

# Appendix 1: Sample Limited Partnership Agreement

LIMITED PARTNERSHIP AGREEMENT

Among

GENERAL PARTNER I LIMITED

FUND MANAGER LIMITED

SPECIAL LIMITED PARTNER L.P.

And

THE LIMITED PARTNERS

Constituting

VCPE FUND I LIMITED PARTNERSHIP

Dated

2008

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## DEED OF LIMITED PARTNERSHIP

**T H I S LIMITED PARTNERSHIP AGREEMENT** is made as of the [•] day of [•] 2008 and among General Partner I Limited, whose registered office is at [•], as the General Partner (the "General Partner"), Fund Manager Limited, whose registered office is at [•], as the manager (the "Manager"), Special Limited Partner L.P. and having its place of business at [•] (the "Special Limited Partner") and the investors which subscribe to this Agreement from time to time as limited partners (the "Limited Partners").

### W H E R E A S :-

- (A) The partnership to be governed by this Agreement was established as a limited partnership in [•] under the Limited Partnerships Act [•] on [•] 2008 between the General Partner and the Special Limited Partner (together, the "Original Partners") with the name VCPE Fund I Limited Partnership (the "Original Agreement").
- (B) The business of the Partnership is to carry on the business of investing and monitoring investments made as part of the Fund (known as " VCPE Fund I Limited Partnership ") and to carry out all functions and acts in connection therewith in partnership.
- (C) The General Partner and the Special Limited Partner wish to admit the Limited Partners to the Partnership for the purposes of and upon the terms and conditions set out in this Agreement which shall hereafter apply to the Partnership in substitution for the terms of the Original Agreement.

**N O W T H E R E F O R E** the parties hereto hereby agree as follows:-

### 1. DEFINITIONS

1.1 In this Agreement the following expressions shall have the following meanings:-

"Abort Costs" means those costs and expenses incurred in connection with proposed Investments which do not proceed;

"Accounting Date" means 31 December 2008 and 31 December in each year thereafter or such other date as the Manager may determine and notify to the Limited Partners or (in the case of the final Accounting Period) the date when the Partnership is terminated;

"Accounting Period" means a period ending on and including an Accounting Date and beginning (in the case of the First Accounting Period) on the commencement of the Partnership or, in all other cases, on the day following the preceding Accounting Date;

"Account Manager" means the trustee (or similar) from time to time of the Frozen Funds Account which trustee (or similar) shall be selected by the Manager and approved by the Advisory Board and shall be a person who is not an Associate of the Manager;

"Acquisition Cost" means the acquisition cost of an investment in an Investee Company made by the Partnership together with any expenses associated with

such acquisition which (including without limitation any costs of hedging against exposures arising as a result of fluctuating rates of exchange associated therewith) are payable by the Partnership;

"the Act" means the Limited Partnerships Act [•], as amended from time to time;

"Additional Limited Partner" means a person who becomes a Limited Partner at a subsequent Closing in accordance with clause 3.5 or, to the extent of its additional Commitment, a Limited Partner which increases its Commitment to the Partnership at a subsequent Closing. All references in this Agreement to Limited Partners shall (except where the context requires otherwise) include any Additional Limited Partner with effect from the date of its admission to the Partnership;

"Additional Partnership" means any further investment vehicle which has been or may be established in the [•] or elsewhere and included in the Fund as a parallel co-investment vehicle and which invests pro rata and in parallel with the Partnership, the terms and provisions of the agreement constituting any such further limited partnership being substantially similar (save without limitation for differences necessary or desirable for regulatory, tax or legal reasons) to the terms and provisions of the agreement constituting the Partnership;

"Additional Payment" means in respect of each Additional Limited Partner the additional sum payable pursuant to clause 3.5(g);

"Advisory Board" means a limited partner advisory board as described in clause 12.2 and consisting of one representative nominated by each Limited Partner or investor in any other Partnership who has made a commitment of EUR [•] million or more to the Fund and such additional nominees representing the Limited Partners in the Partnership and the investors in the other Partnerships as may be appointed by the Manager, which board will review the Partnerships' annual valuations, the Fund's investment objectives, strategy and performance and any actual or potential conflicts of interest;

"Aggregate Acquisition Cost" means the aggregate acquisition cost of investments in an Investee Company made by the Partnerships together with any expenses associated with such acquisition (including, without limitation, any costs of hedging against exposures arising as a result of fluctuating rates of exchange associated therewith) which are paid by the Partnerships;

"Agreement" means this Limited Partnership Agreement, as amended from time to time;

"Arbitrator" means the arbitrator appointed in accordance with the terms of clause 10.5;

"Associate" means, any entity which in relation to the person concerned is:

- (a) if the person concerned is a body corporate, any holding company or a subsidiary or a subsidiary of any such holding company or any partnership which is a subsidiary undertaking of the person concerned or of any such holding company; or
- (b) if the person concerned is an individual or a firm or another unincorporated body, any body corporate or partnership where 50 % or more of the votes exercisable at an extraordinary general meeting or partners meeting, or more than 50 % of the profits of which are directly or indirectly controlled by such person;

"Auditors" means the firm of chartered accountants appointed to act as auditors to the Fund, the first such auditors being [•];

"Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks are open for business in [•];

"Capital" means amounts properly determined by the Manager (after consultation with the Auditors where appropriate) to be in the nature of capital and available for distribution by the Partnership or (as the case may be) already distributed by the Partnership, including the value (calculated in accordance with this Agreement) of any assets of the Partnership distributed in specie and including Capital Gain;

"Capital Contribution" means, in respect of the Special Limited Partner and the Limited Partners, the amount in Euros contributed to the capital of the Partnership by each such Partner but excludes the amount of any Loan;

"Capital Gain" means:

- (a) the amount (if any) by which the proceeds of disposal of an Investment (or any part thereof), after the deduction of any expenses associated with such disposal payable by the Partnership, exceed the Acquisition Cost of such Investment (or part thereof); or
- (b) in the case of an Investment (or any part thereof) which is realised by being distributed in specie to the Partners following a Listing, on termination of the Partnership or as a result of regulatory considerations including, without limitation, ERISA, means a sum equal to the value of such Investment (or any part thereof) calculated either:
  - (i) in the case of an Investment which has achieved a Listing, by reference to the Mid-Price thereof; or
  - (ii) in the case of an unlisted Investment, by reference to the current market value calculated in accordance with clause 10.6(d);

less, in the case of either (i) or (ii) above, the Acquisition Cost of such Investment;

"Carried Interest" means the sums paid or payable to the Special Limited Partner in respect of its entitlement to share in profits of the Partnership in the circumstances set out in clause 7.1;

"Closing" means any occasion upon which investors are admitted to any of the Partnerships pursuant to clauses 3.3 and/or 3.5 or any equivalent provision contained in any of the agreements constituting any of the Partnerships;

"Closing Date" means any date upon which a Closing occurs;

"Code" means the United States Internal Revenue Code of 1986, as amended;

"Commitment" means, in respect of each Limited Partner, the aggregate of the Capital Contribution and the Loan advanced or agreed to be advanced by each Limited Partner (whether or not such Loan has been repaid to such Limited Partner in whole or in part pursuant to clause 8.5 hereof) but excluding any amounts paid pursuant to clause 3.5(g) but subject always to the provisions of clause 4.3(c);

"Commitment Period" means the period beginning on the Initial Closing Date and expiring on the earlier to occur of those events specified in clause 4.6(a);

"Custodian" means, as at the date hereof, [•] Asset Management Limited, a company incorporated in [•] and/or any other entity which replaces the existing Custodian in accordance with the terms hereof;

"Custody and Administration Agreement" means the agreement or agreements dated on or around the date hereof relating to the custody and administration of the Partnership and made between the Custodian, the Manager and the Partnership acting by its general partner;

"Drawdown Notice" means a notice served on the Limited Partners by the Manager pursuant to clause 4.3(b) of this Agreement;

