
KXTER FUND ONE LLC

SUBSCRIPTION AGREEMENT

THE OFFERING OF SECURITIES DESCRIBED IN THIS SUBSCRIPTION AGREEMENT HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), OR UNDER ANY SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER JURISDICTION. THIS OFFERING IS MADE PURSUANT TO SECTION 4(a)(2) OF THE SECURITIES ACT, WHICH EXEMPTS FROM SUCH REGISTRATION TRANSACTIONS NOT INVOLVING A PUBLIC OFFERING. FOR THIS REASON, THE SECURITIES DESCRIBED IN THIS SUBSCRIPTION AGREEMENT WILL BE SOLD ONLY TO INVESTORS WHO MEET CERTAIN MINIMUM SUITABILITY QUALIFICATIONS DESCRIBED HEREIN.

AN INVESTOR SHOULD BE PREPARED TO BEAR THE ECONOMIC RISK OF AN INVESTMENT IN THE FUND FOR AN INDEFINITE PERIOD OF TIME BECAUSE THE FUND INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OR THE LAWS OF ANY OTHER JURISDICTION, AND, THEREFORE, CANNOT BE SOLD UNLESS THEY ARE SUBSEQUENTLY REGISTERED OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE. THERE IS NO OBLIGATION OF THE ISSUER TO REGISTER THE SECURITIES DESCRIBED HEREIN UNDER THE SECURITIES ACT OR THE LAWS OF ANY OTHER JURISDICTION. TRANSFER OF THE SECURITIES DESCRIBED HEREIN IS ALSO RESTRICTED BY THE TERMS OF THE FUND AGREEMENT RELATING THERETO, AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE THEREWITH.

PROSPECTIVE FOREIGN INVESTORS SHOULD CONSULT WITH THEIR OWN COUNSEL REGARDING WHETHER OR NOT TO INVEST IN THE FUND. IT IS THE RESPONSIBILITY OF ANY PERSON OR ENTITY WISHING TO PURCHASE AN INTEREST TO SATISFY HIMSELF, HERSELF OR ITSELF AS TO THE FULL OBSERVANCE OF THE LAWS OF ANY RELEVANT TERRITORY OUTSIDE OF THE UNITED STATES IN CONNECTION WITH ANY SUCH PURCHASE, INCLUDING OBTAINING ANY REQUIRED GOVERNMENTAL OR OTHER CONSENTS OR OBSERVING ANY OTHER APPLICABLE FORMALITIES.

KXTER FUND ONE LLC

SUBSCRIPTION AGREEMENT

This Subscription Agreement (including the exhibits and attachments hereto, this “**Agreement**”) is entered into by and between Kxter Advisors LLC (the “**Manager**”) and the subscriber identified on the signature page hereto (the “**Subscriber**”) in connection with the Subscriber’s purchase of a limited liability company membership interest (the “**Interest**”) in Kxter Fund One LLC, a Delaware limited liability company (the “**Fund**”) and admission of the Subscriber as a Member thereof pursuant to the Operating Agreement of the Fund (the “**Fund Agreement**”). Capitalized terms used herein have the meanings indicated in Section 18 hereof.

INSTRUCTIONS: Please complete the information on the signature page and in section 1 through section 5 of the Investor Questionnaire attached hereto as Exhibit A, and execute this Agreement.

- 1. Contribution.** The Subscriber shall contribute capital to the Fund (or its designee) in cash from time to time as required to be made pursuant to the Fund Agreement, in an aggregate amount not to exceed the Subscriber’s “**Capital Commitment**” set forth on the signature page hereto (except as otherwise provided in the Fund Agreement). The Manager may reject all or any portion of a proposed Capital Commitment by the Subscriber and a Capital Commitment shall be deemed accepted only upon written confirmation by the Manager. All payments of the Subscriber’s Capital Commitment shall be made by check, wire transfer or other form of electronic payment pursuant to instructions provided by the Manager prior to the due date of such payments.
- 2. Adoption.** The Subscriber hereby agrees to be bound by all the terms and provisions of the Fund Agreement and to perform all obligations imposed upon a Member with respect to the Interest.
- 3. Acceptance of Participation; Delivery of Fund Agreement.** The Subscriber understands and agrees that this subscription is made subject to the following terms and conditions:
 - (a) The Manager shall have the right to review the suitability of any person desiring to purchase an Interest and, in connection with such review, to waive such suitability standards as to such person as the Manager deems appropriate under applicable law;
 - (b) The Manager shall have the right, in its sole discretion, to reject this subscription, in whole or in part, and the subscription shall be deemed to be accepted only when the Subscriber has been admitted to the Fund as a Member;
 - (c) The Manager shall have no obligation to accept subscriptions in the order received;
 - (d) The Subscriber hereby requests and authorizes the Manager to enter the Subscriber’s name in the books and records of the Fund as a holder of the Interest;
 - (e) The Interest to be created on account of this subscription shall be created only in the name of the Subscriber, and the Subscriber agrees to comply with the terms of the Fund Agreement and to execute any and all further documents necessary in connection with becoming a Member of the Fund; and

