as the Subscription Agreement) sets forth the definitive terms of the issuance of the equity securities by the MFI to the investors. As such, the Share Subscription Agreement will include, among other things,

the subscription price of the equity securities to be acquired by the investors, the conditions to closing, the representations and warranties of the MFI and, if applicable, the founder, and the requirements and terms for closing the transactions contemplated thereby. Once the equity securities are issued pursuant to the Share Subscription Agreement, that agreement will generally have very little relevance to the ongoing relationship between an investor and the MFI. One exception to this general rule is that the representations and warranties included in the Share Subscription Agreement will generally afford an investor recourse against the MFI and, if applicable, the founder, if the MFI's financial condition or other aspects of the MFI's business are not as represented. A Share Subscription Agreement will *not* generally govern the relationship among the MFI and investors after the closing of the transaction. These ongoing relationships would typically involve parties in addition to the MFI and the investors in a particular round of financing, including shareholders that exist prior to the investment, and therefore these terms are typically addressed in a separate agreement, most often in the Shareholders Agreement.

Shareholders Agreement

Following an investment, the Shareholders Agreement will define the relationship of the investors and MFI in relation to each other and to other shareholders of the MFI. As a result, the Shareholders Agreement will establish the governance structure of an MFI, include the composition of its board of directors or other governing body, the method for electing members of the board, procedures for holding board and shareholder meetings, and the role of management of the MFI. It will also establish the approval rights of investors over fundamental decisions to be made by an MFI. In addition, the Shareholders Agreement will often establish any applicable restrictions on transferability of equity interests or other securities held by new and existing investors and provide protection for investors from future issuances of equity securities or other securities in a manner that is dilutive to the investors and other shareholders. Finally, the Shareholders Agreement will provide a process for resolving disputes between the MFI and the investor in the event they are unable to agree on the future direction of the MFI. Often, many of the terms of the Shareholders Agreement will also be reflected in the MFI's constituent documents. While a Share Subscription Agreement may have a "life" of months (that is, the period from the time the subscription terms are agreed upon until the closing), the Shareholders Agreement is likely to have a "life" of many years. The Shareholders Agreement is also likely to be amended over time to respond to changes in the business of the MFI or to include new parties (e.g., new investors).

Part II. Sample Term Sheet

Term Sheet for Investment Into XYZ Microfinance

This term sheet (Term Sheet) summarizes the principal terms of an offering of equity securities described below by XYZ Microfinance, [*details on legal status and location of registration/organization*] (the Company). Except as expressly provided herein, this Term Sheet does not create legally binding obligations on the parties. No such obligations, except as provided herein, will be created until Definitive Agreements are executed and delivered by all parties. This Term Sheet is not a commitment to invest and is conditioned on the completion of a legal and financial due diligence investigation by the Investors (defined below), and agreement on definitive documentation that is satisfactory to the Investors and the Company.

I. Basic Terms

Company

XYZ Microfinance (Company), [*details on entity status and location of registration/organization*].

Securities

[*Description of shares to be offered*] (Equity Shares)

The terminology that describes the securities to be offered will vary based on the jurisdiction in which the equity securities will be issued. Be aware that as there are many different kinds of equity securities, the terminology used is significant. Local law will also impact the rights that different forms of equity carry, and therefore, MFIs must consult local counsel about the legal rights and obligations carried by each form of security. Moreover, in some jurisdictions, local law may limit the kinds of equity securities that a regulated financial institution such as the company can issue or that may be issued to foreign investors if one or more of the investors are foreign-owned. This should be reviewed with local counsel long before any negotiations commence with potential investors. For

purposes of this Term Sheet, we have assumed that only one class of securities is to be issued and that such securities will be “common” equity (e.g., not entitled to preferences with respect to dividends or on liquidation). It is common for investors to seek other types of securities, including preference shares or warrants to acquire additional equity securities at a predetermined price.

Investors and Commitments

Big Fund: [applicable currency] 3,000,000

Domestic Bank: [applicable currency] 2,000,000

Responsible Investor: [applicable currency] 2,000,000

Microfinance Fund: [applicable currency] 3,000,000

The entities named above are collectively referred to as the investors. These investors, together with any others that own a share of the total paid-up equity capital of the company (such as the Founder and Founding NGO of the company), will be collectively referred to as the shareholders after the subscription to the equity shares is completed. Prior to the subscription transaction, the owners of the company’s equity capital will be referred to as the existing shareholders.

This mix of investors is intended to provide a sense of the variety of types of investors that may be investing in MFIs. See the introduction for a more detailed profile of each of these hypothetical investors and for a discussion of the importance of ensuring that there is an alignment of interests among investors, governance structures, and management of the MFI.

It is assumed that any existing Shareholders Agreement or other agreement among existing shareholders does not provide the existing shareholders with rights that can block this transaction, and so existing shareholders who are not purchasing newly issued securities in this round of financing need not sign this Term Sheet. However, prior agreements should be reviewed carefully, and the company should confirm that consent of other parties is not required and that other requirements must not be met before proceeding to issue new securities.

Note also that in many jurisdictions, a regulated MFI would need approval of each “significant” shareholder by its bank regulatory authority prior to the subscription. Depending on local law, “significant” shareholdings can be as small as 5 percent of the overall equity of the MFI. Thus, it is important for an MFI to have investigated each of its proposed investors to assess the likelihood that each investor will be approved before time and energy are spent on negotiations.

Aggregate Proceeds

[applicable currency] 10,000,000

This is the amount of the aggregate subscription price for all of the equity securities being subscribed to in this round of equity financing. At this stage, the company should decide whether to require investors to make their investment in local currency or in a hard currency, such as U.S. dollars. This is a question of risk allocation: an investor will prefer to make its investment in a hard currency to minimize its exposure to currency exchange rate fluctuations taking place during the period of time that runs from the date the Term Sheet is signed to the date on which the contemplated purchase of equity securities is actually made. On the other hand, the company might prefer to have the aggregate proceeds denominated in local currency for the same reason. Note that the issue of choosing a currency for purchasing equity securities is a separate issue from choosing a currency for paying dividends or other payments to investors. In many jurisdictions, the currency of an investment will be dictated by applicable exchange control regulations.

Price Per Share

[applicable currency] 10.00 per Equity Share, based on a pre-money valuation [e.g., value before the infusion of new equity capital] of [applicable currency][•] million.

There are various ways the company may be valued. Clearly, the valuation is one of the most important aspects of the negotiation, as it will determine the percentage share of the company the investors will receive for their investment. In some transactions, certain investors may pay a different price for their shares. Alternatively, if different types of securities are being sold at the same time, then different prices may be assigned to each type of security.

Capitalization

Attached as Exhibit A is the Company's existing capitalization and proposed post-subscription capitalization.

Including a capitalization table, which describes the pre- and post-subscription capital structure of the company, will make it absolutely clear what percentage ownership interest will be held by each investor. It will also illustrate the dilutive effect of an equity offering on existing shareholders.

Closing Date

The closing (Closing) will take place as promptly as practicable following the execution of this Term Sheet, but not later than [90] days after the Term Sheet's execution. At or before the Closing Date (Closing Date), the parties will execute the Definitive Agreements, including without limitation the Shareholders Agreement and the Share Subscription Agreement.

By use of the terms "closing" and "closing date" the Term Sheet is referring to the date on which the actual sale of the equity securities of the company is made to the investors. It is in all parties' interests to close the deal as soon as possible, but the company is likely to be particularly eager to close the deal as soon as possible due to pressure from regulators and the cash needs of the business. The absence of a fixed date by which the transaction will be completed allows negotiations to drag on for a long time. On the other hand, choosing a closing date that is too early may push investors faster than they are able to accommodate. Accordingly, it is important for the company to discuss with all the investors their investment approval process and funding constraints so that a realistic time frame is agreed upon. Similarly, all parties concerned should review the conditions to closing below to ascertain how long it is likely to take to meet such conditions. For example, if it is known that the local bank regulatory authority typically takes up to 120 days to review applications of new significant shareholders, then setting the closing date in 90 days would not be realistic.

Purpose/Use of Proceeds

The purpose of the investment is to assist the Company in operating [a sustainable MFI that will offer (a) a wide variety of financial and nonfinancial products and services and (b) access to capital primarily to the poor and to small and medium entrepreneurs]. The proceeds are to be used to provide working capital, fund portfolio growth, carry out necessary infrastructure investments and other purposes at the discretion of the Company, acting through its board of directors (Board) in accordance with the business plan (Business Plan) as approved by the Board following the completion of the transactions contemplated by this Term Sheet. [The Investors acknowledge and agree that poverty alleviation is an integral part of the Company's mission and that there may be instances in which the Company sacrifices financial return for the sake of its social objectives.]

The form and heading of this section may differ, but the company (and certain investors) may want to provide language that protects the company's mission from pressure to maximize financial returns. Such language may be somewhat general (like the

bracketed language above) or may acknowledge particular social objectives, such as serving defined demographics, offering certain products, or delivering a certain impact on the lives of the customers and communities the company serves. The bracketed language above referencing investors' acknowledgment of the company's mission may be added where the company and founder seeks to ensure that the mission is not altered by the investors' financial stake in the company. In addition, local laws may restrict any change in the scope of the company as certain jurisdictions may prohibit the transfer of shares from the company, where it is a nonprofit entity, to an investor that is a for profit entity.

At the same time, the company would also like to maintain flexibility, to the extent possible, with respect to how it uses the funds it derives from the sale of equity securities. That is why it is in the company's interest to include language like the above "other purposes at the discretion of the Company," although the investors will likely want to define more narrowly the uses to which the funds can be put so as to ensure that the proceeds from the subscription of the equity securities are not spent on ill-advised initiatives. The investors may also insist on approval of the company's business plan as a precondition to their investment so as to ensure that their investment will be used in a manner that is acceptable to the investors.

Law & Jurisdiction

The law of [Country X] will be the governing law of this Term Sheet and the Definitive Agreements.

Arbitration

Any disputes arising in connection therewith shall be resolved through binding arbitration.

Arbitration as a dispute resolution mechanism may be a new concept for the company. In its debt financings, it is likely that the company and its lenders typically looked to courts to resolve any disputes. Because of the complexity of equity investments, arbitration and other methods of dispute resolution are often used instead of resorting to court proceedings. Detailed arbitration and other possible dispute resolution procedures will be included in the Shareholders Agreement and Share Subscription Agreement. Foreign investors, in particular, may be reluctant to subject the resolution of disputes to local courts where they will perceive the company to have an unfair advantage.

II. Definitive Agreements

The parties agree to negotiate in good faith the terms of a share subscription agreement (Share Subscription Agreement) and a shareholders agreement (Shareholders Agreement) consistent with the terms set forth in this Term Sheet (such agreements being referred to as the Definitive Agreements).

Share Subscription Agreement

The Share Subscription Agreement will provide, among other things, as follows:

Representations and Warranties and Covenants. The Share Subscription Agreement will provide for customary covenants and representations and warranties of a type typically found in a share subscription agreement for similar transactions.

While the above description may appear general and noncommittal, there are a variety of standard representations the company will be expected to make. Accordingly, the company should familiarize itself with and be comfortable that it can comply with these representations prior to executing the Term Sheet. Many of the more standard representations and warranties and covenants have been included in the Share Subscription Agreement.

Investors may also seek inclusion of more specific representations and warranties from the company at the Term Sheet stage, possibly because of unique factors of the company, the investment, or the legal and regulatory regime under which the company operates. If this is the case, the company should discuss such requests with its attorneys.

It is typical for investors to also make representations and warranties in the Share Subscription Agreement. These typically attest to their legal and financial capacity to meet their subscription obligations and to their ability to qualify as investors that are permitted to invest in an MFI. Examples of “standard” investor representations and warranties and covenants are also included in the Share Subscription Agreement.

Conditions to Closing. The Share Subscription Agreement will be subject to the following conditions to be completed (unless waived by the Investors or the Company, as applicable) prior to Closing:

- **Representations and Warranties.** The representations and warranties of the Company, Founder, and Investors shall be true and accurate in all material respects on and as of the Closing Date with the same effect as though the representations and warranties had been made on the Closing Date.

- **Performance.** The Company, Founder, and Investors shall perform and comply in all material respects with all agreements and covenants required under the Share Subscription Agreement at or prior to Closing.
- **Regulatory Approvals.** The Company shall have received required regulatory approvals, if any, for the investment by the Investors.
- **No Material Adverse Effect.** No event or circumstance shall have occurred that could reasonably be expected to have a material adverse effect on the Company's business or financial condition.
- **Governmental Orders.** No action shall have been threatened by any governmental authority that would prohibit the consummation of the transactions contemplated by the Share Subscription Agreement.
- **Amendment to Constituent Documents.** The Company shall have amended its constituent documents to allow the issuance of Equity Shares to the Investors.
- **Definitive Agreements.** The parties shall have agreed on the form and substance of the Definitive Agreements implementing the transactions contemplated hereby.

Above are some standard conditions to closing. Investors may request other more specific conditions based on the particular deal. Note that when determining the time frame by which the closing is to occur, the company and its investors will need to consider what is a reasonable time frame for the conditions to closing to be met.

Shareholders Agreement

The Shareholders Agreement will provide, among other things, as follows:

Dividends. [Insert any limitations on the payment of dividends, (e.g., The Investors and Company agree that no dividends shall be paid for a period of [•] years following the Closing Date.)]

Growth stage companies in all industries resist paying dividends and instead seek to re-invest earnings in growth—MFIs are no exception. MFIs often explicitly state that they will not pay dividends, either indeterminately or for some identified period of time. Investors will most likely understand the rationale, although they may indirectly pressure the company to provide alternative ways for investors to achieve a return on their investment.

Note also that an MFI's ability to issue dividends may be regulated by local law. If this is the case, any agreement between the company and its investors regarding dividend payments will be superseded by local law.

Rights in Connection with an Initial Public Offering. The Company will use reasonable commercial efforts to effect an initial public offering (IPO) within [• (•)] years of the Closing Date. The Investors will be afforded the right to sell their Equity Shares in any IPO on a pro rata basis with other Shareholders, subject to such limitations on the number of Equity Shares to be included in the IPO as may be determined by the Board of Directors of the Company.

This provision is intended to allow investors liquidity for their investment after some period by requiring the company to pursue an IPO and grant the investors the right to sell into an IPO. The process of effecting a public offering varies significantly from one jurisdiction to the next, and local legal and financial advice will be required if an MFI is considering granting investors the right to sell shares in an IPO. Among other things, the sale of a significant percentage of a company's outstanding securities in an IPO could have a significant negative impact on the price realized for the shares in the IPO. This provision is much less risky than affording an investor a put right (discussed below) because it would not require the company to use its own funds to buy out an investor.

Liquidation Preference. In the event of any liquidation, dissolution, or winding up of the Company, the net proceeds shall be paid according to each Shareholder's pro rata share of the Company.

This provision addresses how the net proceeds of the company will be distributed upon liquidation. In a scenario in which the company has only common shares outstanding, a distribution provision on liquidation is probably unnecessary because the corporate law of the relevant jurisdiction will normally provide for pro rata distributions. However, if the company has issued preferred shares, convertible debt, or other more complex instruments, then it may be appropriate to establish distribution priorities. Typically, lenders and other creditors are paid first, preferred shareholders are paid second, and common shareholders are paid last, although the amount preferred shareholders are paid before common shareholders may be a matter for negotiation (e.g., return of capital, return of capital plus internal rate of return hurdle, etc.). The issue of whether preferred shareholders can further participate in the proceeds after they have received their preference payment may also arise. Investors who receive their preferred shares in different issuances or series (e.g., series A vs. series B) may also desire separate treatment. For example, later investors often demand that they get preference over earlier investors.

Anti-dilution Protection/Preemptive Rights. Any issue of fresh shares or other securities by the Company after the initial offering shall first be offered pro rata to the Shareholders on a rights basis, permitting each Shareholder to purchase sufficient shares so as to maintain its percentage ownership in the Company. Any shares not taken up by them may be

offered by the Company to third parties—such an offer being on terms and conditions that are not more favorable than those initially offered to the Shareholders.

The purpose of this provision is to permit investors to maintain their proportionate interest in the company in future rounds of financing, a protection referred to as preemptive rights. Some jurisdictions provide preemptive rights as a matter of law. Local counsel should be consulted to discuss the provision.

Right of First Refusal. In any future sale of existing Equity Shares by any of the Shareholders to any third party, the Company shall first have the right, but not the obligation, to repurchase any such shares. If any such shares are not repurchased by the Company, each other Shareholder shall have the right to acquire such shares in proportion to its pro rata share of the Company. Only then can the Shareholder sell those Equity Shares not purchased by the Company or the other Shareholders to third parties.

This provision describes a right of first refusal. Most investors will strongly resist rights of first refusal because it adds time and expense to the process of selling shares and limits liquidity. However, the company and certain types of investors (such as those that have a strong interest in maintaining the social mission of the company and want to be assured that they are investing alongside like-minded investors) will want to be able to have the option to buy back shares before new third parties enter the picture. The provision is a matter for negotiation, although right of first refusal provisions are relatively common in microfinance investment deals. An alternative that is sometimes used is a right of first offer, which obligates shareholders wishing to sell shares to first offer to sell the shares to other shareholders before any offers are made to third parties. If such a provision is used, a variety of other details, such as defining the period during which a sale can be made following an offer to other shareholders (a longer period benefits the selling shareholder) and the amount of consideration (an eventual sale should be for an equivalent amount with respect to what was offered to shareholders), will have to be negotiated.

Tagalong Rights. To the extent that the right of first refusal is not exercised by the Company or any Shareholder, each non-selling Shareholder shall have the right to participate in such sale in proportion to its pro rata share of the total paid-up capital of the Company. Such a tagalong right will not apply to transfers to affiliates, gifts, or other transfers for estate planning purposes, provided that the transferee agrees to be bound by the terms of the Definitive Agreements to be executed by and between the parties in accordance with this Term Sheet.

This provision is intended to prevent a minority shareholder from being left out of a significant sale of shares. These will be very important to financial investors, such as Big Fund.

Drag Along Rights. In the event that Shareholders representing [75]% or more of the total paid-up equity capital of the Company approve a plan to sell all of the Company's outstanding equity securities or all of its assets, then the approving Shareholders shall have the right to require the non-approving Shareholders to sell or exchange their securities or otherwise participate in the sale.

This provision describes drag along rights, which help prevent shareholders from acting as hold-outs and allows shareholders representing a negotiated amount (in this case, 75 percent) to put a larger percentage of the company up for sale, thus making the purchase more attractive to potential buyers. Such rights are typically crafted so that they apply only if a certain threshold level of support for the transaction is satisfied (typically at least a majority as described here but perhaps higher) and a certain price (often predetermined) is offered. This kind of provision is likely to be of concern to the founding NGO and possibly the founder as it allows other shareholders to force a sale of all or part of their interest in the company.

Lock-In. Neither the Existing Shareholders nor any Investor shall sell or otherwise transfer its shares in the Company for a period of [• (•)] months from the Closing Date. The lock-in restrictions will not apply to transfers to affiliates, gifts, or other transfers for estate planning purposes, provided that the transferee agrees to be bound by the terms of the Definitive Agreements to be executed by and between the parties in accordance with this Term Sheet.

The lock-in provision is used to ensure some stability among the investors. Some investors, however, will require an exception to this lock-in provision to be triggered in exceptional cases (e.g., to allow an investor to withdraw from the investment if the investor is exposed to reputational or other damage because of the investment).

The above provisions regarding anti-dilution, rights of first refusal, tagalong rights, drag along rights, and lock-in rights generally are regarded as transfer restrictions. While these provisions will be expanded and elaborated upon extensively in the Shareholders Agreement, the decision about which of these provisions to include and the basic terms of these provisions will likely be settled at the preliminary stage.

Put Option. Following the [• (•)] anniversary of the Closing Date, each Shareholder will have a right to sell all, but not less than all, of the Equity Shares held by such Shareholder to the Company by providing written notice to the Company of its intent to sell such Equity Shares. Subject to any applicable legal restrictions, the Company shall purchase the Equity Shares that are the subject of the notice (Sale Shares) within [60] days of receipt of notice in accordance with the terms set forth in the Definitive Agreements.

A put option is most often requested by a financial investor as a way to withdraw from the investment in the event a certain triggering event occurs, such as the passage of time

or the failure of the company to meet specified financial goals. Social investors (like Microfinance Fund and Responsible Investor) may also request language granting the right to “put” their shares back to the company if the company fails to maintain certain social objectives or results. Investors may also request this provision to protect against reputational risk in the event the company’s activities cause controversy or to avoid liability under money laundering regulations or other applicable laws. The method for determining the purchase price in the event of the exercise of a put option will be the subject of significant negotiation.

Voting Rights. The Equity Shares being allotted to the Investors shall have a right to vote in proportion to each Investor’s pro rata share of the paid-up equity capital of the Company.

Board of Directors. The Board shall be fixed at [five] directors. Any Investor whose share of the paid-up equity capital is [15]% or more shall be entitled to appoint one director to the Board. The right to designate directors to the Company’s Board shall terminate if an Investor’s share of the paid-up equity capital of the Company is no longer [15 percent] or more. For the remaining director vacancies, directors may be nominated by any Investor and voted upon by Shareholders in proportion to each Shareholder’s share of the paid-up equity capital of the Company. At least [two] Directors shall be independent from any Shareholders. [The CEO of the Company shall have permanent observer status but shall not be eligible to hold a seat on the Board].

The board typically comprises of 5 to 11 directors to allow directors with different expertise to participate at the board level while at the same time not allowing the number of directors to be so large that it becomes unwieldy. It is generally a good idea for the board to be comprised of an odd number of directors to prevent ties. Different investors may attempt to negotiate guaranteed representation on the board as a condition to their investment. The company should try to tie rights to appoint directors to some minimum shareholding threshold (such as 15% above) so as to prevent overrepresentation in the future if the investors’ shareholdings are diluted. Note that a threshold of 15 percent for appointing a director could be problematic for the company given its current distribution of shareholdings. This would mean, for instance, that the founder would not be allowed to appoint a director. In addition, the founder may insist on his or her appointment to the board of directors so long as he or she serves in an executive capacity with the company.

While it is not common practice in the microfinance industry, it is good corporate governance practice to require a specified number of independent directors on the board (e.g., directors who do not represent any particular shareholder’s interest), as such directors can often provide valuable expertise and an independent perspective to prevent the

board from making decisions that are beneficial for particular investors but adverse for the company as a whole.

Investors may also seek a commitment from the company to maintain directors and officers liability insurance with an insurance carrier and in an amount satisfactory to the board. Such insurance is intended to protect directors from potential liability they may incur by virtue of their board service and is intended to encourage service. Note that in some countries, this type of insurance is not available, and even where available, such insurance will not protect directors and officers of a regulated financial institution from certain criminal liabilities per local law.

Meetings of the Board. The Board shall meet [quarterly] unless otherwise agreed by a vote of the majority of the directors. The directors shall be reimbursed by the Company for out-of-pocket costs and other reasonable travel expenses in connection with attending such meetings.

This provision will need to comport with local law and should therefore be discussed with local counsel. Some bank regulatory authorities have very specific requirements about the number and location of meetings, while others are less stringent and may permit board meetings via videoconference or telephone.

Matters for Shareholder Approval. The following items will require the approval of the Board and the written consent of Investors whose combined shareholdings equal [a majority] of the paid-up equity capital of the Company:

- Changes in the charter documents of the Company;
- Changes in the capital structure of the Company (including issuance of new shares) or a change in the rights of Shareholders or payment of a dividend or in-kind distribution to Shareholders;
- Changes in the mission, scope, or nature of the business of the Company or commencing any material new business operation;
- A reorganization, merger, demerger, liquidation, winding up, or dissolution of the Company;
- An acquisition by the Company of the assets of a third party or the shares of another entity, in either case, involving more than [[*applicable currency*] 1,000,000];
- The assumption of any liability (contingent or otherwise) whether by guarantee, indemnity, or otherwise other than in the ordinary course of business;
- Appointment of independent external auditors for the Company; and
- Sale or transfer of the assets of the Company in excess of [10]% of net fixed assets at any given time.

Matters for shareholder approval are an issue for discussion among the parties. Investors will most often want more control rather than less, but the company should be mindful of the added complexity of getting these approvals and the impact this has on management's ability to run the day-to-day business. Additionally, local counsel should be consulted early in the process to determine what, if any, protections are given under local law to minority shareholders. In some countries, there are extensive legal protections for minority shareholders, and in others, there are very few. This will be of great interest, of course, to any investor that is acquiring a relatively small percentage of the company's equity. Note that minority shareholders are likely to press for decisions of this sort to be made on a super majority (e.g., 67% or 75%) basis to ensure that their interests are protected.

- **Shareholder Meetings.** The Shareholders shall meet annually, unless otherwise agreed by a vote of the majority of the Shareholders, in a manner and with such notice as set forth in the Definitive Agreements.
- **Reporting.** The Company shall deliver to the Investors:
 - (i) Annual audited financial statements within [60] days of the end of the financial year, and
 - (ii) Other monthly and quarterly reports as shall be designated in the Definitive Agreements.

All such information provided to the Investors shall be subject to confidentiality obligations set forth in the Definitive Agreements.

The reporting requirements will be discussed in greater detail in the Shareholders Agreement. A key issue for the company to consider with respect to all of these reporting requirements is its capacity to produce such reports in a timely manner in its ordinary course of business. Some investors, such as those funded with public money, have significant reporting requirements, and the cost to the company of producing the necessary reports could negate the value of the investment.

External Audit. The Company will undergo an annual independent external audit (in accordance with applicable law) by a statutory auditor acceptable to Investors representing the majority of the paid-up equity capital of the Company.

III. Employee Matters

Key Employees

“Key Employees” refer to the Founder/CEO, other members of the Company’s senior management team, and such other Key Employees the CEO identifies in consultation

with the Investors, all of whom will sign appropriate long-term employment contracts with the Company as per standard Company formats. The Company shall also obtain suitable “key man” insurance for the Key Employees. The Key Employees will enter into a [one] year noncompetition and nonsolicitation agreement in a form reasonably acceptable to the Investors.

Key employees typically include the few most important members of management. Some individuals considered key employees may be obvious, others may be a matter for negotiation. To the extent that such individuals are perceived to be integral to the success of the company (as is typical), investors will likely negotiate for mandatory “key man” insurance to protect the company against the risk of losing the key employees. As such insurance may be expensive, the company is encouraged to investigate costs before committing to providing such insurance. Also, investors commonly request noncompete clauses and nonsolicitation clauses as part of the employment contracts with the key employees. These clauses prevent the employee from working for a competitor (noncompete) or taking other company employees with them to a new employer or project (nonsolicitation). An issue for discussion is the length of time that the company should apply the clauses. Also, such provisions may be unenforceable under local law and therefore should be discussed and drafted with local counsel.

Stock for Key Employees

The Company shall maintain on behalf of the Key Employees an employee stock option plan (ESOP) for option grants up to [•] % of the Equity Shares. The Board will decide on the number of Equity Shares to be issued to Key Employees, vesting schedules, and related details for the ESOP.