"Drawings Date" means 1 January, 1 April, 1 July and 1 October in each year;

"ERISA" means the United States Employee Retirement Income Security Act of 1974, as amended;

"ERISA Plan Assets Regulation" means the United States Department of Labor Regulation 29 CFR Section 2510.3-101 promulgated under ERISA;

"EUR or Euro" means the euro, the single currency of the participating member states of the European Union;

"Escrow Account" means the account established by the Manager in the name of and controlled by an escrow agent appointed by the Manager on terms agreed between them and approved by the Advisory Board (such terms to include and be consistent with the terms of Clause 8.3 of this Agreement);

"EURIBOR" means the European Interbank Offered Rate, being the arithmetic mean of the rates at which six month deposits in Euro are offered by the official panel of banks across participating member states of the European Union at 11:00 am London time on any Business Day to prime banks in the London interbank market;

"Europe" means, for the purposes of this Agreement, Europe and Israel;

"EVCA" means the European Private Equity and Venture Capital Association;

"Extraordinary Investor Consent" means the written consent consisting of one or more documents in like form each signed by such number of the Limited Partners (which for the avoidance of doubt does not include the SPV or the Special Limited Partner) and the investors in any of the other Partnerships (other than in each case any person who is a defaulting partner or investor in any of the Partnerships) who, at the time of providing such consent, hold 60 % or more of the total Fund Commitments and for the avoidance of doubt any such person shall be entitled to split its commitment for these purposes so that any such person may consent in respect of part of its commitment and withhold consent in respect of the balance;

"Extraordinary Investor Special Consent" means the written consent consisting of one or more documents in like form each signed by such number of the Limited Partners (which for the avoidance of doubt does not include the SPV or the Special Limited Partner) and the investors in any of the other Partnerships (other than in each case any person who is a defaulting partner or investor in any of the Partnerships) who, at the time of providing such consent, hold 85 % or more of the total Fund Commitments and for the avoidance of doubt any such person shall be entitled to split its commitment for these purposes so that any such person may consent in respect of part of its commitment and withhold consent in respect of the balance;

"Final Closing Date" means the date upon which investors are last admitted to any of the Partnerships, which shall in any event occur on or before the date which falls nine months after the Initial Closing Date or such later date as the Limited Partners (and investors in the other Partnerships) may approve by an Investor Special Consent;

"Frozen Funds Account" means a Euro denominated interest bearing cash deposit account together with such other accounts (including custody accounts) as the Account Manager shall deem appropriate established in the name of the Account Manager and operated on terms agreed between the Manager and the Account Manager and approved by the Advisory Board (such terms to include and be consistent with the terms of Clause 10.5 of this Agreement);

"Fund" means the fund known as VCPE Fund I being comprised of the aggregate amount of the commitments to the Partnerships, it being understood that each of these will invest in each Investee Company on a pro-rata basis and

in parallel, subject to the terms of the agreements in respect of such Partnerships;

"Fund Commitments" means the aggregate of the total Commitments to the Partnership and the total commitments to the other Partnerships;

"General Partner's Profit Share" means the priority General Partner's Profit Share equal to Euro 5,000 per annum calculated and payable quarterly in advance to the General Partner;

"Gilts" means debt securities issued by governments, financial institutions or other entities with a credit rating of AA or better, money market deposits or other similar liquid investments;

"Income" means all profits, interests, dividends and other benefits (including Tax Credits) of the Partnership properly determined by the Manager (after consultation with the Auditors where appropriate) to be in the nature of income (but excluding any Capital) including income arising from Temporary Investments other than Temporary Investments which are or are capable of being Realised Temporary Investments;

"Initial Closing Date" means the date upon which investors are first admitted as investors to any of the Partnerships;

"Investee Companies" means the bodies corporate or other entities (including their Associates) in which Investments have been made directly or indirectly through a holding company by the Partnership;

"Investment Review Panel" means the panel consisting of such persons as may be appointed and replaced by the Manager from time to time who will meet quarterly with the Manager to review the progress of the Fund and conditions in the [•] sector generally;

"Investments" means investments acquired by the Partnership including but not limited to shares, debentures, convertible loan stock, options, warrants or other securities in or in respect of the capital of any body corporate or other entity, undertaking or body and loans (whether secured or unsecured), made to any body corporate or other entity, undertaking or body by the Partnership (provided that in the case of a loan, any such loan is not the only investment acquired by the Partnerships in such entity) but excluding Temporary Investments;

"Investor Consent" means the written consent consisting of one or more documents in like form each signed by such number of the Limited Partners (which for the avoidance of doubt does not include the SPV or the Special Limited Partner) and the investors in any of the other Partnerships (other than in each case any person who is a defaulting partner or investor in any of the Partnerships) who, at the time of providing such consent, hold over 50 % of the total Fund Commitments and for the avoidance of doubt any such person shall be entitled to split its commitment for these purposes so that any such person

may consent in respect of part of its commitment and withhold consent in respect of the balance;

"Investor Special Consent" means the written consent consisting of one or more documents in like form each signed by such number of the Limited Partners (which for the avoidance of doubt does not include the SPV or the Special Limited Partner) and the investors in any of the other Partnerships (other than in each case any person who is a defaulting partner or investor in any of the Partnerships) who, at the time of providing such consent, hold 75 % or more of the total Fund Commitments and for the avoidance of doubt any such person shall be entitled to split its commitment for these purposes so that any such person may consent in respect of part of its commitment and withhold consent in respect of the balance;

"IRR" means the compound annual internal rate of return, as calculated on a daily basis;

"Key Executives" means, at the date hereof, [•],[•],[•] and may include any other person appointed as a "Key Executive" by the Manager by way of replacement for an existing Key Executive or as an additional Key Executive, from time to time, with the prior approval of the Advisory Board (such approval not to be unreasonably withheld);

"Legal Opinion" means, for the purpose of clause 10.1 of this Agreement, a legal opinion issued by legal counsel of good repute, which legal counsel has previously been approved by the Manager (such approval not to be unreasonably withheld);

"Limited Partner" means an individual, trustee, corporation, partnership or other entity which subscribes to this Agreement as a limited partner and any person who is subsequently admitted to the Partnership as an Additional Limited Partner or Substitute Limited Partner, in each case for so long as they remain a limited partner in accordance with the terms of this Agreement;

"Listing" means in relation to an Investment comprising securities, the admission of such securities to any recognised stock exchange or market for dealing in securities;

"Loan" means, in respect of a Limited Partner, the aggregate amount (if any) of the interest-free subordinated loan advanced or agreed to be advanced (as the context may require) to the Partnership by each such Limited Partner;

"Loss" means:

- (a) the amount (if any) by which the Acquisition Cost of an Investment (or any part thereof) exceeds the proceeds of disposal of such Investment or part thereof (less expenses associated with the disposal paid by the Partnership); or

- (b) in the case of an Investment (or any part thereof) which is realised by being distributed in specie to Partners following a Listing, on termination of the Partnership or as a result of regulatory considerations, including, without limitation, ERISA, the amount (if any) by which the Acquisition Cost thereof exceeds the value of such Investment (or any part thereof) calculated as follows:
  - (i) in the case of an Investment which has achieved a Listing, by reference to the Mid-Price; or
  - (ii) in the case of an unlisted Investment calculated in accordance with clause 10.6(d) hereof;

"Manager" means, at the date hereof, Fund Manager Limited, a company incorporated in [•] and/or any other entity which replaces the existing Manager in accordance with the terms hereof;

"Management Fee" means the annual management fee to which the Manager is entitled, such fee being calculated and payable quarterly in advance in accordance with Clause 5.7;

"Mid-Price" means the average of the mid-market closing price of the relevant securities on the five (5) days immediately prior to date of distribution as published by the primary stock exchange on which securities are listed on the relevant date or, if applicable, or the distribution occurs less than 10 days after a Listing, the average price obtained in a placing or Listing of the relevant securities immediately preceding the distribution;