- (f) The Subscriber hereby undertakes in respect of the Interest that the Subscriber shall comply with the restrictions on transfer of the Interest contained in the Fund Agreement.
4. **Conditions to Closing.** The Fund's obligations to close the sale and issuance of the Interest is subject to the fulfillment, prior to or at the time of closing, of each of the following conditions:
- (a) The representations and warranties of the Subscriber contained in this Agreement shall be true and correct at the time of closing; and
 - (b) All proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the Manager and the Fund, and the Manager and the Fund shall have received all such counterpart originals or certified or other copies of such documents as the Manager may request.
5. **Subscriber's Representations.** In connection with the Subscriber's purchase of the Interest, the Subscriber makes the following representations and warranties on which the Manager and the Fund are entitled to rely:
- (a) The Subscriber has received, read and understands the Fund's Confidential Private Placement Memorandum (including, but not limited to, the Risk Factors discussed therein) (the "**Memorandum**"), the Fund Agreement and this Agreement. No representations or warranties have been made to the Subscriber by the Fund, the Manager or any agent of said persons, other than as set forth in the Fund Agreement and this Agreement.
 - (b) The Subscriber is acquiring the Interest solely for the Subscriber's own account and not directly or indirectly for the account of any other person whatsoever (or, if the Subscriber is acquiring the Interest as a trustee, solely for the account of the trust or trust account named herein) for investment and not with a view to, or for sale in connection with, any distribution of the Interest. The Subscriber does not have any contract, undertaking or arrangement with any person to sell, transfer or grant the Interest.
 - (c) The Subscriber has such knowledge and experience in financial and business matters that the Subscriber is capable of evaluating the merits and risks of the investment evidenced by the Subscriber's purchase of the Interest, and the Subscriber is able to bear the economic risk of such investment including the risk of complete loss.
 - (d) The Subscriber has had access to such information concerning the Fund as the Subscriber deems necessary to enable the Subscriber to make an informed decision concerning the purchase of the Interest. The Subscriber has had the opportunity to ask questions and receive answers satisfactory to the Subscriber concerning the offering of Interests in the Fund and the Fund generally. The Subscriber has obtained all additional information requested by the Subscriber to verify the accuracy of all information furnished in connection with the offering of Interests in the Fund.
 - (e) The Subscriber understands that the Interest has not been registered under the United States Securities Act of 1933, as amended (the "**Securities Act**") or any securities law of any state of the United States or any other jurisdiction, in each case in reliance on an

exemption for private offerings, and the Subscriber acknowledges that the Subscriber is purchasing the Interest without being furnished any offering literature or prospectus other than Memorandum, the Fund Agreement and this Agreement.

- (f) The Subscriber understands that the Fund has not been registered under the United States Investment Company Act of 1940, as amended (the “**Companies Act**”). In addition, the Subscriber understands that the Manager is not registered as an investment adviser under the United States Investment Advisers Act of 1940, as amended (the “**Advisers Act**”).
- (g) The Subscriber is aware that (i) the Subscriber must bear the economic risk of investment in the Interest for an indefinite period of time, possibly until final winding up of the Fund, (ii) because the Interest has not been registered under the Securities Act, there is currently no public market therefor, (iii) the Subscriber may not be able to avail itself of the provisions of Rule 144 of the Securities Act with respect to the Interest, and (iv) the Interest cannot be sold unless subsequently registered under the Securities Act or an exemption from such registration is available. The Subscriber understands that neither the Manager nor the Fund is under any obligation, and neither of them intends, to effect any such registration at any time. The Subscriber also understands that sales or transfers of the Interest are further restricted by the provisions of the Fund Agreement and, as applicable, securities laws of other jurisdictions and the states of the United States.
- (h) The Subscriber acknowledges that the Subscriber is purchasing the Interest without being furnished any offering literature or prospectus other than other than the Memorandum (including the Risk Factors discussed therein), the Fund Agreement and this Agreement. The Subscriber did not rely on any information whatsoever other than the Memorandum, the Fund Agreement and this Agreement to make Subscriber’s investment decision and such materials were not accompanied by any advertisement, including, without limitation, in printed public media, radio, television or telecommunications, including electronic display and the internet, or part of a general solicitation. Information regarding any potential Portfolio Company which may have been delivered to the Subscriber by the Fund or the Manager has been obtained from other sources and prepared by other parties. While such sources are believed to be reliable, neither the Fund, the Manager nor their respective affiliates assume any responsibility for the accuracy and completeness of such information.
- (i) The Interest will not be transferred or disposed of except in accordance with the terms of this Agreement and the Fund Agreement and will not be sold or transferred without registration under the Securities Act, or pursuant to an applicable exemption therefrom.
- (j) The Subscriber’s full legal name, true and correct address, phone number, fax number, electronic mail address, and other identifying or contact information are provided on the signature page hereto. The Subscriber has completely, truthfully and accurately completed the representations and related information on the Investor Questionnaire attached hereto as Exhibit A and agrees the Manager and the Fund may rely on such representations and information.
- (k) The execution and delivery of the Fund Agreement and this Agreement, the consummation of the transactions contemplated thereby and hereby and the performance of the obligations thereunder and hereunder will not conflict with or result in any