Some MFIs have set up ESOPs as a way to provide added performance incentives to its management staff, particularly upper management. Allocating stock options (e.g., the right to purchase equity securities at a later date and, depending on the company’s performance, below market price) is a way to ensure that employees’ goals are aligned with the company’s, providing a mechanism for the employee to share in the growth and financial returns of the company.

In some countries where ESOPs are unheard of or the challenges of managing such programs are overwhelming for the company, other equity-like instruments may be issued to permit management staff to share in the profits of the company without receiving equity shares.

IV. Miscellaneous

No Shop/Exclusivity Provision

Following the acceptance of this Term Sheet by the Investors and for a period of [90 days] (unless extended further by mutual written agreement of the parties hereto), the Founder, Founding NGO, the Company and its employees, consultants, and advisers shall not directly or indirectly solicit, initiate, encourage, or discuss any investment possibility in the Company of any kind with any third party and any direct or indirect solicitation, initiation, encouragement, or discussion regarding an investment possibility in the Company shall promptly be notified to the Investors.

Since the due diligence and document negotiation process can be quite expensive, investors want to be sure that the company is committed to them as investors and will not replace them at the first sign of a better deal. The length of this “no shop” period is an item to be negotiated although it should probably match the term of the Term Sheet and the parties’ obligations to negotiate the Definitive Agreements in good faith. The company will typically resist the requirement to provide an investor with notice that it has been contacted by a third party relative to a related investment.

Confidentiality

This Term Sheet is subject to the terms of the confidentiality agreement (Confidentiality Agreement) signed by the parties on _____, and similar confidentiality provisions shall be included in the Definitive Agreements. In addition, no party or its employees, consultants, or advisers shall make or cause to be made any disclosure or announcement in respect of this Term Sheet or the investment contemplated herein to any third party without the written consent of the other parties unless such disclosure is required by law.

The Confidentiality Agreement should be signed by the company and each investor prior to the investors’ due diligence. The informal due diligence process often begins prior to the execution of the Term Sheet; waiting to include confidentiality provisions in the Term Sheet is not recommended. Before the company provides information or documents of any kind to the investors, the company should have the investors sign the Confidentiality Agreement (also known as a Nondisclosure Agreement). If the investment fails, the company is in a better position to protect its sensitive information and competitive advantage.

Termination

This Term Sheet shall terminate upon the mutual agreement of the parties or upon the inability of the parties to agree upon the Definitive Agreements within [90 days] from acceptance of this Term Sheet (unless extended to a later date upon mutual written agreement of the parties hereto). Upon such termination, no party shall have any further liability or obligation to any other party with respect to this Term Sheet, whether in contract, warranty, tort (including negligence), or otherwise. The provisions of this Term Sheet titled “Costs” and “Confidentiality” shall survive the termination of this Term Sheet.

As indicated above, the time period of termination will likely match the exclusivity provision. Any provisions that the parties intend to survive termination should be expressly identified.

Costs

The Company shall pay all legal and administrative costs of the financing at Closing, including reasonable fees and expenses (not to exceed [*applicable currency*] [•]) of each Investor’s attorney.

[OR as an alternative provision]

Each party shall bear its own costs and expenses incurred in connection with the investment contemplated herein.

Payment of costs incurred in the transaction is a matter for discussion between the parties. Investors may ask that the company reimburse them for their costs and expenses, including for their legal fees. If the company agrees to this, it should negotiate for a maximum ceiling on reimbursable expenses and that such obligation is contingent upon the transaction actually closing. Note that some international financial institutions require the company to pay the costs they incur in conducting due diligence, whether or not an investment is made. This should be discussed before the due diligence begins so that the parties are appropriately informed.

EXHIBIT A MODEL SHAREHOLDERS AGREEMENT**Existing Capitalization**

Existing Shareholder	Number of Equity Shares	% Ownership
Founder	[_____]	[_____]
Founding NGO	[_____]	[_____]
TOTAL	[_____]	100.00%

Capital Structure Following Closing

Shareholder	Existing Equity Shares	Equity Shares to be Issued at Closing	Total Equity Shares Post-Subscription	Fully diluted % Ownership Post-Subscription
Founder				
Founding NGO				
Big Fund				
Responsible Investor				
Microfinance Fund				
Domestic Bank				
Employee Stock Option Plan				
TOTAL		[1,000,000]		100.00%

Part III. Sample Shareholders Agreement

SHAREHOLDERS AGREEMENT

FOR

XYZ MICROFINANCE

DATED

_____, 201_

XYZ Microfinance

Shareholders Agreement

THIS SHAREHOLDERS AGREEMENT (Agreement), dated as of the [•] day of [month], 200_ (Effective Date), is by and among XYZ Microfinance, a [details on entity status], [registered/formed/incorporated] in Country X and having its principal executive office at [principal place of business] (Company), [_____], an individual residing at [address of residence] (Founder), [_____], a non-governmental organization [registered/formed/incorporated] in Country X and having its principal executive office at [principal place of business] (Founding NGO), [Institutional equity fund] (Big Fund), [Socially responsible individual investor] (Responsible Investor), [Microfinance fund] (MF Fund), and [Domestic Bank] (Domestic Bank).

The Big Fund, Responsible Investor, MF Fund, and Domestic Bank shall be referred to as “Investors” and “Investor” as the context may require. The Founder and the Founding NGO shall be referred to herein as the “Existing Shareholders”. The Investors, together with the Existing Shareholders, shall be referred to collectively as the “Shareholders”.

The Preamble above sets forth basic information of this model agreement such as the effective date of the agreement and a description of the parties, including the entity status of a party that is a legal entity, the place of incorporation, registration, or formation of a party that is a legal entity and the address of the principal place of business of a party that is a legal entity or residence of a party that is an individual.

Recitals

The recitals are intended to provide a general overview of the transaction and the business understanding of the parties. These recitals set the stage for the rest of this model agreement and rarely assume independent legal significance. As a result, all parties to the transaction should be careful to review and confirm that the recitals accurately reflect their understanding of the transaction.

WHEREAS, the Company has been incorporated under the laws of [Country X] and one of its primary purposes of business is to provide financial services, including business and consumption loans, to individuals and/or entities that are financially impoverished as a result of low income and/or lack of or limited access to financial services;

WHEREAS, this Agreement is being entered into in connection with the subscription by the Investors for equity shares, par value [applicable currency] [•] per share (Equity Shares) of the Company pursuant to the Share Subscription Agreement, dated [•], by

and among the Company, the Founder, the Founding NGO, and the Investors (Share Subscription Agreement);

WHEREAS, immediately following the closing of the Share Subscription Agreement, the outstanding capitalization of the Company is as set forth on Schedule 1;

WHEREAS, the Company, the Existing Shareholders, and the Investors desire to enter into this Agreement in order to provide, among other things, for certain restrictions relating to future transfers or issuances of Equity Shares, the management and control of the Company, and certain other matters, all as hereafter set forth and subject to all of the terms and conditions contained herein;

NOW, THEREFORE, in consideration of these premises and the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Article I Definition and Interpretation

The use of defined terms in an agreement enhances clarity and precision, and an agreement may contain a separate “definitions” section (as in this model agreement) or may intersperse defined terms throughout the agreement. Defined terms are useful for two primary reasons: (i) once a defined term is created, the drafter can use it throughout the agreement without needing to repeat its meaning, and (ii) the creation of a defined term ensures consistency in use throughout the agreement. Before reviewing this agreement, the company should be sure it understands how specific terms are being defined and used in the agreement and should refer back to the definition of any capitalized defined term it encounters while reading. Never assume that a defined term conforms to common usage or prior dealings; a drafter may take a common and recognizable term and give it an idiosyncratic or nonintuitive definition.

Section 1.1. Definitions

“Additional Transfer Notice” shall have the meaning ascribed thereto in Section 5.2(c).

“Affiliate” shall mean any corporation, company, partnership, joint venture, or other entity that controls, is controlled by, or is under common control with a Person. For purposes hereof, the term “control” shall mean the ability to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” shall have the meaning ascribed thereto in the Preamble.

“Applicable Law” shall mean the laws of [Country X] or any other applicable jurisdiction and shall include all statutes, enactments, acts of legislature, laws, ordinance, rules, bylaws, regulations, notifications, guidelines, policies, directions, directives, and orders of any statutory authority, tribunal, board, or court, or any central or state government, or local authority in [Country X], or elsewhere.

“Articles of Association” shall mean the Articles of Association of the Company as in effect on the date hereof.

This model agreement assumes that the company has a memorandum and articles of association as its constituent or organizational documents. The jurisdiction of formation of the company may provide for different organizational documents.

“Big Fund” shall have the meaning ascribed thereto in the Preamble.

“Board” or “Board of Directors” shall mean the board of directors of the Company.

“Business Day” shall mean a day not being a Saturday or Sunday or a public holiday, on which banks in [Country X] are permitted to remain open for normal banking business.

“Business Plan” shall have the meaning ascribed thereto in Section 9.4(a).

“CEO” shall have the meaning ascribed thereto in Section 4.2.

“CFO” shall have the meaning ascribed thereto in Section 4.2.

“COO” shall have the meaning ascribed thereto in Section 4.2.

“Closing” shall mean the completion of the investment transaction defined in the Share Subscription Agreement and described in Article VIII of the Share Subscription Agreement.

“Closing Date” shall mean the date on which the Closing occurs in accordance with the Share Subscription Agreement.

“Competitive Activities” shall mean any microfinance activities, including without limitation the provision of loans and other financial products and services to poor and low-income customers. The term “Competitive Activities” shall include all activities and events permitted by law as microfinance activities in the Territory in which the Company conducts its microfinance business.

The company typically will want the definition of “Competitive Activities” drafted broadly based on the provisions in which the term is used. The term may be used to describe a situation where an individual such as the founder, other shareholder, or investor of the company uses the company’s information or solicits a company employee to benefit a competitor of the company (see Section 8.1 for noncompetition provisions). By drafting the term broadly, the company ensures that its own information and/or resources are not provided to any competitive organization or activity as it relates to the company’s business.

“Confidential Information” shall have the meaning ascribed thereto in Section 8.3(a).

“Director” shall mean a director on the Board of Directors.

“Dispute” shall have the meaning ascribed thereto in Section 11.1.

“Domestic Bank” shall have the meaning ascribed thereto in the Preamble.

“Drag Along Right” shall have the meaning ascribed thereto in Section 5.6.

“Effective Date” shall have the meaning ascribed thereto in the Preamble.

“Equity Shares” shall have the meaning ascribed thereto in the Recitals.

“Existing Shareholders” shall have the meaning ascribed thereto in the Preamble.

“Foreign Corrupt Practices Act” shall mean the Foreign Corrupt Practices Act of the United States, 15 U.S.C. Sections 78a, 78m, 78dd-1, 78dd-2, 78dd-3 and 78ff, as amended, if applicable, or any similar law or jurisdiction where the Company transacts business.

“Founder” shall have the meaning ascribed thereto in the Preamble.

“Founding NGO” shall have the meaning ascribed thereto in the Preamble.

“Government Authority” shall mean any government authority, statutory authority, government department, agency, commission, board, tribunal, or court or other law-, rule-, or regulation-making entity having or purporting to have jurisdiction on behalf of [Country X] or any state or other subdivision thereof or any municipality, district, or other subdivision thereof, as may be applicable.

“ICC Rules” shall have the meaning ascribed thereto in Section 11.1.

“Independent Directors” shall have the meaning ascribed thereto in Section 4.1(b).

“Investor Nominee Director” shall have the meaning ascribed thereto in Section 4.1(b).

“Investor” or “Investors” shall have the meaning ascribed thereto in the Preamble.

“IPO” shall mean an initial public offering of the Equity Shares of the Company, in which some or all of the Company’s Equity Shares will be offered to the public for the first time.

“Key Employees” shall mean the CEO, CFO, and COO and such other key employees as the CEO identifies from time to time in consultation with the Investors.

“Losses” shall have the meaning ascribed thereto in Section 6.1.

“Main Objects” shall have the meaning ascribed thereto in Section 3.1.

“Memorandum” shall mean the memorandum of association of the Company as in effect on the date hereof.

“MF Fund” shall have the meaning ascribed thereto in the Preamble.

“Microbanking Bulletin” shall mean the publication that publishes financial and portfolio data provided by microfinance institutions and that acts as a benchmarking source for the microfinance industry.

“New Issuance” shall have the meaning ascribed thereto in Section 5.5(a).

“New Shares” shall have the meaning ascribed thereto in Section 5.5(a).

“OFAC” shall have the meaning ascribed thereto in Section 3.7(b).

“Participating Shareholder” shall have the meaning ascribed thereto in Section 5.3(a).

“Party” or “Parties” shall mean the Existing Shareholders, the Investors, and the Company, individually or collectively, as the context so requires.

“Person” shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, limited liability company, trust, unincorporated organization, government agency, or political subdivision thereof or any other legal entity.

It may be necessary to identify additional or different organizations than those stated in the definition of “Person” above as such entities may have varying names in other jurisdictions.

“Proposing Shareholders” shall have the meaning ascribed thereto in Section 5.6.

“Remaining Shares” shall have the meaning ascribed thereto in Section 5.2(c).

“Reserved Investor Matter” shall have the meaning ascribed thereto in Section 4.4(a).

“Responsible Investor” shall have the meaning ascribed thereto in the Preamble.

“Rights Issue” shall have the meaning ascribed thereto in Section 5.5(a).

“Sale Shares” shall have the meaning ascribed thereto in Section 5.2(a).

“Selling Shareholder” shall have the meaning ascribed thereto in Section 5.2(a).

“Shareholders” shall have the meaning ascribed thereto in the Preamble.

“Stock Option Plan” shall mean an employee stock option plan adopted or to be adopted by the Company following the Closing in accordance with Section 4.3.

“Share Subscription Agreement” shall have the meaning ascribed thereto in the Recitals.

“Territory” shall mean [Country X] and any other country or countries in which the Company conducts its microfinance business.

“Transfer Notice” shall have the meaning ascribed thereto in Section 5.2(a).

Article II Representations and Warranties

Both this model agreement and the model Share Subscription Agreement contain representations and warranties. The Share Subscription Agreement primarily contains representations from the company to the investors that investors will rely upon in subscribing to the equity shares. This model agreement primarily contains representations from the shareholders and the company to each other with respect to the relationship and obligations between the shareholders and the company after the subscription of equity shares by the investors (e.g., restrictions regarding the transfer of the equity shares, management and control of the company, etc.).

Section 2.1. Mutual Representations, Warranties, and Covenants of the Parties

Each Party hereby represents and warrants as follows:

- (a) *Organization.* With respect to Parties who are not natural persons, such Party is duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation with all requisite power and authority to enter into this Agreement and to perform its obligations hereunder.
- (b) *Enforceability.* This Agreement constitutes the legal, valid, and binding obligation of each Party enforceable against such Party in accordance with its terms. With respect to Parties who are natural persons, such Party has sufficient capacity to enter into this Agreement pursuant to the terms hereof and does not require any spousal consent to do so.
- (c) *No Conflict.* The execution and delivery of this Agreement by each Party and the consummation of the transactions contemplated hereby by each Party do not conflict with or contravene the provisions of its organizational documents (if not a natural person) or any material agreement or instrument by which it or its properties are bound or any legal requirement to which it or its properties are subject.
- (d) *No Litigation.* There are no actions, suits, or proceedings pending or, to the Party's knowledge, threatened against the Party before any court or governmental agency that question the Party's right to enter into or perform this Agreement or any of the Share Subscription Agreement to which it is a party, or that question the validity of this Agreement or any of the Share Subscription Agreement.

Article III Obligations of the Company

Whereas the provisions of the model Share Subscription Agreement focus on certain facts as of the closing date at the time the equity shares are subscribed to, this model agreement is forward-looking and addresses ongoing obligations of the parties vis-à-vis each other. Investors may have varied concerns with the company and their future role as shareholders in such company and may therefore request a variety of promises, also known as "covenants," from the company regarding its future activities.

Section 3.1. Purpose and Main Objectives

The Company is and shall continue to act as a [*describe legal form of entity*] in accordance with the rules and regulations promulgated from time to time by the [*insert name of primary regulator*]. The main objects and primary objectives of the Company (Main Objects)

shall be to operate [a sustainable microfinance institution that will offer a (a) wide variety of financial and nonfinancial products and services and (b) access to capital primarily to the poor and to small and medium entrepreneurs (i.e., individuals who, at the time of enrollment, are financially impoverished as a result of low income and lack of or limited financial resources)]. The Company shall have all power and authority granted to a company under Applicable Law that may be necessary or convenient in order to pursue the Main Objects. Without the approval of the Investors, the Company shall not engage in any business activities that are not consistent with the Main Objects.

It is important that all shareholders understand and acknowledge the mission of the company. Some microfinance institutions may wish to include a specific mission statement that protects the company's social objectives. The company may also want to clarify to investors that there may be instances in which the company sacrifices financial returns to further its mission. Some microfinance institutions may wish to include a mission statement that is more expansive than the bracketed language in Section 3.1. This mission statement, which would serve as the guiding principles of the organization, could be included in the Shareholders Agreement, but might also form a part of the constituent documents of the company. Wherever the mission statement is included, a microfinance institution should be careful not to unduly limit its business purpose and restrain its activities, and should maintain its ability to modify its purpose or strategy in the future as its business needs dictate. An initial limitation on the company's business purpose in its constituent documents may subsequently result in an "ultra vires" violation if the company later decides to expand its business activities and therefore acts beyond the scope of powers granted by its constituent documents. An ultra vires violation, which occurs where an entity acts beyond its authorized scope of activities, could render the expansion of such business activities void or voidable. Additionally, if the company has a U.S. not-for-profit investor with a primarily charitable purpose, such investor may require the company to amend its constituent documents (as well as the Shareholders Agreement) so that the company must operate in a manner that advances or is consistent with the investor's charitable purpose.

Section 3.2. Capitalization of Reserves

The Company shall not, without the prior written consent of the Investors, capitalize its reserves.

A capitalization of reserves refers to the company converting its reserves into share capital, often through a stock split. A stock split increases the number of shares of the company, although the price of the shares is adjusted such that the market capitalization remains the same before and after the split and dilution of the share price does not occur.

Section 3.3. Fresh Issue of Capital

The Company shall not make any fresh issue of capital, except pursuant to the Stock Option Plan, without the prior written consent of Investors representing [a majority] of the paid-up equity capital of the Company. In any event, the Company shall not make any such fresh issue except in accordance with the terms of this Agreement.

A fresh issue of capital refers to any additional issuance of shares by the company in addition to the issue of shares described in this model agreement, the model Share Subscription Agreement, or the Stock Option Plan. The number of investors that must agree to such an additional share issuance will be a point of negotiation. At a minimum, a new share issuance will likely require consent from a majority of investors. However, investors with minority shareholdings may push to require a super majority of investors (e.g., 67% or 75%) to consent to the issuance of additional shares as such an issuance will further dilute the voice of minority shareholders in the governance of the company.

Section 3.4. Deviations from Business Plan

The Company shall not deviate in any material respect from the Business Plan or any subsequent annual business plan adopted by the Board in accordance with the terms hereof. The Company shall not undertake any new activity that does not fall within the Business Plan or any subsequently adopted annual business plan without the prior approval of the Board.

Later provisions in this model agreement indicate that the initial business plan and subsequent annual business plans are subject to review and approval by the board (see Section 9.4). This approval process and the obligation of the company to follow the business plan without undertaking any new activity provides the primary mechanism for the shareholders' control of the strategy and operations of the business.

Section 3.5. Legal Status of the Company

The Company will remain a [*describe legal form of entity*]. Any change in such legal status shall require the prior written consent of a [majority] of the Investors.

Section 3.6. Appointment of Internal Auditor

The Company shall appoint an internal auditor in consultation with the Investors. The Company shall provide to such auditor full cooperation, assistance, and access to the

Company's records. The internal auditor shall report to the audit committee of the Board. The Directors shall at all times have access to the internal auditor and shall be entitled to ask whatever queries and clarify all issues that the Investors may have from the internal auditor and obtain copies of such statements and accounts as the Investors may desire. The appointed internal auditor shall not be replaced or removed without the prior written consent of a [majority] of the Investors. The fees payable to the internal auditor shall be borne by the Company.

The internal auditor will be a particular focus and concern for financial investors as the internal auditor will serve as a first line of defense with respect to risk management of the company. Accordingly, good corporate governance would dictate that the internal auditor report directly to the board and not to company management. Often local laws and/or regulations will set out the reporting requirements of the internal auditor to the company and the composition of the audit committee. Local counsel should be consulted to account for these regulations in this model agreement.

Section 3.7. Compliance with the Foreign Corrupt Practices Act and OFAC

- (a) *Foreign Corrupt Practices Act.* To the extent applicable, the Company shall at all times comply with the Foreign Corrupt Practices Act. Accordingly, the Company will not and will ensure that its officers, Directors, employees, agents, and Affiliates acting on its behalf, do not, for a corrupt purpose, directly or indirectly offer, promise to pay or pay, or promise to give or give, anything of material value to any official representative of any governmental agency or authority or any political party or officer thereof or any candidate for office in any jurisdiction.
- (b) *OFAC.* To the extent applicable, the Company agrees that it will not at any time
 - (i) become a Person with whom U.S. Persons are restricted from doing business under the regulations of the Office of Foreign Assets Control (OFAC) of the U.S. Department of Treasury (including those named on OFAC's Specialty Designated Blocked Persons List) or under any statute or executive order (including the Executive Order Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit or Support Terrorism, dated September 24, 2001), or
 - (ii) engage in any dealings or transactions with or otherwise be associated with such Person.

The Foreign Corrupt Practices Act and OFAC regulations are laws that are applicable to investors with a nexus to the United States. The intention of sections 3.7(a) and (b) is to ensure that a microfinance institution in which an investor makes an investment will not be involved in bribery of public officials or the support of terrorism. In lesser developed

countries, bribery may be commonplace, and compliance with these standards may be resisted by the company. A U.S. investor will normally insist on compliance with both the Foreign Corrupt Practices Act and OFAC regulations. If no U.S. investors are involved, the language of the provisions may be modified to reflect other jurisdictions' applicable standards, but as a rule, an investor will want to know that an institution in which it is investing is not participating in the types of conduct covered by the Foreign Corrupt Practices Act and OFAC regulations.

Article IV Management of the Company

Shareholders agreements typically contain detailed provisions addressing how a company will be managed. Shareholders agreements often vest control of a company in the board of directors, which hires and empowers management to conduct the day-to-day operations of a company. While the provisions below reflect a relatively standard (but by no means the most popular or best) governance model, note that many requirements for board size, voting, decision-making authority, and frequency and notice for board and shareholder meetings may be set by local laws and regulations. As a result, local counsel should review this Article IV and provide input on the types of provisions that should be included.

In Article IV, negotiations between the investors and the company will turn on the investors' desire to protect their investment and participate in the management of the company and the company's desire to maintain its ability to manage the business in an efficient and effective manner, without being burdened by undue bureaucracy. Often, the parties' individual desires are addressed by agreeing to well-defined spheres of influence for the various constituencies, such that certain matters are identified that require the approval of the board and/or investors, and certain matters are identified where management of the company is given relatively free reign to run the business and make decisions.

Section 4.1. Board of Directors

- (a) *Role.* Except as expressly provided elsewhere in this Agreement, the business, operations, and affairs of the Company shall be managed under the supervision of the Board. Subject to the express limitations set forth in this Agreement and the provisions of the Articles of Association and Applicable Law, the Board shall have authority to exercise all power and privileges granted by Applicable Law to a "board of directors" of a company, together with any powers incidental thereto, and to take any and all action not prohibited under Applicable Law, so far as such powers are necessary or convenient to the conduct, promotion, or attainment of the business, purposes, or activities

of the Company. The Parties hereby agree that notwithstanding any power conferred upon the Board by this Agreement, the Articles of Association of the Company, or Applicable Law, the matters set forth on Schedule 4.1 shall require the prior approval of the majority of the members of the Board and, without prejudice to the rights of the Investors provided elsewhere in this Agreement, a majority of the Investor Nominee Directors appointed in accordance with clause (b) of this Section 4.1. Any matter requiring the approval of the Board not identified on Schedule 4.1 shall require only a simple majority of the Board unless otherwise required by Applicable Law.

(b) *Right to Appoint Nominees.* The Board shall be comprised of [five (5)] Directors. The Founder shall be able to nominate one (1) Director to the Board. Any Investor whose share of the paid-up equity capital of the Company is [fifteen] percent ([15]%) or more shall have the right to nominate one (1) Director to the Board (Investor Nominee Director), and such Director may be replaced with a new Investor Nominee Director from time to time at such Investor's discretion. The rights of each Investor to nominate an Investor Nominee Director shall terminate at any time that such Investor, directly or through its Affiliates, owns less than [fifteen] percent ([15]%) of the paid-up equity capital of the Company. The Investors will jointly nominate at least [two (2)] Directors who shall be "independent" from the Company, the Investors, the Founder, and the Founding NGO (Independent Directors). For purposes hereof, "independent" shall mean that such Director shall not (i) be a Director, officer, or employee of the Company, an Investor, the Founder, the Founding NGO, or their respective Affiliates, (ii) have a financial or pecuniary relationship with the Company, an Investor, the Founder, the Founding NGO, or their respective Affiliates, or (iii) be a relative of the Founder, or a director or officer of an Investor, the Company, or the Founding NGO or their respective Affiliates. The appointment of any other Director from time to time as a result of a vacancy created pursuant to a reduction in the entitlement of an Investor as provided above shall be made by the vote of a majority of the Board, as additional Directors, subject to their election at the following annual general meeting.

Section 4.1. is a key provision of this model Shareholders Agreement and will likely be the result of significant discussion and negotiation. Here, investors owning a certain amount of the company's paid-up capital are provided guaranteed representation on the board so long as the required ownership percentages in the company are maintained. This is a common, but by no means only, way to allot board representation in early stage companies. It is also possible to provide for investors or shareholders to vote on all director positions and to provide greater detail with respect to individuals who are or are not eligible for a board seat (e.g., requiring additional independent directors or preventing shareholders or

family members from serving on the board). Even if board seats are assigned as above in Section 4.1(b), it is important to reserve a certain number of seats for independent directors who can offer valuable industry knowledge and skills and are often able to look beyond the narrow self-interest of specific investors. As the independent directors are directors who are not affiliated with the company, the founder, the founding NGO, other directors, subsidiaries of the company, officers, or other related parties on the basis of any relationship, whether familial or pecuniary, independent directors should be able to evaluate and inspect the company's policies and performance, and supervise management, in a more unbiased manner than directors who may have such an affiliation. The company should also be aware that local regulatory laws may provide special rules regarding the composition of the board. For example, local laws may require a minimum number of directors to sit on the board or impose a "fit and proper" test requiring certain qualifications for all directors (e.g., proof of experience and absence of relevant misbehavior in the past).