"Offering Document" means the information memorandum relating to the Fund together with any supplemental Offering Document thereto;

"Partner" or "Partners" means the General Partner, the Special Limited Partner and/or all or any of the Limited Partners, as the context may require;

"Partnership" means the limited partnership constituted by this Agreement;

"Partnership Assets" means all of the assets of the Partnership (including, for the avoidance of doubt, undrawn Commitments to the extent that Limited Parties are obliged to satisfy drawdowns in respect thereof, under the terms of this Agreement);

"Partnership Proportion" means the proportion which the aggregate Commitments to the Partnership bears to the aggregate Fund Commitments at the relevant time;

"Partnerships" means the Partnership and each other limited partnership formed as part of the Fund as a parallel investment vehicle, each of the Additional Partnerships or any of them;

"Realised Temporary Investment" means a Temporary Investment which has been or may be terminated or realised by way of a subsequent syndication within six months of its acquisition;

"Registrar" means the Registrar of Limited Partnerships in [•];

"Scientific Advisory Panel" means the panel consisting of such persons as may be appointed and replaced by the Manager from time to time and who will review the scientific merits of investment proposals;

"Securities Act" means the United States Securities Act of 1933 (as amended);

"SME" means a small or medium size enterprise, being an enterprise which (when taken together with its affiliates) at the time of initial investment: (i) does not employ more than 500 employees; (ii) according to its most recent balance sheet, shows net fixed assets not exceeding Euro 75 million; and (iii) is not owned as to more than one third of its capital by one or more enterprises which do not qualify as SMEs;

"Southern Europe" means any one or more of Italy, Spain, Portugal and Greece;

"Special Limited Partner" means Special Limited Partner L.P., an [•] limited partnership and the special limited partner in its capacity solely as the recipient of Carried Interest and/or any Substitute Special Limited Partner who shall be admitted to the Partnership as the successor to all or part of the rights and the liabilities of the Special Limited Partner in such capacity;

"Spot Rate of Exchange" means the average of the bid and offer spot rates of exchange between Euro and another currency (being the spot rate for purchasing and for selling Euro in exchange for the other currency respectively) in London at 5.00 p.m. on the relevant date as certified by the Manager;

"SPV" means a limited company to be incorporated in an appropriate jurisdiction selected by the Manager, if required, for the sole purpose of receiving the interests of any Limited Partner whose interest is cancelled under clause 4.5 of this Agreement and any similar provision in any agreement relating to any Additional Partnerships and in which all investors in the Fund (other than the person whose interest is cancelled) will together hold shares representing 80% of the total issued share capital, such shares to be held in proportion to their Commitments to the Partnerships and the Special Limited Partner will initially hold shares representing 20% of such total issued share capital;

"Substitute Limited Partner" means a person admitted pursuant to clause 9.2 hereof as the successor to all or part of the rights and liabilities of a Limited Partner in respect of such Limited Partner's interest in the Partnership;

"Substitute Special Limited Partner" means a person admitted pursuant to clause 9.2 hereof as the successor to all or part of the rights and liabilities of the

Special Limited Partner in respect of the Special Limited Partner's interest in the Partnership;

"Suspension Period" means a period during which no Investments are permitted to be made by the Partnership pursuant to clause 5.10 hereof;

"Tax Credits" means any income tax withheld or paid or any tax credits attaching to such income, in each case to the extent that, in the opinion of the Auditors, such amounts would usually be available as credits to a [•] resident company in computing its liability to [•] taxation;

"Temporary Investment" means an underwriting or similar short term Investment entered into, for a period of 6 months or less, in accordance with clauses 5.3(s), 6(e) and 6(f);

"Transaction Fee" means such fees as are payable to the Manager, any of its Associates or the Partnership (other than the Management Fee and any distributions made under clause 8), including: any transaction fee payable by an Investee Company negotiated by the Manager or its Associates in connection with the arrangement of a completed Investment; or for the participation of the Partnership in an Investment; or any abort fee payable by a vendor in connection with a proposed Investment which does not proceed; or any directors' fee charged to an Investee Company or any such fees in relation to the giving of guarantees, indemnities, covenants and undertakings by the Partnership pursuant to clause 5.3(g); or any monitoring fee charged by the Manager or its Associates to an Investee Company;

"UBTI" means unrelated business taxable income as defined under Sections 512-514 of the Code;

"US Person" has the meaning set out in Regulation S under the Securities Act.

"VAT" means within the European Community such tax as may be levied in accordance with but subject to derogations from the Directive 77/338/EEC and outside the European Community any taxation levied by reference to added value or sales.

- 1.2 Reference herein to any statute or statutory instrument or governmental regulation shall be deemed to include any modification, amendment, extension or re-enactment thereof.
- 1.3 Reference herein to persons shall include bodies corporate, unincorporated associations and partnerships.
- 1.4 In this Agreement the masculine shall include the feminine and the neuter and the singular shall include the plural and vice versa as the context shall admit or require.
- 1.5 In this Agreement the headings used are for ease of reference only and shall not be deemed to form any part of this Agreement.
- 1.6 The word "control" shall, in this Agreement, have the meaning set out in section 840 of the Income and Corporation Taxes Act [•].

1.7 The words "subsidiary" and "holding company" shall bear the respective meanings attributed to them in sections [•] and [•] of the Companies Act [•].

1.8 Capitalised terms not defined herein shall have the same meaning as ascribed to them in the Offering Document.

## 2. **COMPLIANCE WITH THE ACT, NAME, PURPOSE, COMMENCEMENT AND DURATION, PRINCIPAL PLACE OF BUSINESS AND CO-INVESTMENT**

### 2.1 **Compliance with the Act**

The Partnership is a limited partnership which has been registered pursuant to the Act. As required by the Act, the General Partner shall procure that particulars of any relevant changes in the composition or terms of the Partnership effected pursuant to this Agreement and any further changes which may occur in the future shall forthwith be notified to the Registrar in a statement specifying the date and nature of such change. In accordance with the Act, the General Partner shall also procure that the amounts mentioned in clauses 3.2 and 3.3 hereof shall be registered as the amount of capital contributed by the Special Limited Partner and the Limited Partners. The General Partner shall furthermore procure that the requirements of the Act and of any other legislation or regulations applicable to the Partnership are duly satisfied.

### 2.2 **Liability of Partners**

In the event that the Partnership is unable to pay its debts, liabilities or obligations, the liability of the Special Limited Partner, any Limited Partner or the SPV will be limited to the amount of its Capital Contribution together (in the case of a Limited Partner) with such portion of the Loan advanced or to be advanced to the Partnership by such Limited Partner and as shall not at the relevant time have been repaid by the Partnership and references to Partnership Assets shall be construed accordingly. The General Partner will (on an unlimited basis) be fully liable for such of the Partnership's debts, liabilities and obligations as exceed the total liability of the Special Limited Partner, the Limited Partners and the SPV.

### 2.3 **Name**

The business of the Partnership shall be carried on under the name and style or firm name of "VCPE Fund I Limited Partnership" or such other name as the General Partner shall from time to time decide after giving written notice thereof to the Limited Partners.

### 2.4 **Purpose**

The purpose of the Partnership is to carry on the business of investing and monitoring investments made with the principal objective of achieving a higher rate of return through capital appreciation than might be achievable through a comparable portfolio of quoted equities. The Partnership may execute, deliver and perform all contracts and other undertakings and engage in all activities and transactions as may in the opinion of the Manager be necessary or advisable in order to carry out the foregoing purposes and objectives. The Partnership shall have power (either directly or indirectly through a special purpose corporate vehicle established by the Partnership) to, inter alia, give guarantees, indemnities and undertakings pursuant to clause 5.3(g) of this Agreement.