violation of or default under any provision of any other agreement or instrument to which the Subscriber is a party or any license, permit, franchise, judgment, order, writ or decree, or any statute, rule or regulation, applicable to the Subscriber. If the Subscriber is organized, has its principal place of business, or resides outside of the United States, the Subscriber confirms that the consummation of the transactions contemplated by the Fund Agreement and this Agreement and the performance of the obligations thereunder and hereunder will not violate any foreign law and that such transactions and performance are lawful in the Subscriber's country of organization, principal place of business or residence.

- (l) No suit, action, claim, investigation or other proceeding is pending or, to the best of the Subscriber's knowledge, is threatened against the Subscriber that questions the validity of the Fund Agreement or this Agreement or any action taken or to be taken pursuant to the Fund Agreement or this Agreement.
- (m) The Subscriber has full power and authority to make the representations referred to in this Agreement, to purchase the Interest pursuant to this Agreement and the Fund Agreement and to execute and deliver the Fund Agreement and this Agreement. The Fund Agreement and this Agreement create valid and binding obligations of the Subscriber and are enforceable against the Subscriber in accordance with their terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting creditors' rights, and subject to general equity principles and to limitations on availability of equitable relief, including specific performance.
- (n) The Subscriber acknowledges that the Subscriber understands the meaning and legal consequences of the representations and warranties made by the Subscriber herein. Such representations and warranties are complete and accurate, shall be complete and accurate at the time of the Fund's closing and may be relied upon by the Fund and the Manager. Such representations and warranties shall survive delivery of this Agreement and the Fund Agreement. If in any respect such information shall not be complete and accurate prior to the time of closing, the Subscriber shall give immediate notice of such incomplete or inaccurate information to the Manager, specifying which representations or warranties are not complete and accurate and the reasons therefor.
- (o) The Subscriber hereby agrees to indemnify and hold harmless the Fund, the Manager and each member, manager, shareholder, director, officer, employee, or advisor thereof (each, an "**Indemnified Party**") from and against any and all loss, damage or liability due to or arising out of any inaccuracy or breach of any representation or warranty of the Subscriber or failure of the Subscriber to comply with any covenant or agreement set forth herein or in any other document furnished to any Indemnified Party specifically supplementing the information in this Agreement by the Subscriber in connection with the subscription for an Interest. The Subscriber shall reimburse each Indemnified Party for its legal and other expenses (including the cost of any investigation and preparation) as they are incurred in connection with any such claim, action, proceeding or investigation. The reimbursement and indemnification obligations of the Subscriber under this Section 5(o) shall survive any closing of the Fund applicable to the Subscriber (or, if this Agreement is terminated pursuant to Section 3(b) above, such termination) and shall be in addition to any liability which the Subscriber may otherwise have (including,

without limitation, liabilities under the Fund Agreement), and shall be binding and inure to the benefit of any successors, assigns, heirs, estates, executors, administrators and personal representatives of the Indemnified Parties.

- (p) The Subscriber confirms that the Subscriber has been advised to consult with the Subscriber's attorney regarding legal matters concerning the Fund and to consult with independent tax advisers regarding the tax consequences of investing in the Fund. The Subscriber acknowledges that the Subscriber understands that any anticipated United States federal or state income tax benefits may not be available and, further, may be adversely affected through adoption of new laws or regulations or amendments to existing laws or regulations. The Subscriber acknowledges and agrees that neither the Manager nor the Fund is providing any warranty or assurance regarding the ultimate availability of any tax benefits to the Subscriber by reason of the Subscriber's investment in the Fund.
- (q) The Subscriber understands that information relating to the Subscriber may appear on the financial statements and other records of the Fund. The Subscriber acknowledges and agrees that other Members may receive such information as permitted by the Fund Agreement or as required by applicable laws and may share such information with their advisors and other parties.
- (r) The Subscriber understands and agrees that the Manager may cause the Fund to make an election under Section 754 of Code or an election to be treated as an "electing investment partnership" for purposes of Section 743 of the Code. If the Fund elects to be treated as an electing investment partnership, the Subscriber shall cooperate with the Fund and the Manager to maintain that status and shall not take any action that would be inconsistent with such election. Upon request, the Subscriber shall provide the Manager with any information necessary to allow the Fund to comply with its obligations to make tax basis adjustments under Sections 734 or 743 of the Code and its obligations as an electing investment partnership.
- (s) The Subscriber has carefully reviewed and understands the various risks of an investment in the Fund, as well as the fees and conflicts of interest to which the Fund and the Manager are subject, as set forth in the Memorandum (including, without limitation, the Risk Factors discussed therein). The Subscriber hereby consents and agrees to the payment of the fees so described to the parties identified as the recipients thereof, if any, and to such conflicts of interest.
- (t) Neither the Subscriber nor any Significant Owner (defined below) has been subject to any Disqualifying Event (defined below) under Rule 506(d) of the Securities Act. Neither the Subscriber nor any Significant Owner is subject to any proceeding or event that could result in any Disqualifying Event. To the best of the Subscriber's knowledge, neither the Subscriber nor any Significant Owner is currently the subject of any threatened or pending investigation, proceeding, action or other event that, if adversely determined, would give rise to any Disqualifying Event.