- (c) *Replacement.* Each Investor Nominee Director shall hold office until death, resignation, or removal at the pleasure of the Investor that nominated him or her. The Independent Directors shall hold office for a period of [•] ([•]) years, at which time each may be (i) re-nominated by Investors and hold office for another [•]-year period or (ii) be removed by Investors, in which case the Investors may jointly nominate a new Independent Director or Independent Directors. If a vacancy occurs on the Board, the Person or Persons with the right to nominate the vacating Director shall nominate his or her successor within [•] ([•]) Business Days following such vacancy. Appointments and removal of Directors nominated by an Investor in accordance with this Agreement shall take effect on notification being provided to the Company to the extent permitted under Applicable Law.
- (d) *Meetings.* The Board shall meet once every quarter and at such other times as may be necessary for the conduct of the business of the Company on at least [ten (10)] Business Days prior written notice of the time and place of such meeting. The Board may also convene via telephone or video conference as may be necessary for the conduct of the business of the Company on at least [ten (10)] Business Days prior written notice of the time and place of such meeting. Any meeting to be held on less than [ten (10)] Business Days advance notice shall require the unanimous written consent or waiver of the Board. Directors may, acting unanimously, waive, in writing, the requirements for notice before, at, or after a meeting, and attendance by a Director at a meeting without objection by a Director shall be deemed a waiver of such notice requirement. The agenda and copies of any appropriate supporting papers shall be circulated to the Directors at least [five (5)] Business Days prior to the date of the proposed meeting.

- (e) *Quorum*. The quorum for a Board meeting shall be at least [•] ([•]) Directors. A meeting of the Board shall not be held or continued without the presence of at least [•] ([•]) Investor Nominee Directors. If a quorum is not present within [30] minutes of the scheduled time for any meeting of the Board, then the meeting shall be adjourned to the next Business Day at the same time and venue. Notice of the adjourned meeting shall be given to all Directors by facsimile transmission or e-mail and the adjourned Board meeting shall consider the same matters as were on the agenda, for the meeting that was adjourned. The Directors present at the adjourned meeting shall be the quorum for such adjourned meeting.

A “quorum” sets the minimum number of directors who must be present for the board to transact business. A small quorum makes it easier for directors to take action; a larger quorum requires more directors to be present and thus more interests represented. Typically, a company will want to set the required quorum at the lowest number that is permitted under applicable law to facilitate business and decision making, while investors will more likely prefer to set a quorum at a level that will ensure that their interests will be adequately represented. Investors may wish to include a provision permitting an alternate director to take the place of a director who cannot be present at a meeting of the board. Such a provision is not included here, but should be limited to cases in which in-person participation is required to transact board business.

- (f) *Circular Resolutions*. The Board may act by written resolution or in any other legally permissible manner, on any matter, except matters that may be acted upon only at a Board meeting under Applicable Law. Subject to any restrictions imposed under Applicable Law, no written resolution shall be deemed to have been duly adopted by the Board unless such written resolution shall have been approved by such number of Directors as is required to transact business pursuant to clause (e) of this Section 4.1.
- (g) *Committees*. The Board may constitute committees of the Board, including an audit committee and a compensation committee, with such composition and functions as may be determined by a majority of the Directors. If an executive committee of the Board is established, each Investor shall have the right to have Investor Nominee Directors serve on that committee.
- (h) *Agreement to Vote*. Each Investor, the Founder, and the Founding NGO, subject to compliance with Applicable Law, agree to hold all Equity Shares registered in its name subject to, and to vote their respective Equity Shares at regular or special meetings of the Shareholders (or otherwise) in accordance with, the provisions of this Agreement.

Clause 4.1(h) is common to ensure that shareholders follow through with their voting obligations. If a shareholder fails to vote as agreed, the other shareholders and/or the company may seek “specific performance,” a remedy whereby the shareholder failing to vote is forced to fulfill its obligation. In some jurisdictions, however, specific performance may not be applicable to an agreement to vote, in which case the other shareholders are entitled to request only monetary compensation for damages incurred as a result of the breach.

(i) *Director Fees.* Directors shall [not] receive compensation for their service on the Board.

Clause 4.1(i) should be modified to reflect the company’s actual compensation policy for payment of its directors. In large, profitable, mainstream companies, directors are often compensated for their time and given a number of benefits, such as first-class travel arrangements, as well as extensive statutory and insurance protections against personal liability in connection with their board activities. To date, with regard to microfinance institutions, directors are often unpaid, and therefore, the company may want to resist reimbursing directors’ international travel or luxurious accommodations, although some directors do not reside in the host country and will be required to travel for meetings for the company. The company may choose to compensate directors modestly to encourage service or may wish to provide insurance coverage for potential director liability (see Section 4.5). The company may also choose to specifically compensate its independent directors given the difficulty of finding qualified independent directors and as such individuals will spend a significant amount of time and effort to meet fiduciary responsibilities and to stay current on the company’s business.

Clause (j) below addresses a situation where the company agrees to pay for the costs of travel and other “reasonable” expenses of board members to attend board meetings.

(j) *Reimbursement of Expenses.* The out-of-pocket costs and expenses to Directors for attending the meetings of the Board or of any committee, including domestic travel and all other reasonable expenses, shall be reimbursed by the Company.

Section 4.2. Management

(a) *Appointment of Officers.* The Board will appoint the Chief Executive Officer (CEO), Chief Financial Officer (CFO), and Chief Operating Officer (COO), jointly referred to heretofore as the “Principal Officers”. The Principal Officers shall be responsible for managing the day-to-day affairs of the Company and the execution of the Business Plan and any subsequent annual business plan adopted by the Company under the general supervision and subject to the direction of the Board as required by

- Applicable Law. The appointment/re-appointment, including terms of appointment (or alteration in such terms) of the person(s) acting as Principal Officers shall be subject to the prior written approval of the majority of the Directors of the Board, including a majority of the Investor Nominee Directors. The Board may also elect such other officers as may be necessary or advisable for the conduct of business of the Company.
- (b) *Removal of Principal Officers and Vacancies.* The Company shall not remove the Principal Officers without the approval of the Board, including a majority of the Investor Nominee Directors. If any vacancy occurs in a Principal Officer position, the Board may appoint a successor to fill the vacancy for the remainder of the term.
- (c) *Remuneration of Principal Officers.* The remuneration of the Principal Officers shall be subject to the periodic review of the Board (and any amendment thereto shall require the approval of the Board, including at least [•] ([•]) Investor Nominee Directors). Performance targets and benchmarks for the Principal Officers will be determined from time to time by the Board in consultation with the Investors and shall be based on the Company's achievement of the results of operation contemplated by the Business Plan and any annual business plan subsequently adopted by the Board. If the Company fails to meet the performance targets and benchmarks, the Board shall be entitled to take steps to ensure performance within a stipulated time frame.

Section 4.3. Stock Option Plan

Promptly following the Closing, the Board shall decide on percentages, vesting schedules, and related details for the employee stock option plan (Stock Option Plan). Any modification to the Stock Option Plan (or the adoption of a new plan) and any new grant of options thereunder shall require the approval of the Board, including at least [two (2)] Investor Nominee Directors. Any Equity Shares issued to the Founder under the Stock Option Plan shall be subject to the terms and conditions of this Agreement. The aggregate number of Equity Shares of the Company allocated to the Stock Option Plan shall be [•] percent ([•]%) of the present issuance. A compensation committee shall be established and shall be responsible for monitoring and making decisions relative to any grants under the Stock Option Plan.

Whether the company will adopt a stock option plan or other plan that provides equity participation to employees will be a matter of discretion for the board and subject to negotiation with the investors who will not want to be diluted to a significant degree as a result of issuances under a stock option plan or other equity ownership plan. The nature of the plan, if any, made available to employees will depend on local custom and practice and applicable legal and tax considerations.

Section 4.4. Matters Requiring Shareholder Action

(a) *Reserved Investor Matters.* Notwithstanding anything herein to the contrary, no action shall be taken, sum expended, decision made, or obligation incurred by the Company in respect of the matters identified on Schedule 4.4 (each a “Reserved Investor Matter”) without the approval of the Board and the written consent of Investors whose combined shareholdings equal [a majority] of the paid-up equity capital of the Company (subject to requirements for any higher percentage that may be indicated under Applicable Law or in any agreement to which the Company may be a party from time to time), and whether or not any such matter is contemplated by the Business Plan or any other annual business plan as in effect from time to time. All matters not identified on Schedule 4.4, to the extent requiring the approval of the Shareholders, shall require the approval of such percentage of Shareholders as may be required by Applicable Law.

The specific matters that are included as reserved investor matters are subject to negotiation among the parties. Typically, these items are significant items of the company, such as fundamental decisions or changes to the business, capital structure, or charter documents. Not surprisingly, strategic investors will likely be more interested in having enhanced control over significant operational decisions, whereas financial investors will be most interested in matters that impact liquidity or the investor’s ability to exit the investment. If there are reserved investor matters identified on Schedule 4.4 that investors believe requires the consent of more than a majority of investors (e.g., 67% or 75% of the paid-up equity capital of the company), then this Section 4.4(a) and its accompanying schedule should be modified accordingly.

(b) *Shareholder Meetings.* The Shareholders shall meet annually and at such other times as shall be designated by the Board. The Board shall designate the time and place for the meeting. Any previously scheduled annual meeting of the Shareholders may be postponed by action of the Board taken prior to the time previously scheduled for such annual meeting of the Shareholders. The agenda and copies of any appropriate supporting papers shall be circulated to the Shareholders at least [five (5)] Business Days prior to the date of the proposed meeting. Unless otherwise required by Applicable Law or by the Articles of Association of the Company, special meetings of Shareholders, for any purpose or purposes, may be called only (i) pursuant to a resolution adopted by a majority of the Board or (ii) by the CEO. Unless otherwise required by Applicable Law or the Articles of Association, the presence in person or by proxy of holders of a majority of the paid-up equity capital of the Company on the record date, shall constitute a quorum at all meetings of the Shareholders for the transaction of business.

Local counsel should be consulted regarding local law on shareholder meetings. Many times, for regulated financial institutions in particular, local law will provide special rules regarding shareholders' rights and meetings.

Section 4.5. Directors and Officers Insurance

The Company shall obtain appropriate directors and officers liability insurance and term "key person" insurance on [_____], each in an amount and on the terms and conditions satisfactory to the Board. The key person policy shall name the Company as loss payee, and neither policy shall be cancelable by the Company without prior approval by the Board.

Investors may want insurance for directors and officers so that they will not incur personal liability for good-faith decisions and activities in connection with their service to the company. Before accepting a position as director, individuals must understand the unique provisions of local corporate law with respect to liability. Local counsel should be consulted on directors and officers liability insurance as such insurance may be unavailable in certain jurisdictions or, if available, its protection may be limited to covering only certain types of situations (e.g., the directors and officers liability insurance likely will not protect a director or officer against criminal liability). In some countries, directors may be held liable on a liberal basis for decisions and activities made as a member of the board. To ease these difficulties, investors will typically push for a commitment from the company to secure adequate directors and officers liability insurance and indemnity/exculpation provisions.

Investors may also want key person insurance, which insures against the loss of key employees. Key person insurance assumes particular importance in microfinance deals: a seasoned, skilled, and visionary upper management team often drives the early growth of microfinance institutions, whereas the "bench strength" is sometimes an issue. In these instances, the continuity of the management leadership is quite important, and the risk of losing this leadership is very severe. However, the costs and consequences of both directors and officers insurance and key person insurance should be considered due to cost concerns and limitations on obtaining insurance in certain jurisdictions.

Article V Transfer Restrictions

Article V addresses restrictions on the shareholders' ability to sell or otherwise transfer their equity shares. The shares of public companies can be traded freely if they are listed on an exchange, but for unlisted companies, there is limited liquidity for shares. In addition,

existing shareholders often desire to keep the shares in the hands of not only known investors, but also investors who understand and will further the main objects of the company as set forth in Section 3.1. Financial investors, on the other hand, may vigorously resist having transfer restrictions placed on their shares in order to be able to sell or transfer their shares, for example, if they believe they are not receiving expected returns on their investment. Consequently, transfer restrictions are often the most contentiously negotiated provisions of a Shareholders Agreement. Local counsel should be consulted regarding minority shareholder rights in the applicable jurisdiction to determine how to address transfer restrictions involving minority shareholders, such as tag along rights and drag along rights.

Section 5.1. Prohibited Transfers

Each of the Shareholders agrees to comply with the provisions of this Article V in connection with any proposed sale or transfer of Equity Shares held by it. Any sale, assignment, transfer, pledge, or hypothecation of Equity Shares or other disposition of Equity Shares not made in conformance with this Agreement shall be null and void.

Section 5.2. Right of First Refusal

- (a) *Transfer Notice.* To the extent that any Shareholder proposes to sell any or all of its Equity Shares (any such Shareholder being a “Selling Shareholder”), then such Selling Shareholder shall promptly give the Company and each other Shareholder written notice of its intention to do so not later than [forty-five (45)] days prior to the consummation of the proposed transfer (such notice being referred to herein as a “Transfer Notice”). The Transfer Notice shall include the name of the prospective purchaser of the Equity Shares, the consideration to be paid for the Equity Shares, and the material terms and conditions of the proposed sale, including the number of Equity Shares proposed to be sold (Sale Shares). The Transfer Notice shall certify that the Selling Shareholder has received a firm offer from the prospective purchaser and that the Selling Shareholder believes in good faith that a binding commitment is obtainable from the prospective purchaser on the terms set forth in the Transfer Notice. The Transfer Notice shall also attach any relevant term sheet or other document relating to the proposed transaction.
- (b) *Company’s Right of First Refusal.* Following receipt of a Transfer Notice from a Selling Shareholder, the Company shall have an option exercisable within [fifteen (15)] days of the Transfer Notice referred to in clause (a) above, to elect to purchase the

Sale Shares on the terms set forth in the Transfer Notice. The Company may exercise such purchase option and purchase all or any portion of the Sale Shares by notifying the Selling Shareholder in writing before expiration of such [fifteen (15)] day period as to the number of Sale Shares it wishes to purchase. If the Company gives the Selling Shareholder notice that it desires to purchase some or all of the Sale Shares that it is entitled to purchase under this clause (b), then the payment for the Sale Shares shall be made by certified check or wire transfer of immediately available funds against delivery of the Sale Shares by the Selling Shareholder at a time and place to be mutually agreed, but in the absence of which, at the Company's principal business address on a date that is not later than [forty-five (45)] days after receipt of the Transfer Notice delivered in accordance with clause (a) above.

- (c) *Shareholders' Right of First Refusal.* Subject to the Company's right of first refusal option set forth in Section 5.2(b), if at any time the Selling Shareholder proposes a transfer, then within [five (5)] days after the Company has declined to purchase all or a portion of the Sale Shares, or the Company's option to so purchase the Sale Shares has expired, the Selling Shareholder shall give each other Shareholder an "Additional Transfer Notice" that shall include all of the information and certifications required in a Transfer Notice and shall additionally identify the Sale Shares that the Company has declined to purchase (Remaining Shares). Each Shareholder shall have an option for a period of [fifteen (15)] days from the delivery of the Additional Transfer Notice to elect to purchase its respective pro rata share of the Remaining Shares at the same price and subject to the same material terms and conditions as described in the Additional Transfer Notice. Each Shareholder may exercise such purchase option and purchase all or any portion of its pro rata share of the Remaining Shares by notifying the Selling Shareholder and the Company in writing, before expiration of the [fifteen (15)] day period as to the number of such shares that it wishes to purchase. Each Shareholder's pro rata share of the Remaining Shares shall be equal to that Shareholder's percentage ownership of the total paid-up equity capital of the Company, excluding the Equity Shares held by the Selling Shareholder. If a Shareholder gives the Selling Shareholder notice that it desires to purchase some or all of the Remaining Shares that it is entitled to purchase under this clause (c), then the payment for the Remaining Shares shall be made by certified check or wire transfer of immediately available funds against delivery of the Remaining Shares by the Selling Shareholder at a time and place to be mutually agreed, but in the absence of which, at the Company's principal business address on a date that is not later than [forty-five (45)] days after receipt of the Transfer Notice delivered in accordance with clause (a) above.

This model Shareholders Agreement assumes that all share transfers are subject to a right of first refusal (and the tagalong rights described in Section 5.3). A right of first refusal is intended to give the company and the shareholders the ability to acquire the shares of the company proposed to be sold by a selling shareholder in priority to a third-party purchaser. As such, it allows the company and the non-selling shareholders to control the composition of the shareholders (e.g., avoiding sales to unfriendly or competitive parties). Rights of first refusal are typically resisted by investors because they are perceived as a substantial limitation on their liquidity because of (i) the delay that results in a proposed sale while the right of first refusal process is followed and (ii) the chilling effect on a potential sale resulting from the uncertainty of a sale to a potential purchaser due to the requirement to offer the company and other shareholders the opportunity to step into the shoes of a proposed purchaser. Investors may push to limit the applicability of these transfer restrictions to transfers by the founder, founding NGO, or certain major investors rather than all shareholders. Investors may also resist inclusion of a right of first refusal altogether, or instead refashion this provision as a right of first offer (e.g., the selling shareholder first offers its shares to the company or other shareholders prior to offering such shares to third parties). A right of first offer poses less of a restraint on a selling shareholder's ability to sell its shares than a right of first refusal.

Note that in Section 5.2, the right of first refusal option is structured to give the company a priority right over other shareholders (e.g., shareholders can purchase only those shares that the company passes on). Investors may resist rights that permit shareholders to partially exercise the right of first refusal, as such partial exercise may reduce the value of the deal that has been struck with the prospective third party purchaser. A partial exercise of the right of first refusal may be particularly costly if the share price has incorporated a control premium and the available shares for sale no longer merit such premium. However, the company may want the ability to partially exercise the right so that even if it does not have the capital or ability to purchase all sale shares, it can still maintain some control. Still, in some jurisdictions, regulated financial intermediaries (which may include the company) are prohibited from decapitalizing and buying back their own shares. Local counsel should, therefore, be consulted to determine whether the company faces this prohibition to determine how to draft, and whether to include the company in, a right of first refusal.

The length of notice periods will, of course, vary from one transaction to another. Long notice periods will delay a shareholder's proposed sale of shares and may make it more difficult to find a buyer that is willing to live with a lengthy sale process. Short notice periods, on the other hand, may not allow other shareholders enough time to evaluate the proposed terms of a sale or raise the capital needed to exercise their right of first refusal.

Section 5.3. Tag Along Rights

- (a) To the extent that the Company or any Shareholder does not exercise its right of first refusal in accordance with Section 5.2, then each Shareholder hereto (Participating Shareholder) that provides written notice to the Selling Shareholder within [twenty (20)] days after delivery of the Transfer Notice or Additional Transfer Notice shall have the right to participate in such sale of Equity Shares on the same terms and conditions as are specified in the Transfer Notice or Additional Transfer Notice. Such Participating Shareholder's notice to the Selling Shareholder shall indicate the number of Equity Shares that the Participating Shareholder wishes to sell, provided that the number of Equity Shares that the Participating Shareholder shall be entitled to sell shall not exceed that number of Equity Shares that is equal to the product obtained by multiplying (i) the aggregate number of Equity Shares covered by the Transfer Notice or Additional Transfer Notice that have not been subscribed for in accordance with Section 5.2 and (ii) a fraction, the numerator of which is the number of Equity Shares held by the Participating Shareholder on the date of the Transfer Notice or Additional Transfer Notice and the denominator of which is the total number of Equity Shares issued and outstanding on the date of the Transfer Notice or Additional Transfer Notice.
- (b) Each Participating Shareholder shall fully cooperate with the Selling Shareholder in connection with any sale made in accordance with this Section 5.3 and shall execute such documents as may be reasonably required in order to effect the sale and transfer on the terms and conditions set forth in the Transfer Notice or Additional Transfer Notice. Each Participating Shareholder shall also effect its participation in the sale by delivering to the Selling Shareholder for transfer to the prospective purchaser one or more certificates, properly endorsed for transfer, that represent that number of Equity Shares that the Participating Shareholder elects to sell in accordance with clause (a) of this Section 5.3. The Company shall cooperate with the Selling Shareholder and any Participating Shareholder to facilitate any sale made in accordance with this Section 5.3. The sale and purchase of the Equity Shares shall be effected in accordance with the terms and conditions set forth in the Transfer Notice or Additional Transfer Notice. The Selling Shareholder shall remit or cause to be remitted to the Participating Shareholder that portion of the purchase consideration to which the Participating Shareholder is entitled by reason of its participation in the sale. A Selling Shareholder shall not effect a sale of Equity Shares to a prospective purchaser unless such prospective purchaser simultaneously effects any purchase from a Participating Shareholder who has perfected its rights to participate in the sale in accordance with this Section 5.3.

Tagalong rights (often referred to as co-sale rights) are most important in circumstances in which a shareholder or small group of shareholders owns a very substantial or controlling block of the company. Since third parties are often willing to pay a premium for a controlling interest in a business, tag along rights enable a minority investor to sell its shares alongside the larger bloc of shares and thus participate in any premium being received. Tag along rights are also another way to align the interests of the founder, founding NGO, management, and investors. Since the founder's continuing participation in the business is a significant factor in an investor's decision to invest, investors will likely want to discourage the founder from selling its shares until or unless all investors have the ability to transfer or sell their shares.

Rights of first refusal and tagalong rights usually expire at the time of an IPO. Upon the occurrence of an IPO, shareholders are typically able to achieve liquidity in public markets and, therefore, have less need for the liquidity that may be available through the exercise of tagalong rights. Similarly, following an IPO, the new shareholders would not be subject to transfer restrictions with respect to the shares that they acquired in the IPO. Investors are likely to be unwilling to continue to be subject to a right of first refusal, which would make them subject to transfer restrictions that do not apply across the board. (Note, however, that in the event of an IPO where the majority of shares are still in the hands of pre-existing shareholders and only a minority of shares are traded publicly, investors may insist on the continuation of the tagalong rights because the public float is too small to create meaningful liquidity.

Section 5.4. Sale Right of Selling Shareholder

To the extent that the Company or the other Shareholders party hereto have not exercised their right of first refusal with respect to the Sale Shares, within the time periods specified by Section 5.2 and no Shareholder has exercised its right to participate in the sale of Equity Shares pursuant to Section 5.3, then the Selling Shareholder shall be free to sell the Sale Shares to the prospective purchaser within a period of [ninety (90)] days (but not thereafter) from the date of the expiration of such rights upon terms and conditions no more favorable to the prospective purchaser than those specified in the Transfer Notice, and the prospective purchaser shall have the right to purchase the Sale Shares, subject to the terms and conditions of this Agreement provided that the prospective purchaser shall have executed documents reasonably satisfactory to the Company assuming the obligations of the Selling Shareholder hereunder, and agreeing to be bound by the terms and conditions of this Agreement applicable to the Sale Shares. The Company and the Founder shall reasonably cooperate in the prospective purchaser's due diligence of the Company.

Section 5.5. Preemptive Rights

- (a) The Company shall give the Shareholders prompt notice of any proposed issuance of new Equity Shares or other equity-linked securities or preference shares (New Shares) by the Company (New Issuance) and shall afford the Shareholders the right to participate in any such New Issuance being undertaken by the Company by making an offer to them on a pro rata basis of the New Shares (Rights Issue). Each Shareholder shall, at its option, agree to participate in such Rights Issue wholly or in part or waive the exercise of its right of first refusal in respect of the New Issuance. Each Shareholder shall communicate its decision in this regard by written notice to the Company within [thirty (30)] days of receipt of the Rights Issue from the Company.
- (b) Notwithstanding the above, each Shareholder shall, during the New Issuance, be entitled to subscribe to such number of New Shares as is required to maintain the Shareholder's percentage ownership of the paid-up equity capital of the Company, as it exists prior to the Rights Issue, on terms no less favorable than those on which the New Issuance is to be made.
- (c) If a Shareholder elects not to exercise the right under this Section 5.5, the Company shall, subject to the terms of this Agreement, offer such New Shares to the remaining Shareholders and then to a third party on terms no more favorable than those offered to the Shareholders for the New Shares and at a price no less than that offered to the Shareholders for the New Shares under clause (a).
- (d) The sale of any New Shares pursuant to this Section 5.5 shall be completed within [one hundred twenty (120)] days of receipt of the notice from an Investor of its decision to participate in the Rights Issue.

Preemptive rights allow a shareholder to maintain its existing percentage ownership interest of the company in subsequent new issuances of equity by giving such shareholder the first opportunity to purchase new shares. The purpose of preemptive rights is to prevent dilution of value of such shareholder's shares and reduction of control of the shareholder. These rights are so common that certain jurisdictions grant preemptive rights to shareholders as a matter of statute unless expressly disallowed in the shareholders agreement or organizational documents. Local counsel should be consulted to determine how preemptive rights are treated under local law. The company may be willing to give the shareholders preemptive rights, but if they are offered, the company must be careful to follow this process whenever it issues new shares. Even if the shareholders choose not to purchase additional shares so as to avoid a dilution of their shareholdings, appropriate waivers to the preemptive rights should be obtained by the company from the shareholders.

Section 5.6. Drag Along Rights

In the event that Shareholders representing [seventy-five percent (75%) or more] of the paid-up equity capital of the Company (Proposing Shareholders), acting together or pursuant to a common plan or arrangement, propose to (a) participate in a bona fide sale or exchange (including, but not limited to, a plan of merger, consolidation, or amalgamation of the Company with another corporation or entity) in a transaction or series of related transactions representing one hundred percent (100%) of the issued and outstanding Equity Shares (including shares issuable upon exercise, conversion, or exchange of any convertible stock, options, warrants, or other rights to purchase or acquire shares), or (b) initiate on behalf of the Company a sale of all or substantially all of the assets of the Company, in either case of (a) or (b) to a third party that is not, and following sale will not be, affiliated with any of the Proposing Shareholders, such Proposing Shareholders shall have the right (Drag Along Right), exercisable upon thirty (30) days written notice to the other Shareholders, to require the other Shareholders to sell or exchange their securities or otherwise participate in a transaction or series of related transactions on the same terms and conditions as the Proposing Shareholders. Each Shareholder agrees to vote all Equity Shares held by it or execute favorable written consents in lieu of voting at a Shareholder meeting in favor of (i) a sale or exchange of capital stock of the Company (including, but not limited to, a plan of merger, consolidation, or amalgamation of the Company with another corporation or entity), or (ii) a sale of all or substantially all the assets of the Company, in either case in a transaction or series of related transactions meeting the criteria specified above.

A drag along right gives a defined group or percentage of shareholders the right to require all (or most) other shareholders to tender their shares in connection with change of control transactions such as those set forth in clauses (a) and (b) above. When considering how the drag along right operates, the company must be mindful of how this right interacts with any minority protections granted in the “Reserved Investor Matters” of Section 4.4(a) or other control provisions, and must ensure these provisions are consistent. A drag along right is hardly a universal feature and is subject to negotiation. Possibly the most significant issue here is the “trigger” percentage that will allow the proposing shareholders to “drag along” the other shareholders. It is common for the trigger percentage to be set at a higher threshold than a majority, such as 75 percent. If structured correctly, the goal is not simply to let the majority of shareholders drag along the minority, but rather to provide a mechanism to ensure that all or most of the shareholders will approve the transaction while preventing certain shareholders from blocking the sale/exchange transaction for the company.