## 2.5 **Commencement and Duration**

The Limited Partners and the Special Limited Partner shall be investors in the Partnership as from the date of this Agreement or, if later, the date of their admission to the Partnership. The term of the Partnership shall continue until the tenth anniversary of the Initial Closing Date unless sooner terminated in accordance with the provisions of clause 10.1 hereof or extended in accordance with the provisions of clause 10.3 hereof. No person shall be admitted to the Partnership as a Limited Partner if the sum of the aggregate Fund Commitments (including the Commitment of such person and the commitment of any other person admitted at the same time to any of the Partnerships) is less than EUR 90 million.

## 2.6 **Principal Place of Business**

The principal place of business of the Partnership shall be at [•] or such other place in the European Union as the General Partner may from time to time determine after giving written notice thereof to the Limited Partners.

## 3. **CAPITAL CONTRIBUTIONS**

### 3.1 **General Partner**

The General Partner shall contribute by way of Capital Contribution Euro 10 to the Partnership.

### 3.2 **Special Limited Partner**

At any closing, the Special Limited Partner shall to the extent not previously contributed, contribute by way of Capital Contribution sums which, together with any such amounts previously contributed, equal 20% of the aggregate Capital Contributions of the Limited Partners and the Special Limited Partner as at any Closing.

### 3.3 **Limited Partners**

- (a) The Capital Contribution of each Limited Partner shall be as set out in Schedule 1 hereto (being 0.01 percent of its Commitment). Each Limited Partner shall contribute the full amount of its Capital Contribution pursuant to a first Drawdown Notice issued on or around the Initial Closing Date for payment within ten Business Days of the date of such notice or, in the case of an Additional Limited Partner admitted pursuant to clause 3.5, pursuant to a first Drawdown Notice issued on or around the Closing Date at which such Additional Limited Partner was admitted to the Partnership for payment within ten Business Days of the date of such notice. All such amounts contributed by a Limited Partner shall be deemed to have been contributed on the Initial Closing Date for the purposes of this Agreement.
- (b) The SPV shall make a Capital Contribution to the Partnership of EUR 1 on the date of its admission to the Partnership (which date shall be determined by the Manager in its sole discretion) and shall not be required to contribute any Loans. It will then be a Limited Partner from the date of such admission and, in the event of a cancellation of the interest of a Limited Partner under clause 4.5,

shall participate in all Income and Capital of the Partnership arising on Investments made prior to such cancellation to the same extent that the cancelled Limited Partner would have done but for the cancellation of its interest, but shall not so participate beyond this amount. The provisions of clauses 7 and 8 shall be construed as if the SPV was the sole Limited Partner in the Partnership in respect of its share of Investments. Where the interest of more than one Limited Partner is cancelled under clause 4.5, the provisions of this clause shall be applied separately in relation to the SPV's holding of the interest formerly held by each such Limited Partner.

### 3.4 **Interest**

No interest shall be paid or payable by the Partnership upon any Capital Contribution or Loan or upon any amount, whether of Income or Capital, allocated to any Partner but not yet distributed to it.

### 3.5 **Increase in Capital**

- (a) Save for the admission of Additional Limited Partners as provided in sub-clauses (b) to (h) below and the admission of the SPV pursuant to clause 3.3(b) the capital of the Partnership may only be increased from time to time by such amount as may be agreed between the Partners by an Investor Special Consent.
- (b) The Manager may, at one or more subsequent Closings, admit Additional Limited Partners to the Partnership after the date hereof up to the Final Closing Date (with the exception of the SPV which may be admitted at any time).
- (c) The Manager may, at one or more subsequent Closings, admit persons as limited partners or additional investors in any other of the Partnerships at any time after the Initial Closing Date up to the Final Closing Date. The Manager shall procure that the constitutional documents of each of the Partnerships shall include provisions inter alia to give effect to the principles of clauses 3.5(f) and (g) and 3.6 hereof regarding adjustments to be made on such Closings.
- (d) Where an Additional Limited Partner is admitted to the Partnership, such Partner shall be required to execute a form of application in such form as the Manager may require and such form of application shall be appended to this Agreement.
- (e) Where an Additional Limited Partner is admitted to the Partnership, the amount of the Capital Contribution of the Special Limited Partner set out in clause 3.2 hereof shall be increased to reflect any resulting increase in the aggregate Capital Contributions of the Limited Partners in the Partnership, so that the Capital Contributions of the Special Limited Partner, shall always equal 20% of the total Capital Contributions of the Limited Partners and the Special Limited Partner.
- (f) On admission to the Partnership, each Additional Limited Partner shall be required to pay to the Partnership its appropriate Capital Contribution together with a sum equal to the amount of the Loan which it would have been required

to pay had it been a Limited Partner as from the Initial Closing Date. The Additional Limited Partner's undrawn Commitment shall be reduced by the sum paid under this clause 3.5(f).

- (g) In addition, any person admitted as an Additional Limited Partner to the Partnership after the Initial Closing Date will be required to pay to the General Partner (as agent for the Partnerships and to be disbursed among the Partnerships in accordance with clause 3.6) on admission to the Partnership, an additional sum equivalent to interest on the amount of its Capital Contribution and the Loan(s) which it is required to pay on admission at a rate of EURIBOR plus 2% compounded annually, which sum shall accrue from the date or dates upon which such Capital Contribution or Loan(s) would have been payable had it been a Limited Partner in the Partnership on the Initial Closing Date up to the date of admission to the Partnership. In addition such Additional Limited Partner shall be obliged to pay any stamp duty, stamp duty reserve tax or other transfer taxes which may arise from any allocation and adjustment made pursuant to clause 3.6 below which results from such Additional Limited Partner being admitted to the Partnership.
- (h) The Manager agrees that it will not admit any person as a Limited Partner at any Closing if, as a result, the aggregate Fund Commitments (including the Commitments made at such Closing by such person and the commitments made by any investor admitted at such Closing to any of the other Partnerships) would thereby be greater than EUR400 million, without the prior sanction of an Investor Special Consent.

### 3.6 Closing Adjustments

- (a) On, or as soon as possible after each Closing after the Initial Closing Date, the Manager shall apply the Additional Payments received by it from investors admitted to any of the Partnerships at that Closing together with the amount subscribed by all such investors pursuant to clause 3.5(f) (or any equivalent provision of any other partnership agreement) in making payments to each of the Partnerships in such proportions as may be required so as to ensure (following any adjustments made under this clause 3.6 and after allocating the Management Fee to the Manager and the General Partner's Profit Share to the General Partner payable by reference to the Commitments of the Additional Partners with effect from the Initial Closing Date and after payment of any costs associated with any adjustments made under this clause 3.6 (other than any costs relating to stamp duty, stamp duty reserve tax or other transfer taxes arising from any reallocation or adjustment made pursuant hereto which shall be borne by those Limited Partners whose addition to any of the Partnerships results in such stamp duty, stamp duty reserve tax or other transfer taxes)) parity between all of the Partnerships and parity between the investors in each of the Partnerships. In effecting such adjustments the Manager shall take all necessary steps including making payments to the other Partnerships and causing the Partnership to receive appropriate payments from the other Partnerships and shall thereupon allocate all payments so made or received among the Limited

Partners in such a way that, in combination with similar provisions in the agreements constituting the other Partnerships, all investors in the Partnerships should be placed in the same economic position as if they had been admitted to the relevant Partnership on the Initial Closing Date.

- (b) If the Partnerships shall have made any investment prior to the admission of any additional investors to any of the Partnerships then, following such admission, the calculation made pursuant to clause 5.3(b) hereof to establish the appropriate proportion of the Aggregate Acquisition Cost of the Investment to be paid by the Partnership shall be repeated (or if no previous calculation has been made a calculation shall be made hereunder) taking into account any increase in the aggregate commitments to any of the Partnerships and the increase in the aggregate commitments to the Fund. The Manager shall procure that, following such calculation, appropriate adjustments are made to the proportion of the aggregate investments held by each of the Partnerships by transferring appropriate portions of any relevant Acquisition Cost to such of the Partnerships as may be necessary and similarly causing the other Partnerships respectively to transfer appropriate portions of any relevant Acquisition Cost to each of the Partnerships and in all cases procuring that appropriate cash payments are made to or by the appropriate Partnership. The cash payments received by any Partnership under clause 3.6(a) and this clause 3.6(b) shall not be treated as the proceeds of realisation of an investment and accordingly shall be distributed to the Limited Partners in repayment of Loans but in such case such amount shall be capable of being drawn down again from such Limited Partners.
- (c) Following the Final Closing Date the Manager shall cause the Partnership to receive payments from or make payments to the other Partnerships and cause the other Partnerships to make payments to the Partnership or to each other (to the extent that such reallocations have not taken place pursuant to clauses 3.6(a) and (b) above) with the intent that the expenses of the Partnerships and allocations made in respect of the General Partner's Profit Share shall be allocated between the Partnerships pro-rata to their aggregate Commitments on the Final Closing Date.