A "**Significant Owner**" is any direct or indirect owner of the Subscriber that would own twenty percent (20%) or more of the Fund's interests if such owner were a direct member in the Fund. By way of example only, if the Subscriber owns 40% of the Fund's

interests, the Subscriber would have a Significant Owner if one of the Subscriber's beneficial owners owns 50% or more of the outstanding equity of the Subscriber.

A person has been subject to a “**Disqualifying Event**” under Regulation D Rule 506(d) if the person:

- (i) Has been convicted within ten years of the date hereof of any felony or misdemeanor (i) in connection with the purchase or sale of any security, (ii) involving the making of any false filing with the U.S. Securities and Exchange Commission (the “**SEC**”) or (iii) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;
- (ii) Is subject to any order, judgment or decree of any court of competent jurisdiction entered within five years of the date hereof that presently restrains or enjoins the person from engaging or continuing to engage in any conduct or practice (i) in connection with the purchase or sale of any security, (ii) involving the making of any false filing with the SEC or (iii) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;
- (iii) Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that (i) as of the date hereof, bars the person from (A) association with an entity regulated by such commission, authority, agency or officer, (B) engaging in the business of securities, insurance or banking or (C) engaging in savings association or credit union activities or (ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct entered within ten years of the date hereof;
- (iv) Is subject to any order of the SEC pursuant to Section 15(b) or Section 15B(c) of the United States Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) or Section 203(e) or Section 203(f) of the Advisers Act that as of the date hereof (i) suspends or revokes the person's registration as a broker, dealer, municipal securities dealer or investment adviser, (ii) places limitations on the activities, functions or operations of the person or (iii) bars the person from being associated with any entity or from participating in the offering of any penny stock;
- (v) Is subject to any order of the SEC entered within five years of the date hereof that presently orders the person to cease and desist from committing or causing a violation or future violation of (i) any scienter based anti-fraud provision of the federal securities laws or (ii) Section 5 of the Securities Act;
- (vi) Is, as of the date hereof, suspended or expelled from membership in, or

suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

- (vii) Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the SEC that, within five years of the date hereof, was the subject of a refusal order, stop order or order suspending the Regulation A exemption, or is presently the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or
- (viii) Is subject to a United States Postal Service false representation order entered within five years of the date hereof or is presently subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.
- (u) The Subscriber will immediately notify the Manager in writing if the Subscriber or a Significant Owner becomes subject to a Disqualifying Event at any date after the date hereof. In the event the Subscriber or a Significant Owner becomes subject to a Disqualifying Event at any date after the date hereof, the Subscriber agrees and covenants to use its best efforts to coordinate with the Manager (i) to provide documentation as reasonably requested by the Manager related to any such Disqualifying Event and (ii) to implement a remedy to address the Subscriber's changed circumstances such that the changed circumstances will not affect in any way the Fund's, the Manager's or their respective affiliates' ongoing and/or future reliance on the Rule 506 exemption under Regulation D of the Securities Act. The Subscriber acknowledges that, at the discretion of the Manager, such remedies may include, without limitation, the waiver of all or a portion of the Subscriber's voting power in the Fund, the Subscriber's removal from the Fund, and/or the Subscriber's withdrawal from the Fund through the transfer or sale of its Interest in the Fund. The Subscriber also acknowledges that the Manager may periodically request assurance that each of the Subscriber and each Significant Owner has not become subject to a Disqualifying Event at any date after the date hereof, and the Subscriber further acknowledges and agrees that the Manager shall understand and deem the failure by the Subscriber to respond in writing to such requests to be an affirmation and restatement of the representations, warranties and covenants in this Section 5(u) and Section 5(t).

6. Anti-Money Laundering Regulations. The Manager's and the Fund's intent is to comply with all applicable federal, state and local laws designed to combat money laundering and similar illegal activities, including the provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("**PATRIOT Act**"). The Subscriber hereby represents, covenants, and agrees that, to the best of the Subscriber's knowledge based on reasonable investigation:

- (a) None of the Subscriber's capital contributions to the Fund (whether payable in cash or otherwise) shall be derived from money laundering or similar activities deemed illegal under federal laws and regulations.