Section 5.7. Permitted Transfers

Notwithstanding anything herein to the contrary, the following transfers shall be Permitted Transfers and shall not be subject to the restrictions contained in this Article V: transfers to (a) any spouse or member of a Shareholder's immediate family or to a custodian or trustee, executor, or fiduciary for the account of a Shareholder or members of a Shareholder's immediate family, or to a trust for the Shareholder's own self, in the case of Shareholders who are individuals; (b) an Affiliate of a Shareholder, provided that each such transferee shall have executed documents reasonably satisfactory to the Company assuming the obligations of the transferring Shareholder hereunder, and agreeing to be bound by the terms and conditions of this Agreement applicable to the transferred Equity Shares; and (c) any shareholder, member, partner, or other equity holder in a Shareholder, if a Shareholder is a legal entity.

Section 5.7 provides for permitted transfers, meaning that such transfers are not burdened by the rights of first refusal and tagalong rights indicated in sections 5.2 and 5.3. Exemptions from rights of first refusal and tagalong rights for transfers of small numbers of shares are often allowed for administrative convenience or to permit shareholders to achieve limited amounts of liquidity. The company may also consider adding a section on prohibited transfers or prohibited transferees if there are particular classes of potential transferees that should be prohibited, such as direct competitors, customers, or suppliers (particularly if there is sensitivity about such customers or suppliers receiving too much information) or persons with which an investor may not be permitted to associate under applicable law. Local counsel should be consulted with regard to share transfer provisions to determine which transfer restrictions exist under local law. For example, in certain jurisdictions, local bank regulations may limit transfers of shares by shareholders, even as small as 5 percent of a total shareholding, unless such transfers are approved by local regulatory authorities.

Section 5.8. Put Option

- (a) *Grant of Sale Right.* Beginning [\bullet (\bullet)] years from the Closing Date, each Shareholder shall have a right to sell all, but not less than all, of its Equity Shares to the Company, subject to the terms and conditions of this Agreement. This right shall terminate in the event that such Shareholder transfers its Equity Shares or has otherwise terminated its status as a Shareholder.
- (b) *Sale Price.* The per Equity Share sale price upon exercise of the right under this Section 5.8 shall be determined as the greater of (i) the fair market value of an Equity Share

- or (ii) the amount paid by the Shareholder for its Equity Shares plus a return of [•]% per annum accrued from the date of the issuance of such Equity Shares to the date of sale. The “fair market value” shall be determined by the current accounting firm of the Company, provided that such firm shall have no conflicts of interest among any of the Shareholders or the Shareholders shall waive such conflicts in writing. The accountant shall consider all relevant discounts to the shares for lack of marketability, minority holding, and external political and economic forces. Each Shareholder has the right to have the valuation reviewed by an independent accountant of their choice. The cost of such review will be paid by the Shareholder. In case of a dispute in value, fair market value will be determined in accordance with the dispute resolution provisions of this Agreement.
- (c) *Exercise of Right.* The Shareholder seeking to exercise its right to sell shall send written notice to the Company expressing its intent to sell and the number of Equity Shares to be sold.
- (d) *Method of Sale.* Upon receipt of the notice of the intent to sell from the Shareholder, the Company shall purchase the Equity Shares of the offering Shareholder within [sixty (60)] days of receipt of such notice. Upon exercise of the sale right by the Shareholder, the Company shall either (i) pay the Shareholder for the Equity Shares in cash or (ii) pay [•] percent ([•]%) of the amount in cash and issue a note to the Shareholder to pay the balance over a period of time of no greater than [five (5)] years, payable in equal annual installments plus annual payments of [•]. Interest will be paid at a rate equal to the prime lending rate as quoted by the [national bank or other appropriate bank of Country X] on the date of the principal payment date. In the event such payments under the note may adversely affect the Company’s financial ability to conduct its business, payments under the note may be delayed from time to time, provided such payments are brought current prior to the termination of the note.

A put option gives the investors the right (but not the obligation) to sell a specified number of equity shares at a specific price and during a specific time period to a designated purchaser. A put option is most often requested by a financial investor as a way to provide an exit in the event a certain triggering event occurs, such as the passage of time or the failure of the company to meet specified financial goals (or in some cases, upon death or disability of an investor where the investor is an individual). Also, social investors may request language granting the right to “put” their shares back to the company if the company fails to maintain certain social objectives or results. Investors may also request this provision to protect against reputational risk in the event the company’s activities cause controversy or to avoid liability under money-laundering regulations or other applicable law. A key negotiation point is determining who will stand on the other side of the “put,”

or who will be forced to purchase an investor's equity shares. Investors will often seek to "put" their shares to the company, but the company will often not be in a position to make such a purchase due to liquidity constraints or regulatory prohibitions against share buybacks by the company. The company must therefore carefully consider whether it will be able to purchase such shares (dependent on the company having sufficient cash flow to make such purchase or as a matter of law if the company is prohibited by local bank regulatory authorities from making such purchase) in the event a put option is exercised in the future. Put options are still relatively uncommon in Shareholders Agreements and the company's best decision is to resist these to the extent possible.

Section 5.9. Lock-In

Notwithstanding any provision of this Agreement to the contrary, neither the Founder nor any Investor shall be permitted to sell or otherwise transfer its Equity Shares for a period of [• (•)] months from the Closing Date, except for those transfers permitted under Section 5.7.

The company has an interest in keeping investors "locked-in" to their obligations under this agreement for some minimum period. This is particularly true of strategic investors, who may be offering a number of different benefits to the company (e.g., strategic advice, reputation, and local connections) that may take time to realize. Whereas a strategic investor will likely accept a longer lock-in period (because it is interested in staying involved for a long-term period), a financial investor will be wary of an extended lock-in period. Even though most financial investors will approach microfinance investments with a three to seven year investment horizon in mind, such investors may want to be able to exit sooner if the market will allow for an early exit on favorable economic terms. If financial investors are willing to agree to a lock-in provision, it will usually not be for more than two years.

Article VI Indemnification and Exculpation

Section 6.1. Indemnification by the Company

To the maximum extent permitted under Applicable Law, the Company shall indemnify, hold harmless, and defend each Investor and the Founder, the Directors, including any Investor Nominee Directors or alternate Directors, and each of their respective officers, directors, members, shareholders, and employees from and against any and all loss, cost, expense, damage, claim, liability, or injury (including any judgment, award, settlement and

reasonable attorneys' fees, and other costs related thereto) (collectively, "Losses") suffered or sustained by them by reason of or arising out of (a) their activities on behalf of the Company or otherwise in furtherance of the interests of the Company, (b) their status as managers, officers, or directors, including Investor Nominee Directors or alternate Directors, and (c) in the case of the Investors only, any obligation to be performed by the Investors pursuant to any provision of Applicable Law, in connection with the offer and sale of the Equity Shares and/or compliance with statutory or other requirements stipulated by Government Authorities as well as any applicable stock exchanges, provided that the actions or omissions forming the basis of the Losses were not performed or omitted to be performed fraudulently or as a result of the willful misconduct by the indemnified Party or as a result of the willful breach of this Agreement or the organizational agreements of the Company.

The indemnification provision is a common provision found in Shareholders Agreements. Indemnities by the company may be expanded or limited depending on the amount and type of loss events that trigger indemnification. As provided in Section 6.1, it is typical that the indemnifying party does not have to indemnify the indemnified party if loss events triggering indemnification are the result of fraud, willful misconduct, or willful breach by the indemnified party. Although not drafted in this model agreement, note that in some cases, the indemnifying party may be a party other than the company, where the company is being indemnified for a loss suffered due to the material breach or activities of such indemnifying party. A provision in which parties other than the company may be an indemnifying party can be balanced with language in Section 6.2 regarding exculpation (e.g., where a party will indemnify the company for losses arising out of its fraud, bad faith, or willful misconduct).

Section 6.2. Exculpation

To the maximum extent permitted by Applicable Law, the Investors, the Founder, the Directors, including the Investor Nominee Directors and the alternate Directors, and each of their respective officers, directors, members, shareholders, and employees shall not be liable to the Company for Losses arising out of or in connection with this Agreement or the operation of the business of the Company, unless such Losses arise out of such Person's fraud, bad faith, or willful misconduct or an action or omission that is outside of the scope of the authority granted to such Person.

As indicated above, investors most likely will pressure the company to protect them and their directors, officers, and other members from any possible liability to the extent permitted by applicable law.

Due to the broad financial liabilities that sections 6.1 and 6.2 pose to the company, the company may want to negotiate the language of the provisions (e.g., such as the events triggering indemnification or exculpation) to limit its liability.

Article VII Assistance with Exit

Section 7.1. Assistance with Exit

The Company and the Founder recognize that the Investors may in the future want to diversify their investment in the Company, achieve greater liquidity in the Company's Equity Shares, or otherwise dispose of their Equity Shares. After the [• (•)] anniversary of the Closing, at the request of any of the Investors, the Company and the Founder agree to provide support and assistance to the Investors to achieve liquidity for their investment in the Company. In furtherance of the foregoing, the Company (and the Founder to the extent applicable), at the request of any of the Investors, shall use reasonable commercial efforts, in the following order or priority, to

- (a) assist the Investors in identifying potential purchasers for their Equity Shares;
- (b) purchase the Equity Shares held by the Investors through a buy-back or through a reduction of capital so long as the same does not materially and adversely impact the Company's ability to execute the Business Plan or any subsequent annual business plan in the judgment of the Board; or
- (c) effect an initial public offering of the Company on a public exchange and allow the Investors to sell their Equity Shares through such public offering on a pro rata basis or on such other basis as shall be recommended by the lead manager or underwriter of such public offering, provided that the foregoing shall not require the Company to pursue an initial public offering in a jurisdiction other than [Country X].

The assistance with exit provision in Section 7.1 is generally not a typical provision in microfinance deal agreements. This provision provides greater flexibility to the investors in the case any of the investors decide to diversify or dispose of their shares. The company and the founder should carefully evaluate whether they are in a position to provide such assistance to investors at any time. Factors for the company to consider include its ability to identify potential purchasers for the shares, especially in the case of an economic downturn; its ability to buy back shares given local regulatory restrictions; its ability to reduce capital given company needs; and its ability to effectuate an initial public offering given its resources. As this provision requires a dedication by the company to the

investors' needs, the company may not want to use this provision or may wish to at least limit the circumstances in which the company will need to assist investors with an exit. In addition, the company may need to set aside reserves or retained earnings to provide assistance of the type referenced in clause (b) of Section 7.1. In some jurisdictions, as designated by statute, share buy-backs may be restricted to circumstances where the company has a threshold reserve amount.

Section 7.2. Dividends

Shareholders shall be entitled to receive dividends on their Equity Shares when, as, and if declared by the Board in its discretion. The Shareholders acknowledge and agree that no dividends shall be paid for a period of [•] ([•]) years from the date of Closing, and any payment of a dividend (a) shall be approved by the Investors pursuant to Section 4.4, (b) shall not render the Company insolvent, and (c) shall not otherwise violate Applicable Law.

Growth-stage companies in all industries resist paying dividends and instead seek to re-invest earnings in growth. Microfinance institutions are no exception, and to date many microfinance institutions rarely pay dividends and investors rarely expect them. In this model agreement, the payment of dividends is a reserved investor matter, meaning a majority of the outstanding equity shares must approve any payment of dividends. In addition, substantial investors may often request some kind of veto ability over any declaration or payment of dividends. The language in Section 7.2 indicates that dividends shall be payable only “when, as, and if” declared by the board, so that the company will never be obligated to make a dividend distribution to the investors unless the board deems it appropriate. If the company chooses to pay dividends, local counsel should be consulted as local regulations may limit or prohibit the payment of dividends under certain circumstances.

If the company chooses to offer preferred shares, then dividend provisions will likely be more complex, and the company will need to address the relative rights of preferred and common shareholders, a preferred rate, and whether dividends are cumulative (e.g., preferred shareholders are entitled to unpaid dividends for past years before common shareholders receive a dividend) and/or participating (e.g., preferred shareholders receive dividends paid on common shares in addition to preferred dividends). As regulated financial institutions in certain jurisdictions may not be authorized to issue preferred shares, local counsel should be consulted on this matter.

Article VIII Non-competition Undertaking and Confidentiality

Section 8.1. Non-Competition Undertaking of the Founder

So long as the Founder remains in employment of the Company as the CEO or in another executive capacity with the Company, or continues to hold Equity Shares or other securities of the Company, and for a period of [one (1)] year thereafter, the Founder agrees that neither he nor any of his Affiliates, without the written consent of the Investors, shall directly or indirectly

- (a) engage in, control, advise, manage, serve as a director, officer, or employee of, or otherwise hold an ownership interest in any Person that engages in Competitive Activities within the Territory, except for charitable organizations and activities;
- (b) employ or solicit for employment any employee of the Company or its Affiliates or encourage any such employee to leave his or her employment with the Company or its Affiliates.

In the event of a breach of this Section 8.1, in addition to any other remedy that may be available, the company and the investors shall be entitled to an injunction preventing the continued violation of this Section 8.1.

Section 8.2. Other Investments or Activities by Investors

Nothing in this Agreement shall be deemed to prohibit or restrict any Investor or its Affiliates from entering into a joint venture, tie-up, or similar arrangement, or otherwise make an investment in or provide financing or technical assistance or collaboration or support to a Person that is engaged in any activities including Competitive Activities (including not-for-profit entities) even if such person is engaged in activities in the Territory that are similar to or competitive with the activities of the Company. The Company hereby unconditionally and irrevocably agrees that it will consent to and cooperate with the Investors in obtaining any authorizations from Government Authorities to the extent necessary for any of the Investors to engage in any of the foregoing activities. The foregoing does not in any way limit the Investors' obligation hereunder with respect to Confidential Information.

[OR as an alternate provision]

- (a) For a period of [\bullet (\bullet)] years after the Closing Date, or so long as the Investors continue to hold Equity Shares or other securities of the Company, the Investors agree not to participate in any Competitive Activities in the Territory, or engage in, control, advise, manage, serve as a director, officer, or employee of, or otherwise hold an ownership interest in any Person that engages in Competitive Activities, other than that which is incidental to their normal operations to offer loans and financial services to poor and low-income customers located in the Territory. This provision is subject to review by the Existing Shareholders who may, after due consideration, make a determination (which shall always be in the best interest of the Company) to waive this requirement to allow similar investments by Investors. The approval by the Existing Shareholders will be by special resolution at a Shareholder meeting.
- (b) Each of the Investors agrees that for a period of [\bullet (\bullet)] years from the Closing Date, or so long as the Investors continue to hold Equity Shares or other securities of the Company, they will not have a majority shareholding or hold a controlling interest either via equity investment or control of the board of directors of any Person who engages in Competitive Activities or have a representative on the board of directors of any Person who engages in Competitive Activities as this will result in a conflict of interest on the part of the relevant Investor. A conflict of interest would arise if an Investor was a majority shareholder in a fund that provides loans and financial services to poor and low-income customers located in the Territory or sets up a large unit to engage in the financing of poor and low-income customers located in the Territory. Investments allowed in Persons who engage in Competitive Activities are restricted to small investments of total aggregate amount [*applicable currency*][\bullet] and small units with a total aggregate amount of financing of [*applicable currency*][\bullet], which investments shall be subject to confirmation by the Existing Shareholders that such investments and/or operations do not constitute a conflict of interest.

The company will ideally not want its investors involved in any way with its competitors, and the company may seek to prohibit investors (particularly those that are privy to confidential information) from competing within a certain geographical area and from investing in other microfinance institutions. The risks, of course, include the possibility that an investor will obtain information about customers, business practices, or other sensitive data that it can use to benefit other ventures in which it may be involved. At a minimum, investors should be required to safeguard the company's confidential information.

In the alternate Section 8.2 provided above, the company may want to use a provision that states that for a certain period of time after the incorporation of the company or for the period of time that investors hold equity shares or other securities in the company, the investors agree not to participate in any competitive activities, subject to waiver by the

existing shareholders to allow similar investments by investors. Such a provision will be subject to negotiation among the parties as investors may not wish to have certain competitive activities curtailed as provided in the alternative provision.

Section 8.3. Confidentiality

- (a) Any information related to the business of the Company, its operations, or finances that would reasonably be considered to be proprietary, or that is designated as such in writing by the Company (hereinafter Confidential Information) shall be deemed confidential and shall be treated in accordance with this Section 8.3. Each Investor agrees (i) not to disclose Confidential Information to any Person, except to its Affiliates (on the condition that such Affiliates are bound by the provisions of this Section 8.3) and those of its and its Affiliates, employees, representatives, agents, or advisers who need to know such Confidential Information in connection with such Investor's ownership of the Company, the evaluation of the conduct of the business of the Company, or the exercise of its rights hereunder or as may otherwise be required by Applicable Law, and (ii) not to use the Confidential Information for any purpose unrelated to the business activities of the Company or the exercise of its rights hereunder. For purposes of this Agreement, the term "Confidential Information" shall not include (A) information that is or hereinafter becomes available to the public, other than as a result of a breach of this Agreement by an Investor, (B) information that was already known to an Investor at the time of disclosure by the Company, and (C) information that is obtained from a third party not in breach of an obligation of confidentiality to the Company. In addition, it shall not be deemed a violation of this Section 8.3 for an Investor to disclose Confidential Information that may be required to be disclosed to comply with any law, order, regulation, or rule (including the rules of any applicable stock exchange) applicable to an Investor or that may be required to be disclosed in response to any summons or subpoena or in connection with any litigation. In addition, an Investor may disclose Confidential Information to a proposed transferee of Equity Shares, provided that the proposed transferee executes a confidentiality agreement restricting such Persons disclosure and use of the Confidential Information in a manner consistent with this Section 8.3 and the Company is made a third-party beneficiary of the agreement.
- (b) All Confidential Information shall be protected by the receiving Investor from disclosure with the same degree of care with which the receiving Investor protects its own confidential information from disclosure. The information and materials prepared or

generated by an Investor or its representatives, agents, or advisers and which embody Confidential Information shall also be subject to the confidentiality provisions of this Section 8.3. This Section 8.3 shall remain in effect in the event this Agreement is terminated. If this Agreement is terminated, each Investor shall promptly return to the Company (or, at the request of the Company, destroy) any documents or other written information containing Confidential Information.

A separate Confidentiality Agreement would normally be signed by an investor prior to being provided access to proprietary information of the company in connection with the assessment of a potential investment. The confidentiality provision may be narrowed from the language provided in Section 8.3 to further restrict the dissemination of confidential information only to a limited number of individuals specifically identified on a list. Under the current formulation, the investor is allowed to disclose confidential information to its employees, representatives, agents, and advisers who have a need to know the information. Investors may also disclose the confidential information to initiate or defend legal proceedings between parties and to comply with applicable rules and regulations of a stock exchange, as necessary in connection with a transfer of equity shares.

Section 8.4. Publicity

Except as required by Applicable Law or the rules of any stock exchange, no public announcement or other publicity regarding the transactions referred to herein shall be made by any Party hereto or any of its respective Affiliates, officers, directors, employees, representatives, or agents, without the prior written agreement (which shall not be unreasonably withheld or delayed) of any other Party mentioned in the public announcement, in any case, as to form, content, timing, and manner of distribution or publication; provided that nothing in this Section 8.4 shall prevent such Parties from discussing such transactions with those Persons whose approval, agreement, or opinion, as the case may be, is required for consummation of such particular transaction or transactions, provided further that nothing in this Section 8.4 shall prevent such Parties from communicating the fact that an investment has taken place in the Company in their marketing collateral (both online and hard copy). Subject to the other provisions of this Section 8.4, any public statement made by the Company or any Investor, that refers to the other, shall either (a) require the prior approval of the Company or such Investor (as applicable) which approval shall not be unreasonably withheld or (b) be made pursuant to a marketing or publicity program approved in advance by the Company and such relevant Investor.

Both the company and the investors may be concerned about publicity from the investment transaction. Social investors in particular are likely to have an interest in ensuring that their involvement with the company is cast in a good light, and even purely financial investors will want to avoid the impression that they are profiting from exploitation of the poor. The company, on the other hand, would often like to highlight the involvement of mainstream investors, whose investment is seen as a stamp of validation and legitimacy and may help attract additional funds or talent.

Article IX Books And Records; Reports; Notices

Section 9.1. Books and Records

The books and records of the Company shall be maintained in accordance with generally accepted accounting principles in [Country X]. The method of accounting and the accounting policies of the Company shall be consistently applied. The books and records shall be maintained at the Company's principal office, and all such books and records shall be available to any Investor for inspection at such location, at such Investor's sole cost and expense during normal business hours with at least twenty-four (24) hours prior notice. In connection therewith, each Investor (and its agents and representatives) shall have the right to meet and consult with any and all employees of the Company.

Section 9.2. Reports

- (a) *Annual Reports.* Within [sixty (60)] days of the end of each fiscal year of the Company, the Company shall furnish to each Investor the audited financial statement of the Company (including the balance sheet, income statement and cash flow statement, as well as the notes thereto) as of the end of the relevant fiscal year and the unaudited financial statements (including the balance sheet and income statement) as of [most recent month end for which financial statements are available] and for the [●] month period then ended. The annual reports shall be prepared in accordance with the generally accepted accounting principles in [Country X]. The annual financial statement shall be audited by a firm of independent auditors appointed by the Board that is approved by Investors representing a majority interest in the Company.
- (b) *Periodic Reports.* Within [thirty (30)] days of the end of each month, and [forty-five (45)] days of the end of each fiscal quarter, the Company shall furnish to the Investors the information and reports described on Schedule 9.2.

Annual reports are a standard requirement in microfinance investments. See Schedule 9.2 for further analysis of other requirements and some unique information microfinance institutions may be asked to provide.

Section 9.3. Income Tax

The Company shall prepare or cause to be prepared all income and other tax returns that are required to be prepared in accordance with Applicable Law. The Company shall also prepare or cause to be prepared such additional information and reports as may from time to time be requested by the Investors in connection with the filing by the Investors of their own tax returns. The Company shall cooperate with the Shareholders to minimize any such tax.

Section 9.4. Business Plan

- (a) The Company has prepared and delivered to the Investors a detailed and updated [three (3)] year business plan (Business Plan) with financial projections for the Company clearly explaining how the Company will build and strengthen its systems in order to increase the outreach and product offerings to meet the needs of its clients. The Company agrees to take into consideration the Investors' comments and suggestions and the Business Plan, approved in writing by the Investors, shall be finalized by the Company prior to Closing and adopted through its Board at Closing. After approval of the Business Plan by the Board, the Company shall operate its business and affairs in accordance therewith. Although the Business Plan provides projections for a [three (3)] year period, such projections will be updated annually and incorporated into the Business Plan adopted by the Board for subsequent years.

The business plan of the company is likely the document upon which the investors' decision to invest is based. Financial investors (e.g., Big Fund and MF Fund) will pay particular attention to the company's ability to scale and manage growth since its ability to grow in the future will determine whether the investment returns are high. The business plan should be developed very carefully. Not only will it provide a strategic roadmap for the company and management in future years, it also implicitly defines the scope of management's discretion and flexibility (as any action or decision outside of those specifically contemplated in the business plan will likely require the approval of the board and/or shareholders). See the note after Section 3.4 for further discussion on the business plan.

(b) *Subsequent Annual Business Plans.* No later than [thirty (30)] days prior to the end of each fiscal year, the Company shall prepare or cause to be prepared an annual business plan for the Company for the next fiscal year in a format similar to the Business Plan. Each such annual business plan shall require the approval of the Board. No material changes to any items in each annual business plan shall be adopted or implemented without the approval of the Board in accordance with Section 4.1. If for any reason the Board is unable to agree on the form or content of an annual business plan by the last day of the preceding fiscal year, the annual business plan for the preceding fiscal year will serve to guide the operation of the business of the Company unless and until a new annual business plan is approved and adopted by the Board.

Section 9.5. Bank Accounts

The Company shall maintain one or more bank accounts with a scheduled bank to be approved by the Investors and deposit the amounts received by the Investors into such accounts. Payment from such account shall be subject to verification by a Person authorized by the Investors. The Company shall also obtain and furnish to each Investor, upon request, a letter (in a form approved by such Investor) from the said bank foregoing its right of set-off or lien in respect of such account. The Company shall also authorize the said bank to furnish to such Investor, on demand, a certified true copy of the records of the said account with details for verification by the Investors, at the expense of the Company.

Section 9.6. Accounting and Cost Control Systems

The Company shall promptly and diligently install and maintain accounting and cost control systems satisfactory to the Investors and maintain books of accounts and other records adequate to reflect the true and fair financial position of the Company and the result of its operations in conformity with sound accounting principles. Such records and books shall be open to examination by the Investors as provided elsewhere herein.

Section 9.7. Statutory Auditors

The Company in a general meeting shall appoint [*reputable accounting firm*] as the statutory auditors for the Company or such other auditing firm as approved by all Investors.

Financial investors in particular will want to be comfortable with the auditor and will seek some sort of approval right over the selection, as drafted above. As local regulatory

authorities may have rules for the selection and termination of the external auditors by the company, local counsel should review and provide advice with respect to the drafting of this provision. In some jurisdictions, for example, bank regulatory authorities may pre-approve a list of external auditors for companies to select from. Similarly, certain jurisdictions require companies to change external auditors after a period of time to avoid collusion and fraud between companies and external auditors.

Section 9.8. Notice of Winding Up or Other Legal Process

The Company shall promptly inform the Investors if it has received notice of any application for winding up or any statutory notice of winding up under Applicable Law, or any other notice under Applicable Law or otherwise of any material suit or legal process initiated against the Company or if a receiver or administrator is appointed over any of its properties or business or undertaking.

Section 9.9. Insurance

The Company shall keep all its properties and equipment insured against all customary risks and pay all premiums and other sums payable for that purpose.

An insurance provision is generally appropriate only in jurisdictions where company insurance for properties and equipment is available and customary. In certain jurisdictions, insurance is not available and/or is not customary and as a result, microfinance institutions in such jurisdictions do not keep insurance.

Section 9.10. Investor Rights to Inspect

The Company shall permit the Investors and their authorized representatives to carry out technical, financial, and legal verification of the expenditures incurred out of the Company's capital, to visit the Company's facilities, and to examine any installations, sites, works, buildings, property, equipment, vehicles, records, and documents relating to the Company. Any representatives of the Investors shall have free access at all reasonable times to the Company's properties, and the Company and its employees shall extend full cooperation and assistance to the Investors and their representative(s).

Article X Termination

Section 10.1. Termination Options

This Agreement may be terminated by or against the Party specified hereunder, by the issuance of a notice in writing of at least [thirty (30)] days, upon the happening of any of the following events, in the manner and to the extent stated below:

- (a) A Party ceases to hold, by itself and/or through its Affiliates, any Equity Shares whatsoever, in the Company;
- (b) Written consent of all Parties of the desire to terminate the Agreement; and
- (c) Automatic termination of the Agreement in the event of an IPO.