### 3.7 **Registration under the Act**

The General Partner shall be entitled (but not obliged), on each Closing, to conduct a notional conversion of the Capital Contribution made by each of the Limited Partners admitted or to be admitted to the Partnership on such Closing into [•] at the Spot Rate of Exchange applicable on the Initial Closing Date, and shall in the event that any such conversion occurs use such sterling equivalent for the purpose of notifying the Registrar pursuant to the Act.

## 4. **LOANS**

### 4.1 **General Partner**

The General Partner shall not be required to advance any Loan to the Partnership.

#### 4.2 **Special Limited Partner**

The Special Limited Partner shall not be required to advance any Loan to the Partnership.

#### 4.3 **Limited Partners**

- (a) The Loans to be made by each of the Limited Partners shall be as set out in Schedule 1 and, subject to clause 4.6, shall be advanced by each such Limited Partner as to 2.49% of its Commitment pursuant to a first Drawdown Notice issued on or around the Initial Closing Date for payment within twelve Business Days of the date of such notice or, in the case of an Additional Limited Partner admitted after the Initial Closing Date pursuant to clause 3.5, pursuant to a first Drawdown Notice issued on or around the Closing Date at which it was admitted to the Partnership for payment within ten Business Days of the date of such notice.
- (b) The balance of such Loans shall be advanced at such times after the Initial Closing Date as the Manager may require either for the purpose of making Investments, for working capital purposes or to satisfy obligations of the Partnership. The Manager shall give not less than twelve Business Days written notice requesting payment from Limited Partners by issuing a Drawdown Notice. On all such occasions the same percentage of their Commitment shall be advanced by all the Limited Partners and each Drawdown Notice shall contain a statement to this effect. Any such Drawdown Notice shall contain brief details (including the location of a proposed Investee Company) of the proposed Investment to which the sums raised pursuant to such Drawdown Notice are intended to be applied (but need not refer to the name of the prospective Investee Company or its subsidiaries provided that such name shall, in any event, be notified to the Limited Partners as soon as reasonably practicable after the proposed Investment has been made) or shall indicate that the sum is required for working capital or expenses or to satisfy any obligation of the Partnership. The Manager shall use its reasonable endeavours to ensure that the information supplied to such Limited Partners hereunder is accurate and not misleading and provided that the General Partner has used such reasonable endeavours, it shall be under no liability to any Limited Partner in the event that it is subsequently discovered that any such information was not in fact accurate or was found to be in some way misleading. For the avoidance of doubt, no Limited Partner shall be required to meet any Drawdown Notice to the extent that to do so would result in the sum of its Capital Contributions and Loans drawn down exceeding its total Commitment (save to the extent that any Commitments repaid to a Limited Partner may be recalled pursuant to the terms of this Agreement).
- (c) At any time after the seventh anniversary of the Initial Closing Date (provided always that prior approval has been obtained from the Advisory Board) the Manager shall be entitled, in its absolute discretion, to reduce the undrawn Commitment of each Limited Partner (on a pro rata basis) by such amount as he

may determine and if such Commitments is so reduced he shall notify each Limited Partner in writing of such reduction (including the amount thereof) as soon as practicable thereafter. In the event that the Manager exercises this discretion, all references in this Agreement to Commitment shall thereafter be deemed to be references to this reduced amount.

#### 4.4 **Currency, Interest and Repayment**

- (a) Loans shall only be drawn down in Euros.
- (b) No interest shall be paid or payable by the Partnership upon any Loans advanced to the Partnership by the Limited Partners. Instead any Loans which are drawn down by the Manager prior to the completion of an Investment will, where possible, be invested in cash deposits or Gilts. Any income or capital gain earned thereon will not be allocated or distributed in accordance with clauses 7 and 8 but instead will be allocated to Limited Partners pro-rata to their Capital Contributions and, at the sole discretion of the Manager, retained in the Partnership or distributed to such Limited Partners at the end of each Accounting Period or such earlier date as the Manager may decide.
- (c) Insofar as (i) any Loan is drawn down for the purposes of an Investment and such Investment does not complete or (ii) any portion of any Loan remains unused after completion of an Investment due to an excess drawdown, then such Loan or the relevant portion thereof shall be repaid to Limited Partners but shall be available for further drawdown provided always that the Manager may retain such Loan or a portion thereof if he reasonably determines that it shall be required for the purpose of making other investments, for working capital purposes or to satisfy obligations of the Partnership.
- (d) Loans shall be repaid as provided in clauses 7 and 8 below. Save as provided in clauses 3.6(c), 4.4(c), 6(f) and 7.2(c)(ii), Loans which have been repaid shall not be available for further drawdown.

#### 4.5 **Failure to Comply with Drawdown Notice**

- (a) Notwithstanding any provision of this Agreement to the contrary, if any Limited Partner fails to advance to the Partnership the amount which is the subject of a Drawdown Notice on or before the date of expiry of such Drawdown Notice, then the Manager shall provide written notice of such failure to such Limited Partner. If such Limited Partner does not advance to the Partnership the amount owing within ten Business Days of receipt of such notice, the Manager may then in its sole discretion allow a Limited Partner up to a further 15 Business Days to make such advance after which the Manager shall cancel (without prejudice to any rights which the Partnership or any Partner may have against such Limited Partner) all of the Capital Contribution of such Limited Partner unless the Manager agrees, in consultation with the Advisory Board, that such cancellation shall not be made.

- (b) The Manager shall also cancel all of the Capital Contribution of a Limited Partner who fails to comply with the terms of a Drawdown Notice where such failure is due to such Limited Partner's bankruptcy, insolvency, dissolution, liquidation or other similar event provided that the Manager may in its sole discretion allow such Limited Partner up to 15 Business Days to meet the Drawdown Notice following failure to comply with the terms of the Drawdown Notice.
- (c) Upon cancellation of such Capital Contribution all amounts standing to the credit of such Limited Partner's relevant accounts including loan account shall (to the extent the Manager exercises its discretion hereunder to forfeit the Limited Partners interest) shall thereupon (when the Manager is reasonably satisfied that no legal proceedings have or are likely to commence relating to such forfeiture) accrue to the SPV (including the Capital Contribution of such Limited Partner). In addition, the right to repayment of all of its Loan previously advanced by such Limited Partner shall accrue to the SPV.
- (d) In the event of the right of cancellation being exercised against a Limited Partner under this clause the total Commitments to the Partnership shall be reduced by the amount of the Commitment of the defaulting Limited Partner and thereafter such reduced total Commitment shall apply for the purposes of this Agreement in relation to any Investment acquired after the date of forfeiture and the Carried Interest and the Management Fee accruing from the next following Drawings Date following such forfeiture.