- (b) To the extent within the Subscriber's control, none of the Subscriber's capital contributions to the Fund will cause the Fund or any of its personnel to be in violation of federal anti-money laundering laws, including without limitation the Bank Secrecy Act (31 U.S.C. 5311 et seq.), the United States Money Laundering Control Act of 1986 or the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, and any regulations promulgated thereunder.
- (c) When requested by the Manager, the Subscriber will provide any and all additional information, and the Subscriber understands and agrees that the Manager may release confidential information about the Subscriber and, if applicable, any underlying beneficial owner or Related Person to U.S. regulators and law enforcement authorities, deemed reasonably necessary to ensure compliance with all applicable laws and regulations concerning money laundering and similar activities.
- (d) Neither the Subscriber nor any person or entity controlled by, controlling or under common control with the Subscriber, any of the Subscriber's beneficial owners, any person for whom the Subscriber is acting as agent or nominee in connection with this investment nor, if the Subscriber is an entity, any Related Person is:
- (i) a Prohibited Investor;
 - (ii) a Senior Foreign Political Figure, any member of a Senior Foreign Political Figure's "*immediate family*," which includes the figure's parents, siblings, spouse, children and in-laws, or any Close Associate of a Senior Foreign Political Figure, or a person or entity resident in, or organized or chartered under, the laws of a Non-Cooperative Jurisdiction;
 - (iii) a person or entity resident in, or organized or chartered under, the laws of a jurisdiction that has been designated by the U.S. Secretary of the Treasury under Section 311 or 312 of the PATRIOT Act as warranting special measures due to money laundering concerns; or
 - (iv) a person or entity who gives the Subscriber reason to believe that its funds originate from, or will be or have been routed through, an account maintained at a Foreign Shell Bank, an "*offshore bank*," or a bank organized or chartered under the laws of a Non-Cooperative Jurisdiction.
- (e) The Subscriber hereby agrees to immediately notify the Manager if the Subscriber knows or has reason to suspect that any of the representations in this Section 6 have become incorrect or if there is any change in the information affecting these representations and covenants.
- (f) The Subscriber agrees that, if at any time it is discovered that any of the foregoing anti-money laundering representations are incorrect, or if otherwise required by applicable laws or regulations, the Manager may undertake appropriate actions, and the Subscriber agrees to cooperate with such actions, to ensure compliance with such laws or regulations, including, but not limited to segregation and/or redemption of the Subscriber's Interest in the Fund or the freezing of the Subscriber's account.

- 7. Withholding.** The Manager is required to withhold a certain portion of the taxable income and gain allocated or distributed to the Subscriber unless the Subscriber provides documentation confirming that the Subscriber is not subject to withholding, or is subject to a reduced rate of withholding. The Subscriber should consult with a tax advisor concerning the application of the U.S. withholding rules to the Subscriber.
- 8. Power of Attorney.** By signing this Agreement, the Subscriber constitutes and appoints the Manager as its agent, true and lawful representative and attorney-in-fact, in its name, place, and stead to make, execute, sign, acknowledge, deliver or file (i) the Fund's Certificate of Formation and any other instruments, deeds, documents and certificates which may from time to time be required by any law to effectuate, implement and continue the valid and subsisting existence of the Fund, (ii) the Fund Agreement, (iii) all instruments, deeds, documents and certificates that may be required to effectuate the dissolution and termination of the Fund in accordance with the provisions hereof, the Fund Agreement and the Act, (iv) all instruments, deeds, documents, or certificates that may from time to time be required of the Fund by the laws of the United States of America or any other jurisdiction in which the Fund shall conduct its affairs in order to qualify or otherwise enable the Fund to conduct its affairs in such jurisdictions, (v) all amendments of the Fund Agreement contemplated by the Fund Agreement including, without limitation, amendments reflecting the addition or substitution of any Member, or any action of the Members duly taken pursuant to the Fund Agreement whether or not the Subscriber voted in favor of or otherwise approved such action, and (vi) any other instrument, certificate, document, accession agreement or deed of adherence required from time to time to admit a Member, to effect the substitution of a Member, to effect the substitution of a Member's assignee as a Member, to effect a transfer pursuant to the Fund Agreement or to reflect any action of the Members provided for in the Fund Agreement. The foregoing grant of authority (i) is irrevocable, coupled with an interest in favor of the Manager and deemed to be given to secure the performance of the Subscriber's obligations under this Agreement and the Fund Agreement and shall survive the death or disability of the Subscriber if the Subscriber is a natural person or the merger, dissolution or other termination of the existence of the Subscriber if the Subscriber is a corporation, association, partnership, limited liability company, trust, organization or other entity, and (ii) shall survive the assignment by the Subscriber of the whole or any portion of its Interest, except that where the assignee of the whole thereof has furnished a power of attorney, this power of attorney shall survive such assignment for the sole purpose of enabling the Manager to execute, acknowledge and file any instrument necessary to effect any permitted substitution of the assignee for the assignor as a Member and shall thereafter terminate. Notwithstanding the foregoing, this power of attorney shall expire immediately on the dissolution of the Fund. The Subscriber is aware that the Manager and each Member will rely on the effectiveness of such powers in concluding that the Subscriber is bound by, and subject to the Fund Agreement. The Subscriber agrees to execute such other documents as the Manager may reasonably request in order to affect the intention and purposes of the power of attorney contemplated by this Section 8.
- 9. Survival of Agreements, Representations and Warranties.** All agreements, representations and warranties contained herein or made in writing by or on behalf of the Subscriber, the Fund or the Manager in connection with the transactions contemplated by this Agreement shall survive the execution of this Agreement and the Fund Agreement, any investigation at any time made by the Subscriber, the Fund or the Manager or on behalf of any of them and the sale and purchase of the Subscriber's Interest and payment therefor and the dissolution and termination of the Fund.