Upon termination of this Agreement, all further rights and obligations of the Parties under this Agreement shall terminate, except for those rights and obligations that expressly survive termination. Termination of this Agreement shall not in any way affect or prejudice any right accrued to any Party against the other Parties, prior to such termination.

The most important provision above (and most often overlooked) is in clause (c) above, which provides for the automatic termination of the Shareholders Agreement in the event of an IPO. Without that provision, a current investor could refuse to agree to terminate the Shareholders Agreement, in which case, the transfer restrictions herein would continue to inhibit the marketability of the shares held by the pre-existing shareholders. In addition, the disparate rights among the pre-existing shareholders and the potential new shareholders who acquire shares in an IPO could adversely impact the value of the shares issued in the IPO. The automatic termination of the Shareholders Agreement at the time of an IPO will put pre-existing and new shareholders on the same footing. (Note that in the case of an IPO, where only a small percentage of new shares are issued, the automatic termination of the agreement is subject to negotiation among the parties.)

Article XI Dispute Resolution and Governing Law

Section 11.1. Arbitration

- (a) *Arbitration Procedure.* Any dispute, controversy, claims, or disagreement of any kind whatsoever between or among the Parties in connection with, relating to, involving, or

arising out of this Agreement or the breach, termination, or invalidity thereof, including any question regarding the validity, interpretation, scope, performance, or enforceability of this dispute resolution provision (Dispute) shall be exclusively referred to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce (ICC Rules), in effect at the time the arbitration request is filed. These ICC Rules shall be deemed to be incorporated by reference into this Article XI. This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding, which award, if appropriate, shall determine whether and when any termination shall become effective.

- (b) *Venue of Arbitration.* Unless the parties otherwise agree, the seat of the arbitration shall be [*location of arbitration*].
- (c) *Arbitrator/Arbitral Tribunal.* The arbitration shall be conducted by three (3) arbitrators. Each Party shall nominate an arbitrator, and the two (2) Party-nominated arbitrators shall jointly agree upon and appoint a third arbitrator who shall be knowledgeable with regard to the subject matter of the Dispute and who shall serve as the chairperson of the arbitral panel. If the two (2) Party-nominated arbitrators are unable to agree upon the selection of the chairperson within that time frame, the chairperson shall be appointed by the ICC International Court of Arbitration in accordance with the ICC Rules.
- (d) *Language of Arbitration.* The language of the arbitration shall be [English].
- (e) *Award; Apportionment of Costs.* The award rendered by the arbitral panel shall be in accordance with the governing law of this Agreement, shall be in writing, and shall set out the reasons upon which it is based. The award shall allocate or apportion the costs of the arbitration, including attorneys' fees and expenses, as the arbitral panel deems fair.
- (f) *Award Final and Binding.* The Parties agree that the arbitration award of the majority of the three arbitrators shall be final and binding on the Parties. The Parties agree that no Party shall have any right to commence or maintain any suit or legal proceeding (other than for interim or provisional measures and as provided in clause (h) below) until the Dispute has been determined in accordance with the arbitration procedure provided herein and then only for enforcement of the award rendered in the arbitration. Judgment on the arbitration award of the majority of the three arbitrators may be rendered in any court of competent jurisdiction, and application may be made to any such court for an order of enforcement.
- (g) *Confidentiality of Arbitration.* Unless otherwise agreed by the Parties or required by law, the Parties, the arbitral panel, and the arbitral institution shall maintain

the confidentiality of all documents and communications provided, produced, or exchanged during the course of the arbitration. Furthermore, no Party involved in the creation, coordination, or operation of the arbitration of any Dispute may disclose the existence, content, or results of the Dispute or any arbitration conducted under this Agreement, unless required to do so in order to enforce the arbitration agreement or any award made pursuant to this Agreement.

(h) *Injunctive Relief*. Nothing in this Agreement shall prevent the Parties from applying to a court of competent jurisdiction for provisional or interim measures or injunctive relief as may be necessary to safeguard the rights of the Parties under this Agreement.

Arbitration tends to be the preferred mechanism for resolving disputes due to avoidance of the difficulties of litigation such as the costs and length of litigation. The legal remedies available to Parties under Section 11.1 may be determined by local law (e.g., specific performance for voting arrangements may not be allowed). The ICC, of course, is only one forum through which disputes may be adjudicated through arbitration. Other forums may be more appropriate under a given circumstance.

Section 11.2. Governing Law

This Agreement shall be governed by the laws of [Country X].

The agreement will usually be governed by the law of the country in which the company is incorporated and/or conducts its business.

Article XII Miscellaneous

Section 12.1. Notice

Any notice, approval, request, or other communication given under this Agreement shall be in writing and delivered by hand, pre-paid registered post, facsimile, or by internationally recognized courier service to the registered office in the case of the Company and the address for communication as given to the Company, in the case of any other Party. Notice and instruments will be deemed served [seven (7)] days after posting if sent by registered post, upon receipt in the case of email or hand delivery, upon receipt of confirmation report if transmitted by facsimile transmission, or [four] (4) days from date of dispatch if sent by courier.

Section 12.2. Severability

If one or more of the provisions hereof shall be void, invalid, illegal, or unenforceable in any respect under any Applicable Law or decision, the validity, legality, and enforceability of the remaining provisions herein contained shall not be affected or impaired in any way. Each Party hereto shall, in any such event, execute such additional documents as the other Party may reasonably request in order to give valid, legal, and enforceable effect to any provision hereof which is determined to be invalid, illegal, or unenforceable.

Section 12.2 provides that if some part of this model agreement is found invalid or unenforceable, the rest of the agreement should remain intact. Without a severability provision, there is a risk that a partial invalidity or unenforceability would render the entire agreement unenforceable. A severability provision permits the offensive part of the agreement to be “severed” from the rest.

Section 12.3. Waiver

No failure to exercise and no delay in exercising any right or remedy hereunder shall operate as a waiver thereof. No waiver or consent hereunder shall be applicable to any events, acts, or circumstances except those specifically covered hereby.

A party may contend that because another party waived a certain requirement once, the party waived that requirement on subsequent occasions. For example, just because a shareholder agrees to waive its right of first refusal in connection with a particular transaction does not mean that the parties can assume that the shareholder waives that right with respect to future transactions. Section 12.3 thus limits the scope of waivers to the narrow situation in which the waiver was given.

Section 12.4. Survival of Warranties

The warranties, representations, and covenants of the Company and Investors contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of the Investors or the Company.

Section 12.5. Entire Agreement

This Agreement, along with the Share Subscription Agreement, constitutes the entire understanding and agreement between the Parties hereto with respect of the subject matter hereof and supersedes all prior agreements among any Parties hereto with respect to the

subject matter hereof. There are no understandings, representations, or warranties except as expressly set forth or referred to herein. Any modifications to this Agreement shall not be effective unless they are in writing and signed by all the Parties.

Section 12.5 prevents the parties from arguing that there are side agreements or understandings that are not clearly set out in this model agreement. Without this provision, a party may try to introduce evidence that the parties had other agreements that superseded or modified this model agreement. Of course, if there are other agreements that would modify or supersede this agreement, they should be explicitly identified and excluded from this provision.

Section 12.6. Assignments and Transfers, No Third-Party Beneficiaries

This Agreement and the rights and obligations of the Parties hereunder shall inure to the benefit of, and be binding upon, the Parties and their respective successors and permitted assigns and legal representatives, but shall not otherwise be assignable without the consent of all other Parties or provide any benefit to any third party. The rights of the Shareholders are assignable to (a) any other Shareholder; (b) an Affiliate of a Shareholder; (c) a transferee of the Equity Shares of a Shareholder only (i) if the Shareholder is an individual, or to such Shareholder's spouse or member of his or her immediate family or to a custodian, trustee, executor, or other fiduciary for the account of a Shareholder's spouse or members of his or her immediate family, or a trust for the Shareholder, and (ii) in the case of any other Shareholder, an Affiliate of the Shareholder; provided, in each case, that the transferee shall have executed documents reasonably satisfactory to the Company assuming the obligations of the transferring Shareholder hereunder, and agreeing to be bound by the terms and conditions of this Agreement applicable to the Equity Shares transferred to such transferee (the Persons described in clauses (a), (b), and (c) being referred to as "Permitted Transferees"). The Company may refuse to effect a transfer of Equity Shares that is not completed in accordance with this Agreement.

Section 12.6 is often contained in this Article XII on miscellaneous items unless assignability is of central importance to the agreement and should be addressed at an earlier stage of the agreement. Section 12.6 should be read in conjunction with Article V, "Transfer Restrictions."

Section 12.7. Effective Date of Agreement

This Agreement shall become binding on the Company and Shareholders on and from the Effective Date. It shall be in force so long as the Investors continue to hold any part of the Equity Shares acquired under this Agreement.

Section 12.8. Amendment to the Memorandum and Articles of Association

Following the Closing, the Company shall take all actions required to amend its Memorandum and Articles of Association to incorporate therein the provisions of this Agreement and the Share Subscription Agreement and shall file such documentation as may be necessary to reflect the same with the [*applicable authority*]. Following the Closing, the Memorandum and Articles of Association of the Company shall at all times incorporate the terms of this Agreement to the maximum extent permissible under the Applicable Law and the Parties hereby undertake to cast their votes and take such other actions as may be necessary to ensure that the Company shall adopt the same and make all amendments thereto as may be required from time to time and as may be necessary to ensure that the Memorandum and Articles of Association are consistent with the provisions of this Agreement and the Share Subscription Agreement.

Legal counsel should be consulted to ensure that the terms of the Shareholders Agreement are accurately and consistently reflected in the constituent documents. This provision would not be necessary if the constituent documents of the company are amended concurrently with the closing.

Section 12.9. Amendments

No modification or amendment to this Agreement and no waiver of any of the terms or conditions hereof shall be valid or binding unless made in writing and duly executed by the Company and a majority of the Investors, provided that any modification or amendment adverse to an Investor or Investors shall be approved by said Investor or Investors.

Section 12.9 should always require amendments to be in writing. While Section 12.9 has been drafted to require approval of only a majority of investors, the number of investors required to approve an amendment to this agreement is subject to negotiation by the parties. The parties may decide that rather than a simple majority approval by the investors, investors' representation based on the size of the investment should be the basis of the approval (e.g., investors representing 51% of the size of the investment are required for approval of the amendment). The company and investors may also choose to require execution by all parties, rather than a majority of the investors. An execution by all parties may be preferable as it avoids any interpretive debate about who is negatively affected or the definition of a majority, but creates additional bureaucratic hurdles in the event an amendment is needed and thus reduces flexibility.

Section 12.10. Interpretation

All references to statutory provisions shall be construed as meaning and including references to any statutory modification, consolidation, or re-enactment (whether before or after the date of this Agreement) for the time being in force and all statutory instruments or orders made pursuant to a statutory provision. All references to the singular shall include the plural and vice-versa, references to the masculine includes the feminine and vice-versa and references to persons shall include corporations and firms. The headings to articles and sections are inserted for convenience only and shall not affect the interpretation and construction of the Agreement. The terms “include” and “including” shall mean “including without limitation.”

Section 12.11. Further Assurances

The Parties agree to do such further acts and to execute and deliver such additional agreements and instruments as may be reasonably necessary to give effect to the purposes of this Agreement and the Parties’ obligations hereunder.

Section 12.11 addresses the parties’ fears that they omitted certain necessary provisions in the agreement. The provision gives parties a degree of comfort that unforeseen matters will be appropriately addressed.

Section 12.12. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed in English and [local language]. Each party shall retain one copy of the Agreement in each language. In the event of differences in interpretation of this Agreement, English shall be the binding and controlling language for all matters relating to the meaning, interpretation or enforcement of this Agreement.

Section 12.12 facilitates a closing in which documents and signatures are exchanged via fax, email, and/or regular mail (rather than executed simultaneously in the same physical location) by providing that documents signed in counterparts shall be accepted as originals.

Section 12.13. Costs

The Company shall pay all legal and administrative costs of the financing at Closing or upon submission of invoices by the Investor, including reasonable fees and expenses (not to exceed [applicable currency] [•]) of each Investor's attorney.

[OR as an alternate provision]

Each Party shall bear its own costs and expenses incurred in connection with the transaction contemplated by this Agreement.

The provision on costs and expenses is a matter for negotiation by the parties. Parties may decide to split the entire cost of the transaction evenly or in certain percentages. In the alternative, each party may bear its own costs of the transaction. Parties may also decide that one or some of the parties pay legal and administrative costs of the transaction while the other party or parties pay for duties and tax expenses of the transaction.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties hereto as of the date and year first written above.

XYZ Microfinance

By: _____

Name: _____

Title: _____

Founder

By: _____

Founding NGO

By: _____

Big Fund

By: _____

Name: _____

Title: _____

Responsible Investor

By: _____

Name: _____

Title: _____

MF Fund

By: _____

Name: _____

Title: _____

Domestic Bank

By: _____

Name: _____

Title: _____

Schedule 1

Capital Structure Following Closing

Shareholder	Existing Equity Shares	Equity Shares to be Issued at Closing	Total Equity Shares Post-Subscription	Fully diluted % Ownership Post-Subscription
Founder				
Founding NGO				
Big Fund				
Responsible Investor				
MF Fund				
Domestic Bank				
Stock Option Plan				
TOTAL		[1,000,000]		100.00%

Schedule 4.1

Matters for the Board

Resolutions concerning the following matters must be approved by the Board pursuant to Section 4.1(a); provided, however, that to the extent any of the matters below have been included in the Business Plan or any subsequent annual business plan that has been approved by the Board, then such matter will be deemed to be approved by the Board.

1. *Personnel Policies and Executive Compensation.* Adoption of or modifications to personnel policies, including creation of posts, selection procedure recruitment, and salary of senior executives, including any modifications to the Stock Option Plan.
2. *Expansion Plans.* Any expansion or diversification plans to be adopted or implemented by the Company.
3. *Business Plans.* Approval of the annual business plan, including the budget for revenue or capital expenditure.
4. *Listing.* Listing of Equity Shares or other securities on stock exchanges and matters connected therein, including the timing, pricing and appointment of merchant bankers.
5. *Committees.* The establishment of any committee of the Board.
6. *Borrowings.* Any short-term or long-term borrowing and repayment of the same other than at maturity.
7. *Investment Policies.* Adoption of or modifications to the investment policies of the Company.
8. *Approval of Accounts; Changes in Accounting Policies.* Approval of the annual or statutory accounts of the Company and or the adoption of or modification to accounting policies.
9. *Affiliate Transactions.* Entering into transactions with entities affiliated with any officer, Director, or Shareholder of the Company.
10. *Sale of All or Substantially All of the Assets.* The sale of all or substantially all of the assets of the Company.

Schedule 4.4

Reserved Investor Matters

1. *Amendments to Charter Documents.* Any amendment to the Memorandum or Articles of Association.
2. *Changes to Capital Structure or Shareholders' Rights.* Any modification to the capital structure of the Company or change in the rights of Shareholders.
3. *Subsidiaries.* The formation of any subsidiary or the acquisition of any entity that will become a subsidiary of the Company.
4. *Changes to Scope of Business.* A fundamental change in the mission, scope, or the nature of the business of the Company or commencement of any material new line of business operation.
5. *Sale of All or Substantially All of the Assets.* The sale of all or substantially all of the assets of the Company.
6. *Guarantees.* The assumption of any liability (contingent or otherwise) whether by guarantee, indemnity, or otherwise other than in the ordinary course of business.
7. *Auditors.* The appointment of independent external auditors for the Company.
8. *Sale of Assets.* The sale or transfer of assets of the Company in excess of [10]% of net fixed assets at any given time.
9. *Diversification, Modernization of Project.* The undertaking of any material new project or any diversification, modernization, or expansion program.
10. *Commission.* The payment of any commission to the Company's promoters, Directors, managers, or other persons for furnishing guarantees, counter guarantees, or indemnities or for undertaking any other liability in connection with any financial assistance obtained for or by the Company or in connection with any other obligation undertaken for or by the Company.
11. *Fundamental Corporate Transaction.* Entering into a strategic alliance, merger, acquisition, capital restructuring, reorganization, sale of assets, winding up, dissolution, or IPO having significant impact on the Company's business.
12. *Investment by Company in a Third Party.* Any investments by the Company in a third party, including an acquisition by the Company of the assets of a third party or the shares of a third party, in either case, involving more than [[*applicable currency*]]1,000,000].
13. *Distribution of Dividends.* Any distribution of dividends by the Company to the Shareholders.

Schedule 9.2

Periodic Reports

A. *Monthly Reports.*

1. Monthly unaudited financial statements, including an income statement and balance sheet.
2. Loan portfolio and borrower report.
3. Monthly management reports (in such format as shall be agreed from time to time by the Company and the Investors).

B. *Quarterly Reports.*

1. Quarterly unaudited financial statements, including an income statement and balance sheet.
2. A poverty distribution report, if generated by the Company.
3. Quarterly analysis of Company performance relative to the Business Plan and any subsequent annual business plan.
4. Reports filed by the Company with the Microbanking Bulletin (to be delivered to the Investors promptly following the submission thereof to the Microbanking Bulletin).

C. *Annual Reports.* An annual report on social indicators but only to the extent that the same can be prepared without undue expense.

Companies and investors often negotiate the scope of the obligations of periodic reports. Companies need to balance investors' interest in staying informed against the company's desire to maintain its focus on its core business operations and not be distracted by excessive time spent generating reports and managing investors. Quarterly and annual financial analysis is standard. Provision of month-to-month reports and measures of nonfinancial performance can be discussed on a case-by-case basis. Keep in mind that shareholders often negotiate "inspection rights" (see Section 9.10), which provides another mechanism by which investors can access any information they need.

Because many investors in microfinance institutions (such as social investors) want to have an impact on poverty in addition to making money, investors may request additional information about outreach to the poor, loan sizes, and other portfolio statistics, numbers employed, and other poverty assessment or borrower quality-of-life statistics to ensure there is no deviance from the mission of the microfinance institution. Companies should be careful that the reports they promise to provide can be generated without undue difficulty. If a company already has a system for tracking social metrics, any additional reports should be made consistent with the information already being tracked and measured.

Part IV. Share Subscription Agreement

SHARE SUBSCRIPTION AGREEMENT

FOR

XYZ MICROFINANCE

DATED

_____, 201_

SCHEDULES

Schedule 2.1	Equity Shares to be Issued and Allotted at Closing
Schedule 3.3(a)	Existing Capitalization
Schedule 3.3(b)	Capital Structure Following Closing
Schedule 3.9	Employees Subject to Non-Competition Restrictions
Schedule 4.4	Governmental Authorizations
Schedule 5.4	Required Consents

EXHIBITS

Exhibit A	Shareholders Agreement
Exhibit B	Disclosure Letter

XYZ Microfinance

Share Subscription Agreement

THIS SHARE SUBSCRIPTION AGREEMENT (Agreement) is made as of the [•] day of [month], 201_, by and among:

XYZ Microfinance, a [details on entity status], [registered/formed/incorporated] in [Country X] and having its principal executive office at [principal place of business] (Company);

[_____], an individual residing at [address of residence], and a founder of the Company (Founder),

[_____], a non-governmental organization, [registered/formed/incorporated] in [Country X] and having its principal executive office at [principal place of business] (Founding NGO),

[Institutional equity fund] (Big Fund),

[Socially responsible individual investor] (Responsible Investor),

[Microfinance fund] (MF Fund), and

[Domestic Bank] (Domestic Bank).

The Big Fund, Responsible Investor, MF Fund, and Domestic Bank shall be referred to as “Investors” and “Investor” as the context may require. The Founder and the Founding NGO are referred to herein as “Existing Shareholders”.

The preamble above sets forth basic information of the agreement, such as the effective date of the agreement and a description of the parties, including the entity status of a party that is a legal entity, the place of incorporation, registration or formation of a party that is a legal entity, and the address of the principal place of business of a party that is a legal entity or residence of a party who is an individual.

Recitals

The recitals are intended to provide a general overview of the transaction and the business understanding of the parties. These recitals set the stage for the rest of the agreement and rarely assume independent legal significance. All parties to the transaction should be careful to review and confirm that the recitals accurately reflect their understanding of the transaction.

WHEREAS, the Company has been incorporated under the laws of [Country X] and one of its primary purposes of business is to provide financial services, including business and consumption loans, leasing, and financial advisory services, to individuals and/or

entities that are financially impoverished as a result of low income and/or lack or have limited access to financial services;

WHEREAS, the Company desires to raise capital in order to support the development and growth of its business;

WHEREAS, the Company desires to issue Equity Shares to the Investors and the Investors desire to subscribe to Equity Shares on the terms and conditions specified herein;

NOW, THEREFORE, in consideration of these premises and the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Article I Definitions and Interpretation

The use of defined terms in an agreement enhances clarity and precision, and an agreement may contain a separate “definitions” section (as in this model agreement) or may intersperse defined terms throughout the agreement. Defined terms are useful for two primary reasons: (i) once a defined term is created, the drafter can use it throughout the agreement without needing to repeat its meaning, and (ii) the creation of a defined term ensures consistency in use throughout the agreement. Before reviewing this model agreement, the company should be sure it understands how specific terms are being defined and used in the agreement and should refer back to the definition of any capitalized defined term it encounters while reading. Never assume that a defined term conforms to common usage or prior dealings; a drafter is free to take a common and recognizable term and give it an idiosyncratic or nonintuitive definition.

Section 1.1. Definitions

“Affiliate” shall mean any corporation, company, partnership, joint venture, or other entity that controls, is controlled by, or is under common control with a Person. For purposes hereof, the term “control” shall mean the ability to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” shall have the meaning ascribed thereto in the Preamble.

“Applicable Law” shall mean the laws of [Country X] or any other applicable jurisdiction and shall include all statutes, enactments, acts of legislature, laws, ordinance, rules, bylaws, regulations, notifications, guidelines, policies, directions, directives, and orders of any statutory authority, tribunal, board, or court or any central or state government or local authority in [Country X], or elsewhere.

“Articles of Association” shall mean the Articles of Association of the Company as in effect on the date hereof.

This model agreement assumes that the company has a Memorandum and Articles of Association as its constituent or organizational documents. The jurisdiction of formation of the company may provide for organizational documents by a different name such as articles of incorporation, certificate of incorporation or charter.

“Big Fund” shall have the meaning ascribed thereto in the Preamble.

“Board” or “Board of Directors” shall mean the board of directors of the Company.

“Closing” shall mean the completion of the subscription to the Equity Shares by the Investors on the Closing Date in accordance with the provisions of this Agreement.

“Closing Date” shall have the meaning ascribed thereto in Section 8.1.

“Company” shall have the meaning ascribed thereto in the Preamble.

“Conditions Precedent” shall mean the conditions to the Closing set out in Article V and Article VI.

“Damages” shall have the meaning ascribed thereto in Section 9.1(a).

“Deferred Closing Investors” shall have the meaning ascribed thereto in Section 8.6.

“Director” shall mean a director on the Board of Directors of the Company.

“Disclosure Letter” means the disclosure letter in the form attached hereto as Exhibit B delivered to the Investors by the Company concurrently with the execution hereof.

See the discussion in the form Disclosure Letter set out in Exhibit B for a discussion of the impact of the Disclosure Letter on the representations and warranties.

“Dispute” shall have the meaning ascribed thereto in Section 10.1(a).

“Domestic Bank” shall have the meaning ascribed thereto in the Preamble.

“Equity Shares” shall have the meaning ascribed thereto in Section 2.1(a).

“Existing Shareholders” shall mean the shareholders of the Company as of the date of this Agreement.

“Financial Statements” shall have the meaning ascribed thereto in Section 3.14.

“Founder” shall have the meaning ascribed thereto in the Preamble.

“Founding NGO” shall have the meaning ascribed thereto in the Preamble.

“Government Authority” shall mean any government authority, statutory authority, government department, agency, commission, board, tribunal, or court or other law-, rule-, or regulation-making entity having or purporting to have jurisdiction on behalf of [Country X] or any state or other subdivision thereof or any municipality, district, or other subdivision thereof, as may be applicable.

“ICC Rules” shall have the meaning ascribed thereto in Section 10.1(a).

“Investment Amount” means the aggregate amount to be paid by all Investors for the Equity Shares to be issued and allotted in accordance with this Agreement, the apportionment of which is set forth on Schedule 2.1.

“Investor” or “Investors” shall have the meaning ascribed thereto in the Preamble.

“Knowledge” shall mean a particular fact or matter (i) of which an individual is actually aware or (ii) of which a prudent individual could be expected to discover or otherwise become aware in the course of conducting a reasonably comprehensive investigation concerning the existence of such fact or matter. A Person (other than an individual) will be deemed to have knowledge of a particular fact or matter if any individual who is serving, or who has served at any time, as a director, officer, partner, executor, or trustee of such Person (or in any similar capacity) has, or at any time had, Knowledge of such fact or matter.

Since the representations and warranties of the company and the founder are often qualified, or limited to, the company’s and founder’s knowledge, the definition of “Knowledge” implicitly defines the scope of the representations and warranties and thus may be subject to negotiation. The above definition of “Knowledge” is a relatively broad definition. The company and founder may push to eliminate clause (ii) altogether and limit “Knowledge” to the company’s and founder’s actual knowledge only. Investors, on the other hand, would likely want clause (ii) to remain because it will taint the company and founder with knowledge of facts that can reasonably be ascertained. For more on the significance of the knowledge qualification, see the note at the beginning of Article III.

“Long Stop Date” shall have the meaning ascribed thereto in Section 9.2.

“Material Adverse Effect” shall mean any event or condition that, individually or in the aggregate, would have a material adverse effect on (i) the assets, business, properties, liabilities, financial conditions, results of operations, or prospects of the Company or (ii) the ability of the Company to perform its obligations under this Agreement.

The definition of “Material Adverse Effect” is important for two reasons. First, many of the representations and warranties made by the founder are qualified by this materiality standard (i.e., there is no breach of a representation or warranty qualified by “Material Adverse Effect” language unless the inaccuracy in the representation or warranty would have a Material Adverse Effect on the company). This qualification severely limits an investor’s recourse for inaccuracies in the representations and warranties that do not have a significant negative impact on the company’s financial condition or results of operation. Second, under this model agreement, investors are not required to make the proposed investment if an event or circumstance occurs that would have a Material Adverse Effect. Parties may negotiate to broaden or narrow the definition of “Material Adverse Effect”. For example, whether “prospects” is included in the definition of “Material Adverse Effect” is a point of negotiation. Because determining whether the company’s prospects have been materially and adversely impacted is necessarily forward-looking, including the term “prospects” in the definition may allow the investors greater leeway in withdrawing from the investment if certain events occur. In addition, it is common to carve out from the definition of “Material Adverse

Effect” general conditions affecting the broader economy or the microfinance industry in particular. The company would argue for the foregoing limitations to narrow the circumstances under which the investors could elect not to proceed with the proposed investment.