#### 4.6 End of Commitment Period

- (a) The Commitment Period shall terminate on the earliest to occur of:-
  - (i) the fourth anniversary of the Final Closing Date;
  - (ii) the day following that upon which the Manager deems (following consultation with the Advisory Board) that all Commitments are fully drawn down; or
  - (iii) the day on which the Manager in its sole discretion terminates the Commitment Period, provided that as at that date at least 75% of the total Commitments have been drawn down;
  - (iv) the day on which the Manager and the Limited Partners and the limited partners or other investors in each of the Partnerships agree, by an Investor Consent, that the Commitment Period be terminated;
  - (v) the expiry of the six month period referred to in clause 5.10(c).
- (b) No Drawdown Notice shall be served on any Limited Partner after the end of the Commitment Period except to the extent that such Drawdown Notice shall require a Limited Partner to advance any part of its undrawn Commitment for the purpose of:-

- (i) paying ongoing operating expenses of the Partnership including the payment to the Manager of the Management Fee in accordance with clause 5.7;
- (ii) completing Investments and follow-on Investments in respect of which agreements or undertakings to invest have been given prior to the end of the Commitment Period; or
- (iii) completing follow-on Investments in existing Investee Companies;
- (iv) to meet on-going obligations of the Partnership including, without limitation, guarantees and undertakings.

## 5. RIGHTS AND DUTIES OF THE MANAGER

### 5.1 Contract with the Manager

- (a) The Partners hereby contract with the Manager and the Manager hereby contracts with the Partners such that the Manager is hereby appointed as Manager of the Partnership and shall, subject to and in accordance with the provisions of this Agreement have the rights, powers, duties and obligations set out in this Agreement.
- (b) The Limited Partners and the Special Limited Partner shall take no part in the management or control of the business and affairs of the Partnership, and shall have no right or authority to act for the Partnership or to take any part in or in any way to interfere in the conduct or management of the Partnership or to vote on matters relating to the Partnership other than as provided in the Act or as set forth in this Agreement, but they and their duly authorised agents shall at all reasonable times by prior arrangement with the Manager have access to and the right to inspect the books and accounts of the Partnership.

### 5.2 Management

Subject to the provisions of this Agreement (and in particular this clause 5), the Manager shall operate and manage the business and affairs of the Partnership and the Partnership Assets (subject to the powers and duties of the Custodian as set out in the Custody and Administration Agreement) to the exclusion of the General Partner with full power and authority to act on behalf of the Partnership and with the power to bind the Partnership. For the avoidance of doubt however the Manager shall not be or be treated as a Partner in the Partnership.

### 5.3 Authority and Powers

Without prejudice to the generality of clause 5.2 hereof, but subject to the terms of this Agreement (and subject to the powers and duties of the Custodian as set out in the Custody and Administration Agreement), the Manager shall have full power and authority on behalf of the Partnership and with the power to bind the Partnership thereby and without prior consultation with any of the Limited Partners:-

- (a) to formulate the investment policy of the Partnership provided that in so doing the Manager shall have regard to the Offering Document, the purpose of the Partnership as set out in clause 2.4, and act in accordance with the investment policy guidelines of the Partnership as set out in clause 6 hereof;
- (b) to locate, evaluate and negotiate investment opportunities and to acquire, underwrite, hold, sell, exchange, convert or otherwise dispose of Investments or Temporary Investments for the account of the Partnership and to enter into investment agreements on behalf of the Partnership provided that in so doing the Manager shall procure that in respect of each Investee Company:-
  - (i) the Partnership shall pay the Acquisition Cost, which shall equal the Partnership Proportion of the Aggregate Acquisition Cost;
  - (ii) the Partnership shall acquire an Investment carrying the identical rights, interests and restrictions as the investments by each of the other Partnerships (except to the extent provided in clause 6(h)) and the amount of such Investment shall bear as far as possible the same proportion to the total investment by the Partnerships in that Investee Company as that described in (i) above;
  - (iii) the Investment shall be acquired and realised simultaneously with all other investments in the same Investee Company by the other Partnerships or, where it is desirable to realise part of an Investment, such partial realisation shall be effected pro-rata as far as possible in the proportions referred to in (i) above;
- (c) to monitor and where appropriate to appoint or remove directors to the boards of Investee Companies (subject always to the provisions of clause 6(h));
- (d) to receive on behalf of the Partnership Capital Contributions, Loans and any other payments pursuant to the terms of this Agreement made by Limited Partners and to receive investment income and other monies arising from Investments;
- (e) as required or appropriate, to open, maintain and close bank accounts and custodian accounts for the Partnership in [•] or elsewhere and to draw cheques and other orders for the payment of monies;
- (f) to enter into, make and perform such contracts, agreements and other undertakings (or to require the General Partner acting on behalf of the Partnership to do the same) and to do all such other acts as it may deem necessary and advisable for or as may be incidental to the conduct of the business of the Partnership including the establishment of intermediate corporate investment vehicles of the Partnership through which Investments and short term or temporary investments may be held;
- (g) subject to the provisions in clause 6(e) and 6(i), to borrow money, for a period not exceeding three (3) months in the case of each such borrowings (or to cause a special purpose corporate vehicle owned and controlled by the Partnership or

Partnerships to borrow such money) (a) in order to cover a temporary cash flow deficit of the Partnership; or (b) in order to make an Investment provided that a Drawdown Notice has been issued for such investment; or to give (or to cause a special purpose corporate vehicle of the Partnership to give) guarantees, indemnities, covenants and undertakings in favour of third parties on behalf of the Partnership in connection with an Investment (including undertakings to make an Investment in an Investee Company in the future) or in respect of the obligations of any Investee Company provided that the aggregate of outstanding borrowings together with the aggregate of the liabilities of the Partnership (and any such special purpose corporate vehicle) outstanding under any guarantees, indemnities, covenants and undertakings do not exceed in aggregate at any one time an amount equal to 10% of the Commitments of all of the Limited Partners or, if less, 100% of the uncalled Commitments of the Limited Partners. Any borrowings or liabilities of the Partnership (and any such special purpose corporate vehicle) pursuant to this sub-clause shall be pro-rata with the other Partnerships. In connection with such borrowings the Manager may make, issue, accept, endorse and execute promissory notes, drafts, bills of exchange, guarantees and other instruments and evidences of indebtedness, and secure the payment thereof by mortgage, charge, pledge or assignment of any interest in all or any part of the Partnership Assets including any uncalled Commitments and may make any interest payments in respect of such borrowings or liabilities provided that the total amount may not exceed the lesser of 10% of total Commitments and the aggregate amount of undrawn commitments. Any guarantees, indemnities, covenants or undertakings given may be secured by any of the Partnership Assets including any uncalled Commitments;

- (h) to make loans provided that such loans shall only be made in connection with an Investment or as provided in clause 7.2(c)(ii) provided, for the avoidance of doubt that the making of any such loan would not cause a breach of clause 6(e);
- (i) to disburse payments of expenses payable by the Partnership under clauses 5.7 and 5.8 including the expenses of acquiring and disposing of Investments to the extent that such expenses have not or will not be paid by any other person;
- (j) to commence or defend any litigation relating to the Partnership or to any of the Partnership Assets;
- (k) to enforce security and exercise liens, charges, seize collateral or pledged assets, appoint administrators, liquidators, receivers and reinsurers and generally to act to protect the Partnership Assets;
- (l) to hold the Partnership Assets and to maintain the Partnership's records and books of account at the Partnership's principal place of business and to allow any Limited Partner or Special Limited Partner or its representative access thereto at any time during normal business hours by prior arrangement for the purpose of inspecting or copying the same provided that such Limited Partner or Special Limited Partner shall reimburse to the Manager any expenses incurred by the Manager in connection with such inspection or copying;