- 10. Legends.** The Subscriber consents to the placement of the legends contained on the cover page of this Agreement and any other legend required by or reasonably advisable under applicable law, as determined by the Manager or the Fund.
- 11. Counterparts, Execution and Delivery.** 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. A facsimile or other reproduction of this Agreement may be executed by the Subscriber and/or the Manager, and an executed copy of this Agreement may be delivered by the Subscriber and/or the Manager by facsimile or similar electronic transmission device pursuant to which the signature or signatures and questionnaire responses can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, the Subscriber and the Manager agree to execute an original of this Agreement as well as any facsimile or other reproduction hereof.
- 12. Amendments.** This Agreement may be changed, waived, discharged or terminated only with the written consent of the Subscriber and the Manager.
- 13. Assignment.** This Agreement is not transferable or assignable by the Subscriber.
- 14. Arbitration.** The Subscriber hereby acknowledges and agrees that any claim, dispute or controversy of whatever nature arising out of or relating to this Agreement shall be resolved by final and binding arbitration in accordance with the terms of the Fund Agreement.
- 15. Privacy.** The Subscriber acknowledges and agrees that the Manager and/or the Fund may disclose nonpublic personal information of the Subscriber to other members of the Fund, the Fund's portfolio companies (including prior to the Manager's acceptance of this Agreement), as well as to the Manager's and/or the Fund's accountants, attorneys and other service providers as necessary to effect, administer and enforce the Manager's, the Fund's and the Members' rights and obligations.
- 16. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware in all respects as such laws are applied to agreements among Delaware residents entered into and performed entirely within Delaware, without giving effect to conflict of law principles thereof.
- 17. Consent to Electronic Delivery.** The Subscriber hereby agrees that the Manager and the Fund may deliver any or all notices, financial statements, tax reports, valuations, reports, reviews, analyses or other materials, and all other documents, information and communications concerning the affairs of the Fund and its investments, including, without limitation, information about the Fund's portfolio companies, required or permitted to be provided to the Subscriber under the Fund Agreement or hereunder by means of facsimile or electronic mail (to the facsimile number or e-mail address set forth in the signature page below, or other number or address as provided in writing by the Subscriber to the Manager), or by posting on an electronic message board or by other means of electronic communication.
- 18. Definitions.** Capitalized terms used herein and not otherwise defined herein shall have the meanings given to them in the Fund Agreement. Capitalized terms used herein and defined elsewhere herein have the meanings so given. The following capitalized terms used herein have

the following meanings:

- (a) **“Close Associate of a Senior Foreign Political Figure”** shall mean a person who is widely and publicly known internationally to maintain an unusually close relationship with the Senior Foreign Political Figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the Senior Foreign Political Figure.
- (b) **“Foreign Shell Bank”** shall mean a Foreign Bank without a Physical Presence in any country, but does not include a Regulated Affiliate.
- (c) **“Foreign Bank”** shall mean an organization that (i) is organized under the laws of a foreign country, (ii) engages in the business of banking, (iii) is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations, (iv) receives deposits to a substantial extent in the regular course of its business, and (v) has the power to accept demand deposits, but does not include the U.S. branches or agencies of a foreign bank.
- (d) **“Non-Cooperative Jurisdiction”** shall mean any foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Task Force on Money Laundering, of which the U.S. is a member and with which designation the U.S. representative to the group or organization continues to concur.
- (e) **“Physical Presence”** shall mean a place of business that is maintained by a Foreign Bank and is located at a fixed address, other than solely a post office box or an electronic address, in a country in which the Foreign Bank is authorized to conduct banking activities, at which location the Foreign Bank (i) employs one or more individuals on a full-time basis, (ii) maintains operating records related to its banking activities, and (iii) is subject to inspection by the banking authority that licensed the Foreign Bank to conduct banking activities.
- (f) **“Prohibited Investor”** shall mean a person or entity whose name appears on (i) the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Office of Foreign Assets Control; (ii) other lists of prohibited persons and entities as may be mandated by applicable law or regulation; or (iii) such other lists of prohibited persons and entities as may be provided to the Fund in connection therewith.
- (g) **“Regulated Affiliate”** shall mean a Foreign Shell Bank that is an affiliate of a depository institution, credit union or Foreign Bank that maintains a Physical Presence in the U.S. or a foreign country regulating such affiliated depository institution, credit union or Foreign Bank.
- (h) **“Related Person”** shall mean, with respect to any entity, any interest holder, director, senior officer, trustee, beneficiary or grantor of such entity; provided that in the case of an entity that is a publicly traded company or a tax qualified pension or retirement plan in which at least 100 employees participate that is maintained by an employer that is organized in the U.S. or is a U.S. government entity, the term “Related Person” shall exclude any interest holder holding less than 5% of any class of securities of such