“Memorandum” means the memorandum of association of the Company as in effect on the date hereof.

“MF Fund” shall have the meaning ascribed thereto in the Preamble.

“Party” or “Parties” shall mean the Company, the Existing Shareholders, and the Investors, individually or collectively, as the context may require.

“Permits” shall have the meaning ascribed thereto in Section 3.11.

“Person” shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, limited liability company, trust, unincorporated organization, government, or any agency or political subdivision thereof or any other legal entity.

It may be necessary to identify additional or different organizations than those stated in the definition of “Person” above as such entities may have varying names in other jurisdictions.

“Related Party” shall have the meaning ascribed thereto in Section 3.21.

“Required Consents” shall have the meaning ascribed thereto in Section 5.4.

“Responsible Investor” shall have the meaning ascribed thereto in the Preamble.

“Shareholders” shall mean all shareholders of the Company immediately following the completion of the transaction contemplated by this Agreement.

“Shareholders Agreement” shall mean the Shareholders Agreement in the form set out in Exhibit A, to be executed by the Shareholders on the Closing Date in accordance with the terms hereof.

The Shareholders Agreement may also be known as the Members Agreement or the Operating Agreement.

“Stock Option Plan” shall have the meaning ascribed thereto in the Shareholders Agreement.

“Unsubscribed Equity Shares” shall have the meaning ascribed thereto in Section 8.6.

Article II Issue and Allotment of Equity Shares

Article II addresses the mechanics of the issuance of the equity shares, the identification of the type of security being issued, and the amount the investors will pay in exchange for the equity shares. This model agreement assumes that the company will issue equity shares. Equity shares, as used herein, are intended to refer to common equity (i.e., equity that does not have superior voting, dividend, liquidation, or other rights vis à vis other

shareholders). It would not be uncommon for investors to seek securities having priority rights to dividends or upon liquidation of the company. The nature of the securities to be issued will be a matter of negotiation and may be restricted by the applicable laws governing corporate entities in a particular jurisdiction. The nature of the security to be offered and sold will also be highly influenced by local custom.

Section 2.1. Subscription of Equity Shares

Subject to and on the terms and conditions of this Agreement, on the Closing Date, (i) the Company agrees to issue to each Investor that number of equity shares, par value [applicable currency] [•] per share (Equity Shares) set forth opposite such Investor's name on Schedule 2.1 in exchange for the payment by the Investors of the portion of the Investment Amount set forth opposite such Investor's name on Schedule 2.1, and (ii) each Investor agrees, severally and not jointly, to subscribe to the Equity Shares set forth opposite such Investor's name on Schedule 2.1 for the portion of Investment Amount set forth opposite such Investor's name on Schedule 2.1.

Under Section 2.1, each investor is only severally, or individually, responsible for its portion of the investment amount based on the number of the equity shares it agrees to subscribe to, as set out in Schedule 2.1. Each investor is not jointly responsible for paying the entire investment amount. This is significant because under Section 2.1 the company may not claim the entire investment amount from any one investor in the case that the other investors breach this agreement and fail to fulfill their obligations to pay their respective portions of the investment amount. It would be common to include a provision allowing, but not requiring, nondefaulting investors to take up the shares not subscribed for by a defaulting investor.

Section 2.2. Payment of the Investment Amount

Subject to the satisfaction of the Conditions Precedent, on the Closing Date, each Investor will pay its proportional share of the Investment Amount determined in accordance with Schedule 2.1 to the Company by wire transfer of immediately available funds to a bank account designated by the Company in writing, not less than three (3) business days prior to the Closing Date.

The currency of the investment amount is subject to negotiation by the parties. Factors to consider in choosing a currency for the investment amount, as well as other monetary amounts in this agreement, include the strength of the currency of the country in which the

company is incorporated, the ability to convert the local currency into foreign exchange, and applicable exchange control regulations. Ordinarily, investments will be made in local currency, and investors will be required to take the risk of devaluation of the currency.

Section 2.2 may also include details on alternate acceptable forms of payment, such as bankers drafts. While wire transfers present the potential advantage of immediately available funds, the closing may be delayed due to errors in the wire transfer process, particularly in developing markets.

Article III Representations and Warranties of the Company and the Founder as to the Company

Both the Model Shareholders Agreement and this model agreement contain representations and warranties. Article III of this model agreement contains the representations and warranties of the company and the founder upon which the investors will rely in connection with their investment decision. In the model Shareholders Agreement, we have not required that the founding NGO make the representations and warranties contained in this Article III or that the founding NGO be responsible for indemnification of the investors pursuant to Article IX. Our rationale is that a founding NGO is often formed as a not-for-profit organization that has a charitable mission. Under these circumstances, it would not be customary to seek to impose liability on the founding NGO, which, in this case, holds no assets other than its investment in the company. This, of course, would be a matter of negotiation. If there are other significant shareholders (in addition to the founder and the founding NGO), the investors may seek to add those shareholders as parties to the agreement and could ask some or all of those shareholders to join the company in making the representations and warranties.

The Company represents and warrants to each Investor, and the Founder represents and warrants to each Investor to his/her Knowledge, that, except as set forth in the Disclosure Letter, the following representations and warranties are true and complete as of the date hereof and as of the Closing Date:

As a condition of their investment, investors will often ask for a series of representations and warranties from the company and the founder (and potentially all existing shareholders) relating to the company. These representations and warranties give comfort to investors that the legal, financial, and regulatory affairs of the company are in order. These representations and warranties (as modified by the disclosure letter) are arguably the most crucial sections of this agreement. Much of the purpose of the representations and warranties is to allocate risk between the company and investors, but they also serve

to clearly disclose key facts to investors. If any of the representations and warranties made by the company and the founder are not true, the company and the founder may be liable to the investors, and the investors may have the right to indemnification or compensation from the company and the founder for losses suffered by investors due to such inaccuracies. The investors may also have the right to terminate the agreement if the misrepresentation is discovered before the closing date.

The representations and warranties set forth in Article III will be generally relevant across many jurisdictions. Local custom and regulations may require additional representations or modifications to those set forth herein. Investors will want the company and the founder to make as thorough a set of representations and warranties as possible. The company and the founder will be motivated to limit the representations and warranties they make in order to reduce any future liability on their part should a representation or warranty prove incorrect. The leverage that the company and the founder or the investors have in the negotiations will ultimately determine the extent of the representations and warranties provided.

In this model agreement, the representations and warranties of the founder are qualified by “knowledge.” This means that an investor would need to establish that the founder was aware (or should have been aware) of an inaccuracy in a representation or warranty in order to have recourse against the founder. While investors may seek to have the promoter or founder be liable to the same extent as the company (i.e., by eliminating the general knowledge qualifier), this would in large part eliminate the benefit to the promoter or founder of conducting the business of the company through a limited liability entity. In addition, while it may be equitable to make the promoter or founder responsible to an investor for matters of which he or she was aware and that he or she failed to disclose, it would be fairly harsh to require the promoter or founder to guarantee the obligations of the company, particularly if the promoter or founder does not own a controlling stake in the company.

For microfinance institutions operating in uncertain legal environments, giving unqualified representations and warranties would subject the institution to significant risk. As a result, the company (like the founder) will typically seek to qualify certain of the representations and warranties (especially those that relate to risks that may be difficult to assess even after a thorough investigation) to be “to the company’s knowledge” or make the representations and warranties subject to various materiality standards. Knowledge qualifiers significantly reduce the company’s liability exposure by essentially shifting the risk of unknown problems from the company to the investors. Investors will resist knowledge qualifiers, arguing that the company is in a better position to learn and investigate company matters, and hence the company should bear the associated risks.

The company will argue that it has provided investors with all the information it has available prior to the issuance of equity shares and given that investors stand to gain from unexpected positive results, the investors should bear risks of unexpected negative results as well. The addition of knowledge and materiality qualifiers may be a heavy point of negotiation among the parties.

Materiality qualifiers are also used as a device to reduce the company's and the founder's exposure to claims of a breach of representation or warranty by the investors. Several representations and warranties of the company and the founder in this model agreement contain materiality qualifiers, where an inconsistency is considered a breach only if the inconsistency in question has a material adverse effect. The material adverse effect standard creates a relatively high barrier to the successful assertion of a claim for breach of a representation or warranty. Although the inclusion of materiality qualifiers is common in connection with minority or noncontrolling investments, they may be resisted by investors.

Investors will often seek to have the company make several representations and warranties concerning its proposed business or prospects. Microfinance institutions that have recently been transformed into for-profit entities will likely resist making such statements given the uncertainty surrounding the new business model. Inclusion of the forward-looking bracketed language and "as proposed to be conducted" throughout the representations and warranties will broaden the scope of the company's disclosure and likely will be a point of negotiation depending on the risk-averse attitude of the investors involved.

Section 3.1. Organization, Good Standing, and Qualification

The Company is duly organized, validly existing, and in good standing under Applicable Law and has all requisite power and authority to carry on its business as now conducted and as proposed to be conducted. The Company is duly licensed or qualified to transact business in each jurisdiction in which the failure to so qualify would have a Material Adverse Effect.

This representation is meant to ensure basic corporate maintenance has been carried out by the company (i.e., that the company was properly formed and has filed any necessary reports or documents that are required for its continued existence). The language of this representation requires the company to disclose to investors if it would not qualify to carry on its business in a jurisdiction and if failing to do so would have a material adverse effect. This representation likely will apply only in the jurisdictions in which the company has significant business operations.

Section 3.2. Authorization

The Company has the requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery, and performance of this Agreement has been duly authorized (or as of the Closing Date will have been duly authorized) by the Board and shareholders of the Company, and, except as contemplated hereby, no further action on the part of the Company is necessary to authorize and approve the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Company and constitutes the legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms.

Section 3.2 gives the investors assurance that all agreements executed in connection with this transaction are enforceable against the company and that the company has taken the requisite steps to authorize the transaction.

Section 3.3. Capitalization

- (a) The existing authorized capital of the Company as of the date hereof consists of [•] equity shares, par value [*applicable currency*] per share. Prior to giving effect to the transactions contemplated by this Agreement, the issued and outstanding capitalization of the Company is as set forth on Schedule 3.3(a). All of the issued and outstanding Equity Shares have been duly authorized, validly issued, fully paid up, and non-assessable and have been issued in accordance with Applicable Law.

The reference to par value of the company's shares means the stated nominal value of a security that is determined by an issuer company. This may or may not be the same as the issue price. Generally speaking, the company will be restricted from issuing securities at less than par value in accordance with local corporation law of the applicable jurisdiction. The reference to nonassessable shares means that each investor's subscription to any such shares is exempted from any expense or liability beyond the amount of its investment. This representation contemplates that only one class of equity shares applies to the company. The representation would need to be modified if other securities, such as preferred shares, exist.

- (b) Immediately following the Closing, the issued and outstanding capitalization of the Company shall be as set out on Schedule 3.3(b).

Although not required, it is advisable to have a post-closing capitalization table included in a Share Subscription Agreement. The inclusion of this table will demonstrate the dilutive effect of an issuance upon the company's existing shareholders. The post-closing capitalization table would need to be revised if one or more of the investors failed to purchase the equity shares contemplated to be purchased by them pursuant to this agreement.

- (c) Except for the rights provided in the Shareholders Agreement and currently outstanding options to acquire [•] Equity Shares granted to employees pursuant to the Stock Option Plan, there are no outstanding or authorized purchase rights, subscription rights, options, warrants, calls, exchange rights, or conversion rights or agreements related to the capital stock or other securities of the Company. No stock plan, stock purchase, stock option, or other agreement or understanding between the Company and any holder of any Equity Shares or rights exercisable or convertible for Equity Shares provides for acceleration or other changes in the vesting provisions or other terms of such agreement or understanding as the result of the occurrence of any event.

The purpose of this provision is to provide investors with assurances that no third-party rights exist to acquire or obtain additional securities of the company. Because the value of an investor's investment would be impacted (negatively) by any such third-party rights, it will be important to make sure that any such rights are properly identified in the disclosure letter. Similarly, the right of employees to acquire securities of the company would have a dilutive effect on the investor's ownership interest in the company and, accordingly, will need to be accurately disclosed to investors to avoid any surprises.

Section 3.4. Valid Issuance of Equity Shares

The Equity Shares being subscribed to by the Investors hereunder, when issued and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid up, and non-assessable and will be free of any liens or encumbrances or restrictions on transfer, other than restrictions on transfer under this Agreement, the Shareholders Agreement, and Applicable Law.

Section 3.4 serves to assure investors that the equity shares are being issued in accordance with applicable law and that the investors will not be required to pay more for their equity shares in the future. Additionally, Section 3.4 identifies those transfer restrictions that may apply to the shares, including tagalong rights or rights of first refusal that may be set out in the shareholders agreement. Local counsel should be consulted to confirm that any appropriate

“legends” have been placed on the equity share certificates, if applicable. Such legends may, for example, prohibit the sale or transfer of shares unless in compliance with local law or certain agreements such as the Shareholders Agreement.

Section 3.5. Subsidiaries

The Company does not presently own or control, directly or indirectly, any interest in any other corporation, association, or other business entity. The Company is not a participant in any joint venture, partnership, or similar arrangement.

Section 3.5 provides assurances that the company does not have an ownership interest in any other entity (except as may be disclosed in the disclosure letter). In the event that the company does own or control another entity, investors may require the same representations from each such entity as are made in Section 3.1. The rationale for representations regarding each such entity is that an investment in the company would represent an indirect investment in any subsidiary or other entity in which the company owns an interest. If there are any subsidiaries or other entities in which the company holds an interest, investors will want to understand the risks associated with these investments before committing to make an investment.

Section 3.6. Consents and Approvals; No Conflicts

- (a) Any registration, declaration, or filing with, or consent, approval, license, permit, authorization, or order by, or exemption or other action of, any Governmental Authority, that was or is required in connection with the valid execution, delivery, acceptance, and performance by the Company under this Agreement has been completed, made, or obtained on or before the date hereof.
- (b) Neither the execution, delivery, or performance of this Agreement by the Company, nor the consummation by it of the transactions contemplated, hereby: (i) conflict or will conflict with, violate, or result in a breach of any of the terms, conditions, or provisions of any law, regulation, order, writ, injunction, decree, or award of any court, governmental authority, or arbitrator, (ii) conflict or will conflict with, violate, or result in a breach of any of the terms, conditions, or provisions of the Memorandum or Articles of Association or any material agreement to which the Company is a party or to which the assets of the Company are subject, (iii) conflict or will conflict with, violate, or result in a breach of, constitute a default under (whether with notice or lapse of time or both), accelerate, or permit the acceleration

of the performance required by, or require any consent or authorization or approval under, any indenture, mortgage, lease financing arrangement, or other agreement to which the Company is a party or by which the assets of the Company are subject, or (iv) result or will result in the creation or imposition of a lien on any of the properties or assets of the Company.

Counsel to the company should perform the necessary due diligence of the company to ensure that the company is in compliance with Section 3.6.

Section 3.7. Exemption from Registration Requirements

Subject to the truth and accuracy of each Investor's representations set forth in Article IV of this Agreement, the offer, sale, and issuance of the Equity Shares as contemplated by this Agreement are exempt from the registration requirements of any applicable securities laws, and neither the Company nor any authorized agent acting on its behalf has taken any action that would cause the loss of such exemption.

Many jurisdictions have securities laws that require registration of securities with a central agency before offering such securities for sale to the public. Because the registration of securities is often a burdensome process, the company may attempt to exempt itself from the registration process and engage in a private offering that implicates a variety of jurisdiction-specific requirements.

Section 3.8. Litigation

There is no action, suit, proceeding, or investigation pending or, to the Company's Knowledge, currently threatened against the Company that questions the validity of this Agreement or any agreement contemplated to be entered into by the Company in accordance with the terms hereof, or the right of the Company to enter into this Agreement, or to consummate the transactions contemplated hereby or thereby, or that might have, either individually or in the aggregate, a Material Adverse Effect or might result in any change in the current equity ownership of the Company, nor is the Company or the Founder aware that there is any basis for the foregoing. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment, or decree of any court or government agency or instrumentality that materially affects its ability to conduct its business.

This representation provides investors assurance that there is no litigation opposing the issuance of equity shares to the investors and that the company is not subject to

other litigation that would have a material negative impact on the company. Any outstanding litigation would normally be the sole liability of the company and so long as corporate formalities are observed, the investors will almost certainly not be personally responsible for the liabilities of the company. That said, investors require a representation like the one in Section 3.8 to ensure that the business of the company is not at risk from any litigation and that their investment will not be used to settle or litigate outstanding claims, but will instead be applied toward the growth and operation of the company's business. Any exceptions to this representation should be noted in the disclosure letter.

Section 3.9. Confidential Information; Non-Compete

Each key employee and officer of the Company has entered an agreement regarding the disclosure of confidential information of the Company. Neither the Company nor the Founder is aware that any of its key employees or officers are in violation of such agreements. Additionally, each key employee and officer of the Company listed on Schedule 3.9 has entered into a non-competition and non-solicitation agreement that restricts such individual's ability to compete with the Company for as long as such individuals remain in employment of the Company and for a period of [one (1) year] thereafter.

Investors typically want a program in place at the company requiring key employees to keep confidential information of the company confidential and to refrain from competing with the company for a certain period of time to protect sensitive information from being disclosed. Section 3.9 is appropriate if the company already has confidentiality and noncompete agreements with key employees. If there is no such program in place at the company, it is not uncommon for investors to ask that key employees sign confidentiality and noncompete agreements as a condition to closing.

Section 3.10. Patents and Trademarks

The Company owns, possesses, or can acquire on reasonable terms all rights to use patents, trademarks, service marks, trade names, domain names, copyrights, trade secrets, information, proprietary rights, and processes necessary for its business as now conducted. To the Knowledge of the Company and the Founder, the operation of its business by the Company does not infringe on the intellectual property rights of others and the Company has not received any notice of infringement or conflict with asserted rights of others with respect to any intellectual property rights.

Section 3.11. Permits

The Company holds all material licenses, permits, variances, franchises, rights, and other approvals or governmental authorizations (collectively, “Permits”) necessary for the operation of its business. All such Permits are in full force and effect and will not be affected by the issuance of the Equity Shares to the Investors hereunder.

Section 3.11 encompasses representations with respect to the licenses a microfinance institution needs to operate its business. For example, a microfinance institution may need certain permits or licenses with regard to the areas in which it is able to operate or with regard to its ability to act as a deposit-taking institution. Given the importance of licenses or permits for the business prospects of a microfinance institution, investors may demand specific representations relating to licenses and permits in addition to this general representation on permits. Also, as local laws may have specific regulations for licenses and permits, this provision should be drafted by local counsel that is familiar with regulatory requirements and the relevant local governing body. Any exceptions to this representation should be noted in the disclosure letter.

Section 3.12. Corporate Documents

The Company has furnished to the Investors true and complete copies of its Memorandum and Articles of Association, together with the minutes of the meetings of its Board of Directors and Existing Shareholders since its formation. The copy of the minute books of the Company provided to the Investors contains minutes of all meetings of the Board and Existing Shareholders and all actions by written consent by the Board and Existing Shareholders in lieu of a meeting since its date of formation. The copy of the minute books accurately reflects in all material respects all actions taken by the Directors (and any committee of Directors) and Existing Shareholders with respect to all transactions referred to in such minutes.

Section 3.12 is intended to assure investors that the corporate records of the company are in a form previously reviewed by investors and no changes affecting the rights of the investors or the company have been implemented. Given that many microfinance institutions may have been operating previously without the advice of counsel, their minute books may not meet the standard represented in Section 3.12. Counsel should therefore carefully consider what representations and warranties the company can make with regard to its corporate documents.

Section 3.13. Title to Property and Assets

The Company owns its properties and assets free and clear of all mortgages, liens, loans, and encumbrances, except such encumbrances and liens that arise in the ordinary course

of business and do not materially impair the Company's ownership or use of such properties or assets. With respect to the properties and assets that it leases, the Company is in compliance with such leases and, to the Company's or the Founder's Knowledge, holds a valid leasehold interest therein free of any liens, claims, or encumbrances.

The company should clearly note on the disclosure letter any assets that are encumbered or a situation where a lease held by the company is of particular significance. An example is where the company has entered into a loan agreement on a secured basis by pledging some of its assets. Such a pledge must be disclosed on the disclosure letter as an exception to the representation in Section 3.13.

Section 3.14. Financial Statements

- (a) The Company has delivered to each Investor audited financial statements (including the balance sheet, income statement, and cash flow statement, as well as the notes thereto) as of the end of the most recently completed fiscal year and its unaudited financial statements (balance sheet and income statement) as of [*most recent month end for which financial statements are available*] and for the [•] month period then ended (Financial Statements). The Financial Statements have been prepared in accordance with generally accepted accounting principles of [Country X] applied on a consistent basis throughout the periods indicated, except that the unaudited Financial Statements may not contain all footnotes required by generally accepted accounting principles. The Financial Statements fairly present in all material respects the financial condition and operating results of the Company as of the dates and for the periods indicated therein, subject in the case of the unaudited Financial Statements to normal year-end audit adjustments. The Company maintains a standard system of accounting established and administered in accordance with generally accepted accounting principles.
- (b) Except as reflected in the Financial Statements, the Company has no liability or obligation, absolute or contingent (individually or in the aggregate), except (i) obligations and liabilities incurred after the date of the most recent balance sheet included in the Financial Statements in the ordinary course of business that are not material, individually or in the aggregate, (ii) obligations under contracts made in the ordinary course of business that would not be required to be reflected in the Financial Statements, and (iii) obligations or liabilities that could not reasonably be expected to have a Material Adverse Effect.

The company represents in Section 3.14 that the financial statements of the company have been prepared in accordance with generally accepted accounting principles. Generally

accepted accounting principles vary from country to country. Local accountants should be consulted to ensure the financial statements of the company comply with the relevant accounting guidelines of the country of the company's principal place of business. Typically, accounting principles are a broad set of methods for preparing financial statements that allow a good deal of professional judgment as to how to report results. Use of alternative acceptable methods of accounting may lead to very different results in the financial statements even when the underlying economics of the company are the same.

The representation that the financial statements "fairly present" financial conditions and results of operation of the company is not a guarantee that the financial statements are perfectly accurate, but provides investors with comfort that they can rely on the financial statements in connection with their decision to invest. The representation in clause (b) is intended to provide investors assurance that there are no other liabilities that were not taken into account in its valuation of the company. The scope of the exception to this representation is general and a topic of significant negotiation.

Section 3.15. Insurance

The Company has in full force and effect policies of insurance sufficient in amount for compliance with all Applicable Law and all contracts to which the Company is a party.

A representation on insurance is generally appropriate only in jurisdictions where company insurance for properties and equipment is available and customary. In certain jurisdictions, insurance is not available and/or is not customary, and as a result, microfinance institutions in such jurisdictions do not keep insurance. The company often resists providing an investor with assurances regarding the levels of insurance that it carries on the basis that investors can make their own assessment of the adequacy of insurance coverage in carrying out its due diligence investigation.

Section 3.16. Labor Agreements and Actions; Employee Compensation

The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment, or arrangement with any labor union, and no labor union has requested or, to the Company's or Founder's Knowledge, has sought to represent any of the employees, representatives, or agents of the Company. There is no strike or other labor dispute involving the Company pending or, to the Company's or Founder's Knowledge, threatened that could have a Material Adverse Effect.

Section 3.17. Employee Benefit Plans and Employment Agreements

The Company is not a party to and does not participate in or have any liability or contingent liability with respect to (a) any employee welfare benefits plan or employee pension benefit plan, (b) any retirement or deferred compensation plan, incentive compensation plan, severance pay, insurance, or hospitalization program or any other fringe benefit arrangements for any current or former employee, Director, consultant, or agent, or (c) any employment agreement.

Laws and regulations covering employee benefit plans may be extensive and vary greatly across jurisdiction. The company should consult with local counsel to ensure compliance with employee benefit laws and regulations. Any exceptions to this representation should be set forth in the disclosure letter.

Section 3.18. Compliance with Laws

The operation of its business by the Company complies in all material respects with all Applicable Law. Any registration, declaration, or filing with, or consent, approval, permit, or other authorization or order by, or exemption from any Government Authority that is or was required in connection with its business, the absence of which could reasonably be expected to have a Material Adverse Effect, has been completed, made, or obtained. Assuming the accuracy of the representations and warranties of the Investors, the Company is, and the issue and allotment of the Equity Shares to the Investors will be, in compliance with all regulations pertaining to foreign exchange in [Country X], including regulations pertaining to the norms relating to valuation prescribed under the policy for foreign direct investment in [Country X].

It is important for investors to be comfortable that the company is in compliance with applicable law. Investors may try to have this representation made with respect to prior periods of operation (as opposed to the present period of operation as this provision is currently drafted). This provision also provides assurance with regard to the valid issuance of the equity shares to the investors. Foreign direct investment regulations in a particular country may require foreign investors to be registered or prequalified in order to hold securities of a domestic microfinance institution. Each investor may need to provide the company with assurances regarding such investor's status before the company would be willing to make this representation.

Section 3.19. Compliance with Statutory Obligations

The Company is not in breach of any material obligation to any Government Authority, including any obligation to pay income tax, corporation tax, or any provident fund,

gratuity, charges, revenue payments, or any other statutory dues payable to any Government Authority of [Country X]. The Company has filed all tax returns and reports (including information returns and reports) as required by Applicable Law. These returns and reports are true and correct in all material respects. The provision for taxes of the Company as shown in the most recent balance sheet included in the Financial Statements is adequate for taxes due or accrued as of the date thereof. The Company has withheld or collected from each payment made to each of its employees, the amount of all taxes required to be withheld or collected therefrom and has paid the same to the proper tax receiving officers or authorized depositories.

Section 3.20. Compliance with Financing Arrangements

The Company is not in material breach of or material default under any loan, guarantee, or debt with any financial institution, bank, or other creditor to which it is a party or which is binding upon it or any of the assets or revenues of the Company. All approvals that may be necessary under any loan, guarantee, or debt with any financial institution or other creditor to which it is a party or which is binding upon it or any of the assets or revenues of the Company for the valid execution, delivery, and performance of this Agreement by the Company have been obtained before the date hereof, or will have been obtained as of the Closing Date, and the consummation of the transactions contemplated by this Agreement and the Shareholders Agreement will not result in any breach or default under any such loan, guarantee or debt.

Due to the need for external financing for a microfinance institution in order to leverage its balance sheet, investors will want assurances that the company is in compliance with its existing financing arrangements. In addition, to prevent a default under an existing financing arrangement, a microfinance institution needs to carefully assess whether consents are required under existing loan documentation for an equity issuance. It would be common for a consent to be required in the event an equity issuance results in a change of control. Often changes in constituent documents (in this case the Memorandum and Articles of Association of the company) would require lender consent. Investors may seek similar issuances regarding a company's material contracts, whether or not such contracts relate to a company's financing arrangements.