- (m) to make payments and distributions to the Partners in accordance with the terms of this Agreement;
- (n) to carry out periodic valuations of the Partnership Assets and to furnish such valuations to the Limited Partners and to the Special Limited Partner in accordance with the provisions of clause 11.2 hereof;
- (o) to admit Additional Limited Partners and Substitute Limited Partners and any Substitute Special Limited Partner to the Partnership in accordance with the provisions of clauses 3.5 and 9.2 hereof;
- (p) to engage employees, agents, lawyers, accountants, custodians, brokers, investment and financial advisers and consultants as it may deem necessary or advisable in relation to the affairs of the Partnership;
- (q) generally (without prejudice to clauses 11 and 12.1) to communicate with the Limited Partners and to report to the Limited Partners at such times as it shall think fit and to represent the Partnership in all things;
- (r) to provide reasonable assistance to enable the Limited Partners and the Special Limited Partner (i) to claim any reliefs from taxation and (ii) to prepare tax returns in respect of their profits from the Partnership;
- (s) to enter into (or to cause a special purpose corporate vehicle of the Partnership to enter into) short term investment transactions in respect of the making of an Investment provided that the total amount invested in any such transactions shall not exceed the lesser of 15% of the aggregate Commitments to the Partnership and 100% of undrawn Commitments;
- (t) to enter into (or to cause a special purpose corporate vehicle of the Partnership to enter into) hedging arrangements only (i) in relation to Investments which achieved a Listing but remain in whole or in part, unrealised such arrangements to be in such form as the Manager may determine provided that they may only continue for so long as the Investment remains unrealised; (ii) to mitigate interest rate or currency risk on the realisation proceeds of an Investment once a sale decision has been made; or (iii) in exceptional circumstances in respect of Investments in a currency other than the Euro in order to mitigate any currency risks associated with such Investment;
- (u) to establish holding companies and/or intermediate vehicles (which need not be based in Europe) for the purpose of effecting an investment in an Investee Company in circumstances where the use of such holding company and/or intermediate vehicle is in the Manager's reasonable judgement in the best interests of the Partnership including, without limitation, where the use of such holding company and/or intermediate vehicle may reasonably be regarded as protecting the limited liability status of the Limited Partners and/or mitigating any tax, regulatory or other liability arising in the context of such investment provided always that, for the avoidance of doubt, the indirect investment in the underlying Investee Company in relation to which any such holding companies

and/or intermediate vehicles have been established will always constitute an Investment which falls within the investment policy of the Fund and complies with the investment restrictions of the Fund as are, in each case, set out in Clause 6 below, as if the indirect investment had been made directly by the Fund; and

- (v) generally to do all other things on behalf of the Partnership as may in the Manager's opinion be reasonably required in connection with or ancillary to the purposes of objectives of the Partnership as described herein.

#### **5.4 Replacement of Manager**

- (a) If at any time the Manager's appointment shall terminate in accordance with the provisions of clause 10 of this Agreement or otherwise, the Partnership will also terminate unless, at the same time, a new General Partner is appointed in accordance with the terms of such clause.
- (b) Until such appointment takes effect, the General Partner shall, on behalf of the Partnership, make such temporary arrangements for the discharge of the functions of the Manager as it shall in its absolute discretion think fit but not, for the avoidance of doubt so that the General Partner shall in any way be or be deemed to be operating or managing the Partnership. The appointment of a replacement Manager shall not take effect unless and until the replacement Manager shall have accepted its appointment in writing and agreed in writing to be bound from the effective date of its appointment by the provisions of this Agreement, as if it were the Manager and references herein to "Manager" shall from such date be construed accordingly.
- (c) From the effective date of its appointment, a replacement Manager shall be deemed to have all the rights and obligations of the Manager as if it were the Manager appointed by this Agreement, save only that it shall have no liability for loss or damage caused by any breach of obligations under the Agreement by any predecessor as Manager.
- (d) Notwithstanding anything to the contrary in this clause 5, the Manager acknowledges and agrees that it shall not withdraw or resign without the sanction of an Investor Special Consent.

#### **5.5 Powers and duties of the General Partner**

The General Partner shall have the overall responsibility for establishing the business objectives and policies of the Partnership and for the supervision of the business management functions carried out by the Manager, and notwithstanding anything else in this Agreement, the rights, powers, duties and obligations in relation to the management, operation and administration of the Partnership and the Partnership Assets granted to the Manager under the Agreement shall not include, and shall be without prejudice to the following:

- (a) the right of the General Partner to receive reports from and monitor the performance of the Manager;

- (b) the right of the General Partner to be consulted on the transfer of any interests in the Partnership;
- (c) the right of the General Partner to approve the Accounts prepared by the Manager in accordance with clause 11.1 so long as the General Partner is satisfied therewith;
- (d) the power of the General Partner to represent itself or the Partnership in dealings with the Manager; and
- (e) the right to make all filings and registrations required by the Partnership pursuant to the Act and to maintain the Partnership's records and books of account at the Partnership's principal place of business and to allow any Limited Partner or its representative access thereto at any time during normal business hours for the purpose of inspecting or copying the same provided that such Limited Partner shall reimburse to the General Partner any expenses incurred by the Manager in connection with such inspection or copying; and
- (f) the responsibility of the General Partner for paying the fees and expenses of the Manager;

and in relation to the above, the General Partner shall be entitled to enter into, make and perform such contracts, agreements and undertakings as it may determine necessary or appropriate provided that, notwithstanding anything in the Agreement to the contrary, the General Partner shall not do and shall not be permitted to do anything which constitutes a "regulated activity" for the purposes of the [•], as amended from time to time.

#### **5.6 Separate Liabilities of the General Partner**

The General Partner shall perform only activities related or ancillary to the Partnership or its duties and obligations under this Agreement and hereby undertakes that it shall at all times duly pay and discharge its separate and private debts and engagements which arise outside the scope of this Agreement whether present or future and keep the Partnership Assets and the Limited Partners and their personal representatives, estates and effects indemnified therefrom and from all liabilities, actions, proceedings, costs, claims and demands in respect thereof provided that no Limited Partner shall compromise or settle any such claims or demand without giving prior notification to the General Partner and allowing the General Partner an opportunity to defend or dispute the same.

#### **5.7 Management Fee**

- (a) The Manager shall be paid quarterly in advance by the Partnership in respect of each Accounting Period and in respect of the management services provided by it to the Partnership a Management Fee which:
  - (i) from the Initial Closing Date until the end of the Commitment Period shall be calculated on the following basis:

- (ii) if the Net Fund Commitments are equal to or less than EUR 225 million, such fee shall be 2.5% per annum of Net Fund Commitments to the Partnership (exclusive of VAT); and
- (iii) if the Net Fund Commitments are greater than EUR 225 million, such fee shall be 2.5% per annum of the Partnership Proportion of EUR 225 million (exclusive of VAT) and 2% per annum of the Partnership Proportion of the excess of Net Fund Commitments above EUR 225 million (exclusive of VAT); and

less in each Accounting Period the amount paid in respect of the General Partner's Profit Share.

for the above purposes "Net Fund Commitments" means total Fund Commitments at the commencement of the relevant period, as reduced by an amount (to be calculated as at the commencement of the relevant period) equal to the aggregate of:

- (1) the Acquisition Cost of any Investment, (or portion thereof), which has been realised (including any Investment or portion thereof distributed in specie) as at that time (save insofar as the proceeds of realisation of such Investment (or portion thereof) have been or are eligible to be reinvested pursuant to the terms of this Agreement; and
- (2) the amount by which any unrealised Investment (or portion thereof) is fully and permanently written off as at that time,
- (iv) after the end of the Commitment Period shall be calculated on the following basis:
  - (b) if the Net Fund Drawdowns are equal to or less than EUR 225 million, such fee shall be 2.5% per annum of Net Fund Drawdowns (exclusive of VAT); and
  - (c) if the Net Fund Drawdowns are greater than EUR 225 million, such fee shall be 2.5% per annum of the Partnership Proportion of EUR 225 million (exclusive of VAT) and 2% per annum of the Partnership Proportion of the excess of such Net Fund Drawdowns above EUR 225 million (exclusive of VAT)

for the above purposes "Net Fund Drawdowns" means drawdown Fund Commitments at the commencement of the relevant period, as reduced by an amount (to be calculated as at the commencement of the relevant period) equal to the aggregate of:

- (1) the Acquisition Cost of any Investment, (or portion thereof), which has been realised (including any Investment or portion thereof distributed in specie) as at that time (save insofar as the proceeds of realisation of such Investment (or portion thereof) have been or are eligible to be reinvested pursuant to the terms of this Agreement; and

- (2) the amount by which any unrealised Investment (or portion thereof) is fully and permanently written off as at that time,

less in each Accounting Period the amount paid in respect of the GP's Profit Share.