publicly traded company and beneficiaries of such plan.

- (i) **“Senior Foreign Political Figure”** shall mean a senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned corporation. In addition, a Senior Foreign Political Figure includes any corporation, business or other entity that has been formed by, or for the benefit of, a Senior Foreign Political Figure.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Subscription Agreement of Kxter Fund One LLC as of the dates written below.

SUBSCRIBER

(Print full legal name)

By: _____

Name: _____

Title: _____

SUBSCRIBER INFORMATION

Capital Commitment: _____

Mailing Address: _____

Telephone: _____

Fax: _____

E-mail: _____

MANAGER ACCEPTANCE

Kxter Advisors LLC hereby accepts the foregoing subscription on the terms set forth herein and in the Fund Agreement, and by such acceptance admits the Subscriber as a Member of the Fund.

Dated: _____

By: _____

Thomas Schneider, Managing Partner

EXHIBIT A

INVESTOR QUESTIONNAIRE

In connection with the Subscriber's purchase of the Interest, the Subscriber makes the following representations on which the Manager and the Fund are entitled to rely:

1. Investor Type. The Subscriber represents and warrants that the Subscriber is, and will hold the Interest as, one of the following [*Please select the applicable option*]:

- Natural person
- C corporation
- S corporation
- Disregarded entity **
- Irrevocable trust ***
- Revocable trust ***
- General partnership
- Limited partnership
- Tax-exempt organization
- Limited liability company
- Estate
- Other entity

** If the Subscriber is a disregarded entity, then the Subscriber must submit such documentation (e.g., Form W-9) that permits the Fund to reliably associate the entity's owners' indirect share of the Fund's income with such owners.

*** If the Subscriber is a grantor trust, then the Subscriber must submit such documentation (e.g., Form W-9) that permits the Fund to reliably associate each grantor's or other owner's indirect share of the Fund's income with such grantor or other person.

2. Investment Company Representation. The Subscriber hereby represents and warrants that the Subscriber is correctly and in all respects described by the category set forth below next to which the Subscriber has checked the applicable box [*Please select the applicable option and complete any additional requested information*]:

- The Subscriber is not an “*investment company*” under the United States Investment Company Act of 1940, as amended (the “**Companies Act**”) nor does the Subscriber rely upon the exclusions from the definition of “*investment company*” provided for in Section 3(c)(1) or 3(c)(7) of the Companies Act.
- The Subscriber is an “*investment company*” under the Companies Act.
- The Subscriber relies on either Section 3(c)(1) or Section 3(c)(7) of the Companies Act to be excepted from the definition of “*investment company*” as defined in Section 3(a) of the Companies Act, and neither the Subscriber nor any Affiliated Subscriber (defined below) has been structured or operated for the purpose of circumventing the registration requirements of the Companies Act. If this option applies, please specify the number of beneficial owners of the outstanding securities (other than short-term paper) of the Subscriber and any existing or prospective Members of the Fund that control, are controlled by, or are under common control with the Subscriber (such other Members referred to as “**Affiliated Subscribers**”): _____

3. Accredited Investor Representation. The Subscriber hereby represents and warrants that the Subscriber is an “*accredited investor*” within the meaning of Rule 501 under the United States Securities Act of 1933, as amended (the “**Securities Act**”) and that the Subscriber is correctly and in all respects described by the category or categories set forth below directly next to which the Subscriber has checked the applicable box [*Please select the applicable option(s)*]:

- The Subscriber is a natural person whose net worth¹, either individually or on a joint basis with the Subscriber’s spouse, exceeds \$1,000,000.
- The Subscriber is a natural person who has had individual income in excess of \$200,000 for each of the two most recent years or joint income with the Subscriber’s spouse in excess of \$300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year.
- The Subscriber is an *irrevocable* trust with total assets in excess of \$5,000,000 whose