Section 3.21. Related Party Transactions

No employee, officer, or Director of the Company (Related Party) or member of such Related Party's immediate family, or any corporation, partnership, or other entity in

which such Related Party is an officer, director, or partner, or in which such Related Party has significant ownership interests or otherwise controls, is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them. To the Company's or the Founder's Knowledge, none of such persons has any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any Person that competes with the Company, except that employees, officers, or Directors of the Company and members of such Related Parties' immediate families may own securities of publicly traded companies that may compete with the Company. No Related Party or member of a Related Party's immediate family is directly or indirectly interested in any material contract with the Company.

Investors tend to be nervous about any possible conflicts of interest among related parties and the company. Such conflicts may arise if a related party deals with or "stands on the other side of the table" from the company and as a result, investors often request specific assurance that no such conflicts exist. The restrictiveness of Section 3.21 is subject to negotiation by the parties. Local counsel should be consulted in drafting Section 3.21 as local laws may impose certain limitations or disclosure requirements with respect to related-party transactions. For example, certain local laws may prohibit company loans to related parties. The laws of certain jurisdictions may allow related-party transactions but may have requirements such as disclosure of such transactions in the company's financial statements, or board examination and approval of such transactions. On the other hand, despite the provisions of local regulations, investors may prefer to take a restrictive approach with regard to related-party transactions by drafting a conservative related-party transaction provision as in Section 3.21.

Section 3.22. Absence of Changes

To the Company's and the Founder's Knowledge, since [•], there have been no events or circumstances that have had, or could reasonably be expected to result in, a Material Adverse Effect.

Investors may request a number of representations to cover the gap period between the date of the most recent financial statements and the closing. Some examples of representations include (i) an absence of material changes in assets or liabilities outside the ordinary course of business, (ii) retention of key officers, and/or (iii) no material damage to business assets not covered by insurance has occurred.

Section 3.23. Disclosure

The Company has provided each Investor with all the information that such Investor has requested for deciding whether to subscribe to the Equity Shares. To the Knowledge of the Company and the Founder, neither this Agreement nor any document furnished or to be furnished by or on behalf of the Company to any Investor in connection with this Agreement or any of the transactions contemplated hereby contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances in which they are made, not misleading.

Section 3.23 embodies the anti-fraud standard for disclosure to investors that is common in the United States in connection with securities purchase transactions. The purpose is to provide to the investors general assurances that they have been furnished with the necessary information to make an informed investment decision. The standard clearly exposes the company and the founder to a greater risk of liability for failing to adequately inform the investors of material issues related to the company's business. The company and the founder, on the other hand, may seek to limit their exposure by requiring the investors to acknowledge that the company and the founder make no representation or warranty regarding the company's business unless explicitly stated in this agreement. Local counsel should be consulted to determine the appropriate standard that should be represented and warranted under the applicable anti-fraud laws in the country of the financing.

Section 3.24. Brokers or Finders

No investment banker, broker, finder, or other intermediary has been retained by the Company or the Founder, or is entitled to a fee or commission from the Company in connection with the transactions contemplated by this Agreement.

Article IV Representations and Warranties of the Investors

The representations and warranties of the investors serve two primary purposes: (i) to provide the company assurances that this agreement is binding on the investors and (ii) to provide support for the company's compliance with securities laws for the offer and issuance of its equity shares. For this reason, it will be critical that local counsel be consulted to ensure that the appropriate representations and warranties are included to properly address these issues.

Each Investor, severally and not jointly, hereby represents and warrants as of the date hereof and as of the Closing Date that:

Section 4.1. Organization and Authority

Each Investor, in the case of an Investor that is a legal entity, is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, and has the corporate, partnership, or company power and authority to enter into and perform its obligations under this Agreement and each other agreement contemplated to be executed by it and to consummate the transactions contemplated hereby and thereby. With respect to Investors who are natural persons, each Investor has sufficient individual capacity to enter into this Agreement pursuant to the terms hereof and does not require any spousal consent to do so. Each such Investor has the power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and each other agreement contemplated to be executed by it and to consummate the transactions contemplated hereby and thereby.

Section 4.2. Authorization and Validity

The execution, delivery, and performance by each Investor of this Agreement has been duly authorized by all requisite corporate action, in the case that an Investor is a legal entity. This Agreement constitutes a valid and binding agreement or obligation of each Investor, enforceable in accordance with its terms.

Section 4.3. No Conflicts

Neither the execution, delivery, or performance of this Agreement nor the consummation by each Investor of the transactions contemplated hereby (a) conflict or will conflict with, violate, or result in a breach of any of the terms, conditions, or provisions of any law, regulation, order, writ, injunction, decree, determination, or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator, applicable to such Investor or any of its Affiliates; (b) conflict or will conflict with, violate, result in a breach of, or constitute a default under any of the terms, conditions, or provisions of the articles of incorporation, bylaws, partnership agreement, or instrument to which such Investor is a party or by which such Investor is or may be

bound or to which any of its properties or assets is subject; (c) conflict or will conflict with, violate, result in a breach of, constitute a default under (whether with notice or lapse of time or both), accelerate, or permit the acceleration of the performance required by, give to others any material interests or rights or require any consent, authorization, or approval under any indenture, mortgage, lease, agreement, or instrument to which such Investor is a party or by which such Investor or any of its properties or assets is or may be bound; or (d) result or will result in the creation or imposition of any lien upon any of the properties or assets of such Investor.

Section 4.4. Governmental Authorizations

Except as set forth on Schedule 4.4, any registration, declaration, or filing with, or consent, approval, license, permit, or other authorization or order by, or exemption or other action of, any governmental, administrative, or regulatory authority, domestic or foreign, that was or is required in connection with the valid execution, delivery, acceptance, and performance by the Investors under this Agreement has been completed, made, or obtained on or before the date hereof.

Local counsel should be consulted to determine those government authorizations that are required by investors of the company. In certain jurisdictions, investors may be required to be deemed “fit and proper” by bank regulatory authorities prior to becoming shareholders of the company. However, the bank regulatory authorities of certain jurisdictions may not provide “fit and proper” approval to investors prior to closing.

Section 4.5. No Governmental Proceedings or Limitation

There are no claims, investigations, or proceedings before any court, tribunal, or Government Authority in progress or pending against or relating to the Investors that could reasonably be expected to prevent the Investors from fulfilling the obligations set out in this Agreement or arising from this Agreement.

Section 4.6. No Brokers

The Investors have not employed or made any agreement with any broker, finder, or similar agent or any other Person or firm that will result in any obligation of the Company to pay any finder's fee, brokerage fees, or commission or similar payment in connection with the transactions contemplated hereby.

Section 4.7. Investigation

Each Investor is acquiring the Equity Shares contemplated to be acquired by it under this Agreement based upon its own investigation, and the exercise by such Investor of its rights and the performance of its obligations hereunder will be based upon its own investigation, analysis, and expertise. Such Investor is a sophisticated investor possessing expertise in analyzing the benefits and risks associated with acquiring investments that are similar to the acquisition of the Equity Shares contemplated to be acquired by it hereunder.

In many jurisdictions, private offerings of the equity shares require that investors make specific representations to the company to ensure that the sale of securities complies with applicable securities laws. Typically the language of these representations allows the company to qualify for an exemption from registration of a public offering under applicable securities laws. To qualify for such exemption, some jurisdictions require the private offering to be made to qualified, sophisticated investors as defined by securities laws. Local counsel should be consulted to ensure compliance with applicable regulations.

Section 4.8. Further Representations by Foreign Investors

If an Investor is not a Person of [Country X], such Investor hereby represents that it has satisfied itself with respect to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Equity Shares or any use of this Agreement, including (a) the legal requirements within such jurisdiction for the subscription to the Equity Shares; (b) any foreign exchange restrictions applicable to such subscription, including restrictions on repatriation of dividends or other funds or assets; (c) any governmental or other consents that may need to be obtained; and (d) the income tax and other tax consequences, if any, that may be relevant to the subscription, holding, redemption, sale, or transfer of the Equity Shares, including dividends on such Equity Shares. Such Investor's subscription and payment for, and its continued beneficial ownership of, the Equity Shares will not violate any applicable securities or other laws of its jurisdiction of organization.

Additional representations and warranties will be necessary for foreign investors. The above example provides general representations for foreign investors, but local counsel should ensure compliance with all applicable laws and regulations. Often, foreign investors must pay careful attention to any foreign direct investment regulations. In certain jurisdictions, for example, foreign investors may not be allowed to hold any significant

amount of shares (defined by local law) of a regulated financial entity. Research on applicable foreign direct investment regulations should be done as early as possible to ensure that the investors will not face unnecessary obstacles or delays to investment in the company.

Article V Conditions to Investors' Obligations at Closing

Article V provides the conditions precedent that must be satisfied by the company to trigger the obligation of the investors to subscribe to the equity shares. The closing is contingent on the fulfillment or waiver of all conditions, and without such fulfillment or waiver, the investors bear no liability to the company for the failure to subscribe to the equity shares.

The obligations of each Investor to the Company under this Agreement are subject to the fulfillment (or waiver by the Investors) on or before the Closing Date of each of the following conditions:

Section 5.1. Representations and Warranties

The representations and warranties of the Company and the Founder contained in Article III shall be true and accurate in all material respects on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the date of such Closing Date.

Section 5.1 serves to reaffirm the representations and warranties of the company and the founder as of the closing date. Thus, if there is any breach of a representation or warranty the investors will have no obligation to subscribe to the equity shares. In the event of a breach of the representations and warranties prior to closing, the investors may simply withdraw and avoid the subscription of shares, rather than subscribing to the shares and subsequently suing the company for damages.

Section 5.2. Performance

The Company and the Founder shall have performed and complied in all material respects with all agreements and covenants required to be performed and complied with by the Company and the Founder under this Agreement at or prior to the Closing.

Section 5.2 serves to reaffirm that the company has performed all obligations that it has committed to perform prior to the closing date. Typically, an officer of the company is required to confirm the company's satisfaction with the conditions specified in Sections 5.1 and 5.2 by delivering a confirmatory certificate at closing.

Section 5.3. Authorization of Issuance and Amendment to Memorandum and Articles of Association

On or prior to the Closing Date, the Company shall have amended its Memorandum and Articles of Association (a) to allow the issuance to the Investors of the Equity Shares contemplated to be issued pursuant to this Agreement and (b) to reflect the agreement of the Shareholders as set forth in the Shareholders Agreement.

The company may need to amend the appropriate governing documents to authorize the issuance of the equity shares. In certain jurisdictions, it may also need to procure a certificate from a chartered accountant that confirms the value of the equity shares.

In some jurisdictions, the amendments to the Memorandum and Articles of Association can be filed concurrently with the closing, which is preferable for investors. If possible, the form of Memorandum and Articles of Association reflecting the agreement of the parties set forth in the Shareholders Agreement should be vetted by the relevant government authority prior to closing to confirm that the Memorandum and Articles of Association, as amended, are acceptable to such government authority. Also, some jurisdictions require that the material terms of the Shareholders Agreement are incorporated into the Articles of Association. Legal counsel should be consulted to ensure that the terms of the Shareholders Agreement are accurately and consistently reflected in the constituent documents to the extent that such terms are required or it is deemed advisable to include the same in the constituent documents of the company.

Different jurisdictions use a variety of terms to refer to the Articles of Association (e.g., the term “Articles of Association” is used for companies incorporated in the United Kingdom or many countries whose corporation law is based on that of the United Kingdom, whereas the term “Articles of Incorporation” is typically used in the United States.). Local law should be reviewed to determine the appropriate term. Care should be taken when specifying the relevant government authority with which the Memorandum and Articles of Association should be filed. In some cases, there may be more than one relevant government authority.

Section 5.4. Authorizations and Consents

With respect to any Government Authority, regulatory body, or any third party, all necessary notices shall have been given, and all necessary authorizations, approvals, permits, or consents shall have been obtained, which are required to have been given or obtained in connection with this Agreement, including those consents or filings identified on Schedule 5.4 (Required Consents).

This provision is broadly drafted and would require that all governmental approvals and third-party approvals required in connection with a proposed investment be secured before an investor would be required to fund. Because it is not always easy to secure third-party approvals, the company will often try to limit the required consents to those consents and approvals that, if not obtained, could have a material adverse effect on the business, the company, or an investor. The company may, for example, resist including a lender on the list of required consents if the loan from the bank is small. From the company's standpoint, this would provide greater certainty that the transaction will actually close by limiting the circumstances that would allow an investor to walk away from the transaction.

Section 5.5. Governmental Orders

No order, statute, rule, regulation, executive order, injunction, stay, decree, or restraining order shall have been enacted, entered, promulgated, enforced, or threatened by any Government Authority that would prohibit the consummation of the transactions contemplated by this Agreement. There shall not be any proceeding pending that seeks to enjoin or obtain damages in respect of the consummation of the transactions contemplated by this Agreement.

Section 5.6. No Material Adverse Effect

No event shall have occurred that, in the reasonable judgment of the Investors, has had or might have a Material Adverse Effect.

As drafted, the existence of a material adverse effect is a determination to be made by the investors, rather than the company, based on a reasonableness standard. The reasonableness standard refers to whether a reasonable investor, knowing all relevant facts and circumstances, would perceive an event to fall under the definition of "Material Adverse Effect." The standard for determining whether a material adverse effect has been suffered by the company is a matter of negotiation.

Section 5.7. Closing Deliveries

The Investors shall have received all of the agreements, documents, and items specified in Section 8.3.

Article VI Conditions to the Company's Obligations at Closing

Article VI provides the conditions that must be satisfied by each of the investors to trigger the obligation of the company to issue the equity shares. Similar to the conditions precedent to the investor's obligations in Article V, the closing is contingent on the fulfillment or waiver of all conditions precedent in this Article VI, and without such fulfillment or waiver, the company bears no liability to the investors for the failure to issue the equity shares.

The obligations of the Company to each Investor under this Agreement are subject to the fulfillment (or waiver by the Company) on or before the Closing Date of each of the following conditions by that Investor:

Section 6.1. Representations and Warranties

The representations and warranties of the Investors contained in Article IV shall be true and accurate in all material respects on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date.

Section 6.2. Performance

Each Investor shall have performed and complied in all material respects with all agreements, obligations, and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing Date.

Section 6.3. Authorizations and Consents

With respect to any Government Authority, regulatory body, or any third party, all necessary notices shall have been given, and all necessary authorizations, approvals, permits, or consents shall have been obtained that are required to have been given or obtained in connection with this Agreement, including the Required Consents.

Section 6.4. Governmental Orders

No order, statute, rule, regulation, executive order, injunction, stay, decree, or restraining order shall have been enacted, entered, promulgated, enforced, or threatened by any Government Authority that would prohibit the consummation of the transactions contemplated by this Agreement. There shall not be any proceeding pending that seeks to enjoin or obtain damages in respect of the consummation of the transactions contemplated by this Agreement.

Section 6.5. Closing Deliveries

The Company shall have received all of the agreements, documents, and items specified in Section 8.4.

Article VII Covenants

The covenants provided in Article VII are additional obligations of the company and investors to engage in or perform any actions necessary to complete the transaction. A party's noncompliance with a covenant is considered a breach of the agreement.

Section 7.1. Implementing Agreement

Subject to the terms of this Agreement, each of the Parties hereto agrees to use commercially reasonable best efforts to take all action, to assist and cooperate with the other Parties in doing, both before and after the Closing, all things reasonably necessary, proper, or advisable to consummate and make effective, the transactions contemplated by this Agreement, including (a) the obtaining of all necessary waivers, consents, and approvals from Government Authorities, and the making of all necessary registrations and filings with, and the taking of all reasonable steps as may be necessary to obtain any approval or waiver, consents, or approvals from, or to avoid any action or proceeding by, any Government Authority and (b) the obtaining of all necessary waivers, consents, or approvals from any Persons other than Government Authorities.

Section 7.1 generally provides that the parties are obligated to take any action necessary to obtain the necessary authorizations from government authorities to complete the transaction. As government authority authorizations may vary from country to country, this Section 7.1 is necessary to ensure that the parties will obtain the required approvals and authorizations without listing each such required approval or authorization in the agreement.

Section 7.2. Conduct of the Business Pending the Closing

During the period from the date hereof through the Closing Date, except as otherwise contemplated by this Agreement or the Disclosure Letter or as the Investors shall otherwise agree in writing in advance, the Company shall conduct the business of the Company in the ordinary and usual course of business in a manner consistent with past custom and

practice, and shall use all commercially reasonable efforts to preserve intact its present business organization, to preserve the goodwill and relationships with any third parties having dealings with the Company, and to cause the Company to comply in all material respects with all Applicable Law. Without limiting the foregoing, during the period from the date of this Agreement through the Closing Date, except with the consent of the Investors, or as otherwise contemplated by this Agreement or the Disclosure Letter, the Company shall not (a) declare, set aside, make, or pay any dividend or other distribution in respect of the capital stock of, shares or other ownership interests in, the Company; (b) make any direct or indirect redemption, repurchase, or other acquisition of any outstanding shares of the capital stock or other securities of, or other ownership interests in, the Company; or (c) transfer, issue, grant, award, sell, pledge, dispose of, or encumber or authorize the transfer, issuance, grant, award, sale, pledge, disposition, or encumbrance of any shares of capital stock or other securities of, or other ownership interests in, the Company, or grant options, warrants, calls, commitments, or rights of any kind to purchase or otherwise acquire any shares of the capital stock or other securities of, or other ownership interests in, the Company.

The covenant in Section 7.2 assures investors that the company will conduct its business in the ordinary course of business from the date the agreement is executed until the closing date. Such an assurance to the investors is significant as the investors decided to invest in the company based on its present business condition and therefore have the right to withdraw from the transaction if the company fails to comply with this obligation. The covenant provides that during the period of time stated, the company must refrain from making any distributions, redemptions, or repurchases of stock, transfers of stock, or any other action that would alter the value of the stock that the investors will subscribe to.

Section 7.3. Public Announcements

Prior to the Closing Date, except as required by Applicable Law or the rules of any stock exchange, no public announcement or other publicity regarding the transactions contemplated by this Agreement shall be made by the Investors, the Founder, or the Company, without the mutual agreement of the Investors and the Company as to the form, content, timing, and manner of distribution or publication, provided, however, that the foregoing shall not prevent such Parties from discussing the transaction with those Persons whose approval, agreement, or opinion, as the case may be, is required for consummation of the transactions contemplated herein. Notwithstanding the foregoing, the Investors shall be entitled to disclose the transaction contemplated hereby to its direct or indirect investors.

While generally the parties to the transaction are under an obligation to keep details of the transaction confidential, at times investors may need to share information regarding the transaction with certain third parties (such as its own investors) and in such a situation, disclosure of the transaction is permitted. This model agreement assumes that the investors and the company have already executed a confidentiality agreement covering confidential information furnished to the investors for purposes of its due diligence investigation.

Section 7.4. Access to Information

Until the Closing Date, the Company shall give the Investors and their representatives access, during normal business hours, to the properties, books, and records of the Company and shall make the Directors and officers of the Company and its agents and consultants available to the Investors and their representatives as the Investors and their representatives shall from time to time reasonably request.

As due diligence on the part of the investors is an ongoing process until the completion of the transaction, the covenant in Section 7.4 assures investors that they will have access to diligence materials when requested.

Article VIII Closing

Sections 8.1 through 8.5 outline the details of the closing of the transaction. This agreement contemplates that it will be signed in advance of closing and will serve as a promise by the investors to subscribe to the equity shares in the future, subject to the satisfaction of the agreed upon closing conditions. Depending on the deal, share subscription agreements may provide for subsequent closings to enable other investors to participate in the financing or to enable the same investors to invest additional sums of money on the same terms as the initial issuance. Such a scenario should be specifically provided for in the share subscription agreement of the transaction, and subsequent closings may typically be documented by the new investor simply executing a counterpart signature page to the financing documents.

Section 8.1. Closing Date

Upon the fulfillment of all Conditions Precedent (or the waiver thereof in writing by the Company or the Investors, as the case may be), the Parties shall proceed to complete the subscription to the Equity Shares by the Investors in the manner provided in this Article VIII as soon as reasonably practicable thereafter, but in any event within ten (10) business

days thereof. The date on which the Closing takes place shall hereinafter be referred to as the “Closing Date.” For the purpose of any calculation or determination required to be made by any of the Parties following the Closing, the Closing shall be deemed to have been effective as of 12:01 a.m., [*time of Country X*], on the Closing Date. All transactions and deliveries required to be made or completed at the Closing pursuant to the terms of this Agreement shall be deemed to occur concurrently, and none shall be deemed completed unless all are completed or are otherwise waived in a writing signed by each of the Parties hereto.

Section 8.2. Location of Closing

The Closing shall take place on the Closing Date at such location as may be agreed by the Parties, at a time to be mutually agreed to between the Parties.

If the parties intend the closing to happen in person (as opposed to a “virtual” closing via email, fax, or regular mail), then Section 8.2 should also indicate the location of the closing (e.g., the offices of the company).

Section 8.3. Closing Actions and Deliveries of the Company

On the Closing Date, the Company shall deliver, or cause to be delivered, to the Investors the following documents/instruments:

- (a) The original share certificates for the Equity Shares issued in the name of the Investors, in accordance with each Investor’s ownership of the Equity Shares as set forth on Schedule 2.1;
- (b) Certified true copies of the resolutions of the Board and Existing Shareholders, if applicable, of the Company approving the execution, delivery, and performance of this Agreement and the issuance of the Equity Shares to the Investors;

The board as well as the existing shareholders will likely need to approve the issuance of equity shares to the investors. Section 8.3(b) provides for the company to give the investors documentation of such approvals so that the investors are assured of transaction approval within the company.

- (c) Certified true copies of any powers of attorney or Board minutes, under which any of the documents referred to in this Article VIII have been executed or evidence satisfactory to the Investors of the authority of any Person signing on behalf of the Company;

- (d) A certificate, dated as of the Closing Date, from the Company and the Founder certifying that (i) the representations and warranties of the Company and/or the Founder, as applicable, are true and correct as of the Closing Date and (ii) the Company and the Founder, as applicable, have complied with all of their obligations under this Agreement through and as of the Closing Date;
- (e) The Shareholders Agreement, duly executed by the Company and the Existing Shareholders;
- (f) An original letter of opinion from its counsel addressed to the Investor *inter alia* opining that (i) the Company is a corporate body duly incorporated under Applicable Law; (ii) the Company has the power to carry on its business as it is now being conducted; (iii) the Company has the power and authority to execute and deliver the Agreement and each other agreement contemplated to be executed by the Company and to perform its obligations hereunder and thereunder; (iv) the Equity Shares of the Company outstanding as of the Closing Date will each have been duly authorized, validly issued, and fully paid up; (v) the investment by the Investor in the Company is in accordance with this Agreement; and (vi) all approvals and consents, if any, required to be obtained for making such investment have been obtained by the Company;

The opinion of counsel referred to in Section 8.3(f) typically covers items in the company's representations and warranties regarding due authorization, capitalization, organization, and other matters of the company.

- (g) Certified extracts from the [*appropriate register*] of the Company evidencing the registration of the Investors as the registered owner of the Equity Shares acquired by them pursuant to this Agreement; and

The company usually has a statutory register showing the name and address of each shareholder, the number of shares held by each shareholder, the amount paid up of shares, and any transfers or acquisitions of shares. In the United Kingdom (and countries whose laws are based on the U.K. legal system), the register is known as the register of members. In addition to the share certificates provided pursuant to 8.3(a), the company's provisions of extracts from the register assures the investors that they are the holders of the equity shares.

- (h) Such additional documents or instruments as may be necessary to give effect to the subscription to the Equity Shares by the Investors in accordance with the terms hereof.

Section 8.4. Closing Actions and Deliveries of the Investors

On the Closing Date, each Investor (a) shall pay its proportionate share of the Investment Amount to the Company in accordance with Section 2.2, and (b) shall deliver, or cause to be delivered to the Company, the following documents/instruments:

- (a) Certified true copies of the resolutions of the board of directors of each Investor (in the case that an Investor is a legal entity), approving the execution, delivery, and performance of this Agreement by such Investor;
- (b) Certified true copies of any powers of attorney or board minutes, under which any document referred to in this Article VIII has been executed or evidence satisfactory to the Company of the authority of any Person signing on behalf of an Investor (in the case that an Investor is a legal entity);
- (c) A certificate, dated as of the Closing Date, from each Investor certifying that (i) the representations and warranties of such Investor are true and correct as of the Closing Date, and (ii) it has complied with all of its obligations under this Agreement through and as of the Closing Date; and
- (d) The Shareholders Agreement, duly executed by each Investor.

Section 8.5. Government Filings/Notices

The Company shall file all relevant forms and provide all notices with any Government Authorities that are required in connection with the transaction contemplated to occur at the Closing, as and when required under Applicable Law.

Section 8.6. Multiple Closings

Notwithstanding anything herein to the contrary, if the conditions to Closing referred to above are satisfied with respect to some, but not all of the Investors because a Required Consent applicable to one or more Investors has not been obtained, then, at the election of the Company, the Closing shall take place, with those of the Investors for which all of the Conditions Precedent have been satisfied, and the Closing for the remaining Investors (Deferred Closing Investors) shall, subject to Section 9.2, take place as promptly thereafter as practicable following the receipt of all Required Consents necessary to the consummation of the transaction contemplated hereby by the Deferred Closing Investors. If the Required Consents of one or more of the Deferred Closing Investors have not been obtained by the Long Stop Date, then such

Deferred Closing Investors shall be relieved of any further obligation hereunder (but not from any liability resulting from such Deferred Closing Investor's prior breach hereof). In such event, the Company shall, within thirty (30) days of the Long Stop Date, offer to sell to all other Investors, on a pro rata basis, the Equity Shares that it was unable to issue to the applicable Deferred Closing Investors (such Equity Shares being referred to as the "Unsubscribed Equity Shares") on the same terms and conditions as are set forth herein. No Investor shall be required to subscribe to the Unsubscribed Equity Shares. If an Investor elects to subscribe to any Unsubscribed Equity Shares, the Closing of such sale and purchase shall take place within thirty (30) days of the acceptance by the Investor of the Company's offer to sell such Equity Shares.

Where one or more investors do not fulfill necessary obligations, such as completion of the conditions precedent, this model Share Subscription Agreement provides that it is the company that has the right to determine whether the closing will occur involving those investors that have fulfilled their obligations. Alternatively, the investors may seek to limit the company's ability to force a closing unless some minimum number (or all) of the investors have satisfied their respective conditions precedent.

Article IX Indemnification and Termination

Section 9.1. Indemnification

- (a) *Indemnification by the Company.* From and after the Closing, the Company agrees to pay and to indemnify fully, hold harmless and defend the Investors, their Affiliates, directors, officers, representatives, employees, and agents from and against any and all damages, including any diminution of value of the Equity Shares held by such Investors, penalties, fines, costs, amounts paid in settlement, liabilities, and losses, whether direct or indirect, expenses and fees, including court costs and reasonable attorneys' fees and expenses (collectively, "Damages"), arising out of or relating to (i) any inaccuracy in or breach of the respective representations and warranties of the Company contained in this Agreement and (ii) any breach by the Company of any covenant or agreement contained in this Agreement.