¹ The meaning of “net worth” (for purposes of determining whether a Subscriber is an “*accredited investor*”) means the excess of total assets at fair market value over total liabilities. For purposes of this calculation, (a) the amount of the Subscriber’s total assets shall exclude the fair market value of the Subscriber’s primary residence, and (b) the amount of the Subscriber’s total liabilities shall include the amount of the Subscriber’s mortgage and other indebtedness that is secured by the Subscriber’s primary residence which (i) exceeds the fair market value of the Subscriber’s primary residence at the time of the Subscriber’s admission to the Fund, or (ii) has been incurred by the Subscriber within the 60 day period prior to the Subscriber’s admission to the Fund and remains outstanding on the date of the Subscriber’s admission to the Fund (unless such indebtedness was incurred as a result of the acquisition of the Subscriber’s primary residence). If, at the time of the Subscriber’s admission to the Fund, the Subscriber has mortgage and other indebtedness that is described in both of subclauses (i) and (ii) above, then both amounts of indebtedness shall be included in the calculation of the Subscriber’s total liabilities.

purchase of the Interest is directed by a person with such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of the prospective investment in the Interest.

- The Subscriber is a corporation, partnership, limited liability company or business trust, not formed for the purpose of acquiring the Interest, or an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law) (the “**Code**”), in each case with total assets in excess of \$5,000,000.
- The Subscriber is a bank as defined in Section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act, whether acting in its individual or a fiduciary capacity.
- The Subscriber is a broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”).
- The Subscriber is an insurance company as defined in Section 2(13) of the Securities Act.
- The Subscriber is an investment company registered under the Companies Act or a business development company as defined in Section 2(a)(48) of the Companies Act.
- The Subscriber is a small business investment company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.
- The Subscriber is a plan established and maintained by a state, its political subdivisions or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees with total assets in excess of \$5,000,000.
- The Subscriber is a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, as amended (the “**Advisers Act**”).
- The Subscriber is an employee benefit plan within the meaning of Title I of the United States Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), for which the investment decision is made by a plan fiduciary, as defined in Section 3(21) of ERISA, which is either a bank, savings and loan association, insurance company or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, for which investment decisions are made solely by persons that are “*accredited investors*” within the meaning of Rule 501 under the Securities Act.
- The Subscriber is an entity in which all of the equity owners, or a living trust or other revocable trust in which all of the grantors and trustees, are “*accredited investors*” within the meaning of Rule 501 under the Securities Act.

4. ERISA and DOL Representation. The Subscriber understands that the Fund and the Manager are relying upon the Subscriber’s responses within this Section 4 in determining fiduciary responsibilities under ERISA and related rules and regulations. The Subscriber hereby represents and warrants that the Subscriber is correctly and in all respects described by the category set forth below next to which the Subscriber has checked the applicable box [*Please select the applicable option*]:

- The Subscriber is an “*employee benefit plan*,” as defined in Section 3(3) of ERISA, that is subject to the provisions of Part 4 of Title I of ERISA.
- The Subscriber is a “*plan*” as defined in Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code (including, by way of example only, an individual retirement account).
- The Subscriber is an entity that is deemed to be a “*benefit plan investor*” under the U.S. Department of Labor final plan assets regulation, 29 C.F.R. §2510.3-101, as amended (the “**DOL Regulation**”) and as modified by Section 3(42) of ERISA, because its underlying assets include “*plan assets*” by reason of a plan’s investment in the entity (including, by way of example only, a partnership or other entity: (A) in which twenty-five percent (25%) or more of each class of equity interests is owned by one or more “*employee benefit plans*” or “*plans*” described above or by one or more other entities described above in this Section 4, applying for this purpose the proportional ownership rule set forth in the final sentence of Section 3(42) of ERISA, and (B) that does not qualify as a “*venture capital operating company*” or “*real estate operating company*” under the DOL Regulation).
- The Subscriber is not an “*employee benefit plan*,” “*plan*” or “*benefit plan investor*” described in the foregoing provisions of this Section 4.

5. Investment Representations. The Subscriber makes the following representations [*Please select the applicable options and complete any additional requested information*]. **If a “False” box is checked in this Section 5, please provide a brief explanation and contact the Manager immediately.**

True False The Subscriber was not organized for the purpose of acquiring the Interest.

True False To the best of the Subscriber’s knowledge, the Subscriber does not control, nor is it controlled by, or under common control with, any other Member of the Fund. If this representation is checked “False,” please identify the applicable entity(ies): _____

True False The Subscriber has made investments prior to the

date hereof or intends to make investments in the near future and each beneficial owner of interests in the Subscriber has and will share in the same proportion of each such investment.

True False

The Subscriber's investment in the Fund will not constitute more than forty percent (40%) of the Subscriber's assets (including for this purpose any committed capital for a Subscriber that is an investment fund).

True False

The governing documents of the Subscriber require that each beneficial owner of the Subscriber, including, but not limited to, shareholders, partners and beneficiaries, participate through such beneficial owner's interest in the Subscriber in all of the Subscriber's investments and that the profits and losses from each such investment are shared among such beneficial owners in the same proportions as all other investments of the Subscriber. No such beneficial owner may vary such beneficial owner's share of the profits and losses or the amount of such beneficial owner's contribution for any investment made by the Subscriber.