Microfinance institutions may seek to limit the time period during which an investor may assert a claim for indemnification against the company for breach of representation or warranty. Likewise, a microfinance institution may seek to limit the amount of damages to which an investor may be entitled. It is common to limit an investor's contractual damages below certain thresholds for example. It would also be common to put a cap on the amount of damages to which an investor is entitled in the event of a breach. Because these items have the impact of shifting risks to the investors, they are often subject to extensive negotiation.

- (b) *Indemnification by the Investors.* From and after the Closing, the Investors, severally and not jointly, agree to pay and to indemnify fully, hold harmless, and defend the Company from and against any and all Damages arising out of or relating to (i) any inaccuracy in or breach of an Investor's representations and warranties contained in this Agreement and (ii) any breach of any covenant or agreement of an Investor contained in this Agreement.
- (c) *Characterization of Indemnity Payments.* Any indemnity payments made pursuant to this Section 9.1 shall be treated as an adjustment to the purchase price for the Equity Shares to the maximum extent permitted by Applicable Law.

It is common for a Share Subscription Agreement to contain an indemnification provision pursuant to which parties will indemnify each other for respective breaches of the representations, warranties, and covenants and provide procedures for pursuing claims for damages resulting from such breaches. Under this model agreement, a party can pursue claims for breaches of representation, warranty, and covenant as permitted under applicable law in addition to pursuing a contractual remedy for indemnification. It would be common for a microfinance institution to seek to limit the availability of such remedies to investors by making indemnification under this agreement the sole remedy of the investors absent fraud. The benefit to investors of including an indemnification provision is that such a provision would clearly lay out the types of losses the investors are entitled to claim, including legal fees and expenses incurred in investigating and prosecuting the claim, and the procedures by which such claims would be made. In this model agreement, the founder is not required to indemnify the investors for breaches of the agreement by the founder. Instead, investors would be required to establish a claim for breach of representation against the founder to be compensated for any damages resulting from any such breach.

Section 9.2. Termination

This Agreement may be terminated and the transactions contemplated by this Agreement may be abandoned at any time prior to Closing:

- (a) by mutual written agreement of the Parties at any time prior to the Closing, or
- (b) by written notice by either the Investors or the Company, if the Closing shall not have occurred by _____, 200_ (Long Stop Date) or such later date as may be mutually agreed by the Parties, provided, however, that the right to terminate this Agreement under this Section 9.2 shall not be available to (i) the Company if the failure of the Company to fulfill any of its obligations under this Agreement caused the failure of the Closing to occur on or prior to such date or (ii) the Investors if the failure of the

Investors to fulfill any of its obligations under this Agreement caused the failure of the Closing to occur on or prior to such date.

If this Agreement is terminated as permitted under Sections 9.2(a) or (b), such termination shall be without liability to any Party or to any partner, principal, shareholder, member, Director, officer, or representative of such Party, and, following such termination, no Party shall have any liability under this Agreement or relating to the transactions contemplated by this Agreement to the other Party, provided, however, that no such termination shall relieve any Party that has breached any provision of this Agreement from liability for such breach, and any such breaching Party shall remain fully liable for any and all damages incurred or suffered by the other Parties as a result of such breach.

Section 9.3. Survival

Section 9.1, Section 9.2, this Section 9.3, Article X, and Sections 11.2, 11.3, 11.4, 11.6, and 11.9 shall survive any termination of this Agreement.

Article X Dispute Resolution and Governing Law

Section 10.1. Arbitration

- (a) *Arbitration Procedure.* Any dispute, controversy, claim, or disagreement of any kind whatsoever between or among the Parties in connection with, relating to, involving, or arising out of this Agreement or the breach, termination, or invalidity thereof, including any question regarding the validity, interpretation, scope, performance, or enforceability of this dispute resolution provision (Dispute), shall be exclusively referred to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce (ICC Rules), in effect at the time the arbitration request is filed. These ICC Rules shall be deemed to be incorporated by reference into this Article X. This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding, which award, if appropriate, shall determine whether and when any termination shall become effective.
- (b) *Venue of Arbitration.* Unless the parties otherwise agree, the seat of the arbitration shall be [*location of arbitration*].
- (c) *Arbitrator/Arbitral Tribunal.* The arbitration shall be conducted by three (3) arbitrators. Each Party shall nominate an arbitrator and the two (2) Party-nominated arbitrators shall jointly agree upon and appoint a third arbitrator who shall be knowledgeable

with regard to the subject matter of the Dispute and who shall serve as the chairperson of the arbitral panel. If the two (2) Party-nominated arbitrators are unable to agree upon the selection of the chairperson within that time frame, the chairperson shall be appointed by the ICC International Court of Arbitration in accordance with the ICC Rules.

- (d) *Language of Arbitration.* The language of the arbitration shall be [English].
- (e) *Award; Apportionment of Costs.* The award rendered by the arbitral panel shall be in accordance with the governing law of this Agreement, shall be in writing, and shall set out the reasons upon which it is based. The award shall allocate or apportion the costs of the arbitration, including attorneys' fees and expenses, as the arbitral panel deems fair.
- (f) *Award Final and Binding.* The Parties agree that the arbitration award of the majority of the three arbitrators shall be final and binding on the Parties. The Parties agree that no Party shall have any right to commence or maintain any suit or legal proceeding (other than for interim or provisional measures and as provided in clause (h) below) until the Dispute has been determined in accordance with the arbitration procedure provided herein and then only for enforcement of the award rendered in the arbitration. Judgment on the arbitration award of the majority of the three arbitrators may be rendered in any court of competent jurisdiction, and application may be made to any such court for an order of enforcement.
- (g) *Confidentiality of Arbitration.* Unless otherwise agreed by the Parties or required by law, the Parties, the arbitral panel, and the arbitral institution shall maintain the confidentiality of all documents and communications provided, produced, or exchanged during the course of the arbitration. Furthermore, no Party involved in the creation, coordination, or operation of the arbitration of any Dispute may disclose the existence, content, or results of the Dispute or any arbitration conducted under this Agreement, unless required to do so in order to enforce the arbitration agreement or any award made pursuant to this Agreement.
- (h) *Injunctive Relief.* Nothing in this Agreement shall prevent the Parties from applying to a court of competent jurisdiction for provisional or interim measures or injunctive relief as may be necessary to safeguard the rights of the Parties under this Agreement.

Arbitration tends to be the preferred mechanism for resolving disputes due to avoidance of the difficulties of litigation, such as the costs and length of litigation. The legal remedies available to parties under Section 10.1 above may be determined by local law (e.g., specific performance for voting arrangements may not be allowed).

Section 10.2. Governing Law

This Agreement shall be governed by the laws of [Country X].

Article XI Miscellaneous

Section 11.1. Notice

Any notice, approval, request, or other communication given under this Agreement shall be in writing and delivered by hand, prepaid registered post, facsimile, or by internationally recognized courier service to the registered office in the case of the Company and the address for communication as given to the Company, in the case of any other Party. Notice and instruments will be deemed served [seven (7)] days after posting if sent by registered post, upon receipt in the case of email or hand delivery, upon receipt of confirmation report if transmitted by facsimile transmission, or [four (4)] days from date of dispatch if sent by courier.

Section 11.2. Severability

If one or more of the provisions hereof shall be void, invalid, illegal, or unenforceable in any respect under any Applicable Law or decision, the validity, legality, and enforceability of the remaining provisions herein contained shall not be affected or impaired in anyway. Each Party hereto shall, in any such event, execute such additional documents as the other Party may reasonably request in order to give valid, legal, and enforceable effect to any provision hereof which is determined to be invalid, illegal, or unenforceable.

Section 11.2 provides that if some part of the Agreement is found invalid or unenforceable, the rest of the Agreement should remain intact. Without a severability provision, there is a risk that a partial invalidity or unenforceability would render the entire Agreement unenforceable. A severability provision permits the offensive part of the Agreement to be “severed” from the rest.

Section 11.3. Waiver

No failure to exercise and no delay in exercising any right or remedy hereunder shall operate as a waiver thereof. No waiver or consent hereunder shall be applicable to any events, acts, or circumstances except those specifically covered hereby.

A party may contend that because another party waived a certain requirement once, the party waived that requirement on subsequent occasions. Section 11.3 thus limits the scope of waivers to the narrow situation in which the waiver was given.

Section 11.4. Survival of Warranties

The warranties, representations, and covenants of the Company and Investors contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of the Investors or the Company.

Section 11.5. Entire Agreement

This Agreement, along with the Shareholders Agreement, constitutes the entire understanding and agreement among the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements among any Parties hereto with respect to the subject matter hereof. There are no understandings, representations, or warranties except as expressly set forth or referred to herein. Any modifications to this Agreement shall not be effective unless they are in writing and signed by all the Parties.

Section 11.5 prevents the parties from arguing that there are side agreements or understandings that are not clearly set out in this agreement. Without this provision, a party may try to introduce evidence that the parties had other agreements that superseded or modified this agreement. Of course, if there are other agreements that would modify or supersede this agreement, they should be explicitly identified and excluded from this provision.

Section 11.6. Successors and Assigns

Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties hereto or their respective successors and permitted assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

Section 11.6 is often contained in this Article XI on miscellaneous items unless assignability is of central importance to the agreement and should be addressed at an earlier stage of the agreement.

Section 11.7. Amendment to the Memorandum and Articles of Association

[Following the Closing, the Company shall take all actions required to amend its Memorandum and Articles of Association to incorporate therein the provisions of this Agreement and the Shareholders Agreement and shall file such documentation as may be necessary to reflect the same with the [applicable authority]. Following the Closing, the Memorandum and Articles of Association of the Company shall at all times incorporate the terms of this Agreement to the maximum extent permissible under the Applicable Law and the Parties hereby undertake to cast their votes and take such other actions as may be necessary to ensure that the Company shall adopt the same and make all amendments thereto as may be required from time to time and as may be necessary to ensure that the Memorandum and Articles of Association are consistent with the provisions of this Agreement and the Shareholders Agreement.]

This provision is an alternate provision to Section 5.3 and should be inserted if the constituent documents of the company are to be amended following the closing. The provision would not be necessary if the constituent documents of the company are amended concurrently with the closing as contemplated by Section 5.3.

Section 11.8. Amendments

No modification or amendment to this Agreement and no waiver of any of the terms or conditions hereof shall be valid or binding unless made in writing and duly executed by the Company and a majority of the Investors, provided that any modification or amendment adverse to an Investor or Investors shall be approved by said Investor or Investors.

Section 11.8 should always require amendments to be in writing. While Section 11.8 has been drafted to require approval only of a majority of the investors, the number of investors required to approve an amendment to this agreement is subject to negotiation by the parties. The parties may decide that rather than a simple majority approval by the investors, investors' representation based on the size of the investment should be the basis of the approval (e.g., investors representing 51 percent of the size of the investment are required for approval of the amendment). The company and investors may also choose to require execution by all parties rather than a majority of the investors adversely affected. An execution by all parties may be preferable as it avoids any interpretive debate about who is negatively affected or the definition of

a majority, but creates additional bureaucratic hurdles in the event an amendment is needed and thus reduces flexibility.

Section 11.9. Interpretation

All references to statutory provisions shall be construed as meaning and including references to any statutory modification, consolidation, or re-enactment (whether before or after the date of this Agreement) for the time being in force and all statutory instruments or orders made pursuant to a statutory provision. All references to the singular shall include the plural and vice versa, references to the masculine includes the feminine and vice versa, and references to persons shall include corporations and firms. The headings to Articles and Sections are inserted for convenience only and shall not affect the interpretation and construction of the Agreement. The terms “include” and “including” shall mean “including without limitation.”

Section 11.10. Further Assurances

The Parties agree to do such further acts and to execute and deliver such additional agreements and instruments as may be reasonably necessary to give effect to the purposes of this Agreement and the Parties’ obligations hereunder.

Section 11.10 addresses the parties’ fears that they omitted certain necessary provisions in the agreement. The provision gives parties a degree of comfort that unforeseen matters will be appropriately addressed.

Section 11.11. Counterparts and Controlling Language

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed in English and [local language]. Each party shall retain one copy of the Agreement in each language. In the event of differences in interpretation of this Agreement, English shall be the binding and controlling language for all matters relating to the meaning, interpretation, or enforcement of this Agreement.

Section 11.11 facilitates a “virtual” closing (e.g., one in which the documents and signatures are exchanged via fax, email, and/or regular mail rather than executed simultaneously

in the same physical location) by providing that documents signed in counterparts shall be accepted as originals.

Section 11.12. Costs

The Company shall pay all legal and administrative costs of the financing at Closing or upon submission of invoices by the Investor, including reasonable fees and expenses (not to exceed [applicable currency] [•]) of each Investor's attorney.

[OR as an alternate provision]

[Each Party shall bear its own costs and expenses incurred in connection with the transaction contemplated by this Agreement.]

The provision on costs and expenses is a matter for negotiation by parties. Parties may decide to split the entire cost of the transaction evenly or in certain percentages. In the alternative, each party may bear its own costs of the transaction. Parties may also decide that one or some of the parties pay legal and administrative costs of the transaction while the other party or parties pay for duties and tax expenses of the transaction.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

XYZ Microfinance

By: _____

Name: _____

Title: _____

Founder

By: _____

Name: _____

Title: _____

Founding NGO

By: _____

Name: _____

Title: _____

Big Fund

By: _____

Name: _____

Title: _____

Responsible Investor

By: _____

Name: _____

Title: _____

MF Fund

By: _____

Name: _____

Title: _____

Domestic Bank

By: _____

Name: _____

Title: _____

Schedule 2.1

Equity Shares to be Issued and Allotted at Closing

Investor	Number of Equity Shares to be Issued	Portion of Investment Amount to be Paid
[Big Fund]	[]	[applicable currency][]
[Responsible Investor]	[]	[applicable currency][]
[MF Fund]	[]	[applicable currency][]
[Domestic Bank]	[]	[applicable currency][]

The table in Schedule 2.1 should be completed for each investor to provide for the number of equity shares to be purchased by each investor and the portion of the purchase price that each investor is paying. If different classes of shares are to be issued, this table should be modified to reflect this information for each type of security that an investor will purchase.

Schedule 3.3(a)

Existing Capitalization

Existing Shareholder	Number of Equity Shares	% Ownership
Founder	[_____]	[_____]
Founding NGO	[_____]	[_____]
TOTAL	[_____]	100.00%

The table in Schedule 3.3(a) should be completed to show the issued and outstanding capitalization of the company prior to the transaction contemplated in the agreement. Each of the names of the existing shareholders should be listed, along with the number of existing shares owned by each existing shareholder and the percentage ownership of existing shares of each existing shareholder. If there is more than one type of security outstanding, this schedule should be modified to reflect this information with respect to each type of outstanding security. If stock options have been issued under an employee stock option plan or similar employee benefit arrangement, this table should also reflect those securities.

Schedule 3.3(b)

Capital Structure Following Closing

Shareholder	Existing Equity Shares	Equity Shares to be Issued at Closing	Total Equity Shares Post-Subscription	Fully diluted % Ownership Post-Subscription
Founder				
Founding NGO				
Big Fund				
Responsible Investor				
MF Fund				
Domestic Bank				
Stock Option Plan				
TOTAL		[1,000,000]		100.00%

The table in Schedule 3.3(b) should be completed to show the issued and outstanding capitalization of the company immediately after closing. The names of all shareholders should be set out on this Schedule 3.3(b), including the existing shareholders and the investors, together with the number of equity shares held by each of them after giving effect to the transactions contemplated by the agreement. The reference to “fully diluted” is intended to ensure that any rights to acquire equity shares that have not been exercised are also illustrated in the table.

Schedule 3.9

Employees Subject to Non-Competition Restrictions

Under Schedule 3.9, the company must list the name of each key employee and officer of the company (typically, senior management of the company) that has entered into non-competition and nonsolicitation agreements with the company.

Schedule 4.4

Governmental Authorizations

Schedule 4.4 will need to identify all governmental consents and/or approvals that must be obtained by each investor before it may lawfully invest in the company. It will also need to identify any necessary regulatory filings that each investor must make with any governmental authority prior to making the investment.

Schedule 5.4

Required Consents

Schedule 5.4 should include a definitive list of all approvals that are required to be obtained by the company or the investors in connection with the consummation of the transaction contemplated by the agreement. This list should include any regulatory approvals that are required to be obtained before an investor is permitted to make an investment.

EXHIBIT A

SHAREHOLDERS AGREEMENT

This Exhibit A will include a form of the Shareholders Agreement, which will be signed at closing. A detailed discussion of the Shareholders Agreement is included in this guide.

EXHIBIT B**DISCLOSURE LETTER**

[XYZ Letterhead]

[•], 200_

[Big Fund]

[Responsible Investor]

[MF Fund]

[Domestic Bank]

[Appropriate address for the Investors]

Dear [Investors],

This Disclosure Letter is delivered to each of you concurrently with the execution of the Share Subscription Agreement, dated as of [•], 200_ (the “Agreement”), by and between XYZ Microfinance (Company), [_____] (Founder), [_____] (Founding NGO), and [Big Fund], [Responsible Investor], [MF Fund], and [Domestic Bank] (each an “Investor” and collectively, the “Investors”). Capitalized terms used and not otherwise defined in this Disclosure Letter shall have the meanings ascribed to them in the Agreement. The purpose of this Disclosure letter is to qualify the representations and warranties of the Company and the Founder set forth in Article III of the Agreement and to identify those matters that may be outside the ordinary course of business of the Company that may occur between the date hereof and the Closing Date.

Any information disclosed pursuant to any item identified below shall be deemed to be disclosed to the Investors for all purposes of the Agreement to the extent the relationship of such matter to such other item is reasonably apparent on its face.

The inclusion of any specific item herein is not intended to imply that the item or matter so specified or included, or other items or matters, are or are not material, and the Parties shall not use the fact of the specification or inclusion of any such item or matter in any dispute or controversy between the Parties as to whether any item or matter is or is not material for purposes of the Agreement. Unless the Agreement specifically provides otherwise, neither the specification of any item or matter in any provision of the Agreement nor the inclusion of any specific item herein is intended to imply that such item or

matter, or other items or matters, are or are not in the ordinary course of business, and the Parties shall not use the fact of the specification or the inclusion of any such item or matter in any dispute or controversy between the Parties as to whether any item or matter is or is not in the ordinary course of business for purposes of the Agreement.

The disclosure letter should be drafted in connection with this agreement. As the representations and warranties of the company and the founder may give rise to legal liability if the representations are not accurate, the disclosure letter to the agreement helps to ensure that the company and the founder are not exposed to legal liability arising from matters that are adequately disclosed. The disclosure letter must list any inconsistencies with or exceptions to the representations and warranties. Where exceptions to the representation and warranties are disclosed, such disclosures have the effect of preventing the investors from suing the company or the founder for breach of a representation. However, if an exception to a representation is not listed in the disclosure letter, investors may sue for breach of such representation. As a result, special care should be paid to the preparation of the disclosure letter and it should be prepared in consultation with legal counsel for the company. Often, there are no applicable disclosure exceptions to the representations and warranties, in which case, a particular item can be eliminated or the disclosure for a particular item can state "None."

Paragraph 2 of the disclosure letter allows the company to disclose an exception or matter under an item without repeating such disclosure for other items if the disclosure for the other items is reasonably apparent to the investors. Where an exception for another item may not be reasonably apparent, the Company should take care to disclose such exception under that item as well. Paragraph 3 of the Disclosure Letter addresses future disputes between the Company and Investors. The outcome of a dispute regarding the Company's business and performance is likely to be affected by whether certain issues that arise between the parties are deemed material and/or in the ordinary course of business. In Paragraph 3, the parties agree that the Company and the Investor may not use disclosed (or absent) items as evidence that such item is material or in the ordinary course of business because the Company has decided to disclose or exclude the item.

In addition, because Section 7.2 of this Agreement restricts the Company's ability to take actions outside of the ordinary course of business between the signing date of this Agreement and the Closing Date, it will be important to identify any such matters in Item 7.2 below so as to avoid the need to secure the Investors' consent with respect to such matters.

Item 3.1

Organization, Good Standing, and Qualification

The company must list any exceptions to the representation regarding its organization, good standing, and qualification, as set forth in Section 3.1. For example, the company may need to disclose that it is delayed in making certain filings necessary for continued existence or is not duly licensed to transact business in certain jurisdictions.

Item 3.2

Authorization

The company must disclose any exceptions to the representation regarding its corporate power and its receipt of authorizations from the board and existing shareholders, as set out in Section 3.2. Generally, there should not be any disclosures under this Item 3.2.

Item 3.3(c)

Outstanding Rights

The company must list any exceptions to its representation regarding the absence of any outstanding or authorized stock rights, or the absence of any acceleration provisions or other changes in vesting provisions applicable to the outstanding equity shares (besides those rights set forth in the shareholders agreement and the stock option plan). By way of example, if some outstanding equity shares are only partially paid-up, the company should disclose this fact under this Item 3.3(c).

Item 3.4

Valid Issuance of Equity Shares

The company must disclose any inconsistencies with regard to its representation on the valid issuance of the equity shares to the investors. Generally, there should not be any disclosures under this Item 3.4.

Item 3.5**Subsidiaries**

The company must list any exceptions with regard to its representation that it does not own or control interest in any business entities, as set forth in Section 3.5. For example, the company must list all owned subsidiaries, joint ventures, partnerships, or similar arrangement, whether directly or indirectly owned and whether wholly or partially owned.

Item 3.6**Consents and Approvals; No Conflicts**

The company must disclose any exceptions to its representation that no conflicts or violations exist with regard to the execution and delivery of the agreement, as set forth in Section 3.6. For example, the company will need to disclose a situation where a financing agreement it has executed calls for acceleration of payment or consent upon a change of control of the company that will occur as a result of the investment transaction. The company will also need to disclose all governmental authorizations and filings that are required to be made by it before the closing even occurs.

Item 3.7**Exemption from Registration Requirements**

The company must list any exceptions with regard to its representation that the offer of the equity shares is exempt from registration requirements of securities laws, as set forth in Section 3.7.

Item 3.8**Litigation**

The company must disclose any exceptions with regard to its representation that, to its knowledge, there is no pending or current litigation against the company that would have a material negative impact on it, as set forth in Section 3.8. The company would also

need to list any threatened claims even if such claims have not amounted to litigation at the time the agreement is drafted. See the introductory note in Article III for a discussion on how the knowledge qualifier affects the company's disclosure.

Item 3.10

Patents and Trademarks

The company must list any exceptions to its representation regarding its ownership, possession, or acquisition of intellectual property necessary for its business and regarding the absence of its infringement upon the intellectual property of others (to its knowledge), as set forth in Section 3.10.

Item 3.11

Permits

The company must list any exceptions to its representation regarding its possession of all necessary permits for the operation of its business and the effectiveness of such permits, as set forth in Section 3.11. For example, if the company is just beginning to transact business in a certain foreign jurisdiction and has not yet received permit approvals by government authorities, it must disclose the lack or delay of those permit approvals in this Item 3.11.

Item 3.12

Corporate Documents

The company must list any exceptions to its representation regarding its provision to the investors of its Memorandum, Articles of Association, and all minute books of the board and existing shareholders, as set forth in Section 3.12. As stated in the note to Section 3.12, many microfinance institutions may not keep regular minutes of actions taken at board meetings or existing shareholders' meetings, and this absence of regular minutes must be disclosed.

Item 3.13**Title to Property and Assets**

The company must disclose any exceptions to its representation that its ownership of properties and assets are free of encumbrances, as set forth in Section 3.13. The company must disclose any and all mortgages, liens, or security interests that have been placed on its properties and/or assets, with those exceptions stated in Section 3.13 regarding encumbrances in the ordinary course of business or that will not have a material effect.

Item 3.14**Financial Statements**

The company must list any exceptions to its representation on the preparation and provision of its financial statements, as set forth in Section 3.14(a) and its representation regarding limited obligations and liabilities, as set forth in Section 3.14(b).

Item 3.15**Insurance**

The company must list any exceptions to its representation on the effectiveness of its insurance, as set forth in Section 3.15. For example, while the company may have insurance coverage on certain items, such as its properties and assets, it may not have other necessary insurance coverage that is customary in its jurisdiction (e.g., directors and officers liability insurance), and such a fact must be disclosed.

Item 3.16**Labor Agreements and Actions; Employee Compensation**

The company must list any exceptions to its representation regarding the absence of arrangements with labor unions and the absence of labor disputes, to its knowledge, as set forth in Section 3.16. For example, the company must disclose all collective bargaining agreements or other union arrangements made with labor unions in this Item 3.16.

Item 3.17**Employee Benefit Plans and Employment Agreements**

The company must disclose all employee welfare benefit plans, employee pension benefit plans, compensation plans, or employment agreements that it has entered into with an employee, director, consultant or agent, as set forth in Section 3.17.

Item 3.18**Compliance with Laws**

The company must list any exceptions to its representation that the operation of its business complies in all material respects with all applicable laws, as set forth in Section 3.18.

Item 3.19**Compliance with Statutory Obligations**

The company must list any exceptions to its representation regarding its compliance with statutory obligations, as set forth in Section 3.19. This Item 3.19 especially calls for any disclosures with regard to compliance with tax authorities, such as delays or failures to file tax returns or other tax statements.

Item 3.20**Compliance with Financing Arrangements**

The company must list any exceptions to its representation regarding compliance under any financing arrangements, as set forth in Section 3.20. As most financing arrangements have provisions requiring approval or consent in the event of a change of control, the company must disclose those arrangements where it has not yet received the required consents or will not receive the required consents as of closing.

Item 3.21**Related Party Transactions**

The company must disclose any exceptions to its representation regarding related party transactions (e.g., ownership interests, control, indebtedness), as set forth in Section 3.21.

Item 3.22**Absence of Changes**

The company must list any exceptions to its representation that, to its knowledge, there are no events that would have a material adverse effect on the company, as set forth in Section 3.22.

Item 3.23**Disclosure**

The company must list any exceptions to its representation that it has provided the investors with all necessary information and that there are no untrue statements of material fact or omissions of material fact, as set forth in Section 3.23. As Section 3.23 is a catch-all provision, this Item 3.23 will likely contain disclosures that do not fit under any of the other items to the disclosure letter but that are still significant to disclose.

Item 3.24**Brokers or Finders**

The company must list any exceptions to its representation that no brokers or other intermediaries are retained and owed a fee in connection with the investment transaction, as set forth in Section 3.24.

Item 7.2**Conduct of the Business Pending the Closing**

Because there are limitations on the company's ability to undertake certain types of activities pursuant to Section 7.2, the company will need to disclose the fact that it intends to take certain action that would not be permitted under Section 7.2 or it will be required to seek the investors' consent before it can implement the relevant item. By way of example, if the company intends to pay a dividend before closing, the amount and timing of the dividend should be set forth in Item 7.2.

Sincerely,

XYZ Microfinance

By: _____

Name: _____

Title: _____