- (d) The following provisions shall apply in relation to the calculation of the Management Fee:-
  - (i) the amount payable to the Manager hereunder shall be adjusted on each Closing after the Initial Closing Date on the assumption that such increased Fund Commitments had been made in the Initial Closing Date so that the Management Fee payable both prior to and subsequent to any Closing shall be calculated by reference to the increased Commitments to the Partnership and the increased Fund Commitments following such Closing;
  - (ii) in the event that an Accounting Period shall cover a period of more or less than one calendar year the Management Fee to be paid to the Manager hereunder shall be increased or reduced (as the case may be) by multiplying the amount thereof which would otherwise be payable by a fraction the numerator of which shall be the number of days in the relevant Accounting Period and the denominator of which shall be 365;
  - (iii) in the event that different Management Fees are applicable in respect of an Accounting Period then the actual Management Fee payable to the Manager for such Accounting Period shall be calculated by treating the period for which each different Management Fee is applicable as a separate Accounting Period and thereafter applying the mechanism set out in sub-clause 5.7 (b) (ii) above for such period.
  - (iv) the Management Fee shall be deemed satisfied (and shall accordingly be reduced) as provided in clause 5.9.

## 5.8 Fees and Expenses

- (a) The Partnership shall be responsible for meeting its pro-rata proportion (calculated by reference to the total commitments to the Partnerships) of all costs and expenses (together with any VAT) actually incurred in relation to the formation of the Partnership and the establishment of the Fund, (including, without limitation, the out of pocket expenses of the Manager incurred in connection therewith) provided that such costs and expenses (other than VAT itself) do not exceed 1% of total Commitments, and in relation to the production and distribution of the reports and accounts referred to in clause 11 in respect of each of the Partnerships and any other valuations or certifications required pursuant to this Agreement including the fees of the Auditors in connection therewith.

- (b) The Partnership shall bear its pro-rata proportion (calculated by reference to the total commitments to the Partnerships) of all fees and expenses (inclusive of VAT) charged by the Scientific Advisory Panel, the Investment Review Panel, lawyers, accountants, consultants and other professional advisers appointed by the Manager, all costs and expenses relating to the provisions of indemnity insurance in relation to the Scientific Advisory Panel, the Advisory Board, the Investment Review Panel, the General Partner, the Manager or any of their Associates in relation to the Fund, hedging arrangements entered into pursuant to clause 5.3(s) and all other fees, costs and expenses in relation to the operation and administration of the Fund generally (other than those referred to in clauses 5.8(c), (d), (e) and (f) below) but including any fees, costs and expenses of the Advisory Board as set out in clause 12.2 below and the interpretation of this Agreement or any other agreements relating to the other Partnerships. In addition, all taxes and all fees or other charges levied by any governmental agency or regulatory body against the Partnership or against the Manager or one or more of its Associates in connection with its Investments or otherwise shall be borne by the Partnership.
- (c) The Partnership shall bear the whole of any other fees, costs and expenses (if any) incurred exclusively in relation to the Partnership itself.
- (d) The Partnership shall bear its pro-rata proportion (calculated by reference to the total commitments to the Partnerships) of all external legal, accounting, consultants, intermediary and other costs (inclusive of VAT) relating directly to proposed investments by the Partnerships to the extent that such costs are not borne by a third party, irrespective of whether or not such proposed Investments proceed.
- (e) Save as expressly provided in this Agreement all costs and expenses relating to the establishment of the Partnership and all costs and expenses incurred by the General Partner, the Manager or their respective Associates in providing office facilities, equipment and the compensation of its or their personnel to perform its obligations hereunder to manage, operate and administer the Partnership shall be borne by the General Partner, the Manager or their respective Associates and shall not be for the account of the Partnership.
- (f) All costs, fees or charges (including stamp duty, stamp duty reserve tax and other transfer taxes) associated with the distribution of Investments in specie to each Limited Partner or the Special Limited Partner shall be borne by such Limited Partner or the Special Limited Partner as appropriate.
- (g) For the avoidance of doubt, the Manager shall, and shall procure that its Associates shall, pay to the Partnership any amounts received from Investee Companies by way of reimbursement of costs and expenses incurred by it (or its Associates), to the extent that such costs and expenses have already been paid for by the Partnership.

## 5.9 Fees received from Investee Companies

Transaction Fees (if any) shall be applied in offsetting Abort Costs (if any) and, in the event that Transaction Fees exceed Abort Costs, 75% of such excess shall be credited against the Management Fee and 25% of such excess shall be paid to the Manager or its Associates.

## 5.10 Suspension of Investment Powers

- (a) If at any time during the Commitment Period less than three (3) Key Executives devote a substantial amount of their time to the affairs of the Partnership, or (ii) any suitable replacements appointed by the Manager and approved by at least 75% of the members of the Advisory Board in accordance with the terms of this Agreement ceases to devote a substantial amount of their time to the affairs of the Partnership, then the Partnership shall not be permitted to make any further Investments (other than follow-on investments or short-term liquid investments) without the sanction of an Investor Special Consent which authorises the Manager to continue to cause the Partnership to make Investments notwithstanding the occurrence of (i) or (ii) above. Any such approval shall be general in nature and not given on a case-by-case basis and shall be sufficient to restore all the powers of the Manager until such time as, again, (i) less than three (3) Key Executives devote a substantial amount of their time to the affairs of the Partnership, or (ii) any suitable replacement appointed by the Manager and approved by at least 75% of the members of the Advisory Board in accordance with the terms of this Agreement ceases to devote a substantial amount of their time to the affairs of the Partnership. In the event that (i) three (3) or more Key Executives or (ii) any suitable replacement appointed by the Manager and approved by at least 75% of the members of the Advisory Board in accordance with the terms of this Agreement as the case may be is again retained by the Manager or any of its Associates or the person(s) in question are again devoting a substantial amount of their time to the affairs of the Partnership after the commencement of the Suspension Period, such Suspension Period shall automatically terminate. Any period during which the Partnership is prevented from making Investments pursuant to this clause 5.10(a) is referred to herein as a Suspension Period.
- (b) In the event that a Suspension Period has commenced and is in operation, the Manager shall not be entitled to effect realisations of existing Investee Companies unless the Manager has confirmed to the Advisory Board in relation to each such realisation, that such realisation is made in accordance with the general pre-existing investment policy and exit strategy of the Manager.
- (c) The Commitment Period shall terminate at the end of a period of six months following the date on which the Fund entered the Suspension Period unless the Suspension Period has been terminated before the end of such six months period or unless the Limited Partners (and investors in the other Partnerships) have, on or prior to the end of such Suspension Period, by an Investor Special Consent, required that the Commitment Period shall not terminate.

- (d) After the end of the Commitment Period the Manager shall ensure that the Key Executives shall between them spend such time as is reasonably required, from time to time, on the affairs of the Partnership and, in the event that the Key Executives do not spend the level of time on the affairs of the Partnership as is required by this clause, the Manager shall not be entitled to effect realisations of existing Investee Companies unless the Manager has confirmed to the Advisory Board in relation to each such realisation that such realisation is made in accordance with the general pre-existing investment policy and exit strategy of the Manager.

#### 5.11 Custody and Administration Agreement

The Partnership and the Manager shall contract with the Custodian and the Custodian contract with the Partnership and the Manager such that the Custodian is appointed as custodian and administrator of the Partnership, such appointment being subject to the terms of the Custody and Administration Agreement provided always that the fees of the Custodian plus VAT if applicable shall not be for the account of the Partnership. Subject to the terms of such agreement, the Manager shall be entitled, in its absolute discretion, to direct the Custodian in relation to its custodial and administrative functions, to replace the custodian and/or administrator and to negotiate and agree fees to be paid to any replacement custodian and/or administrator in such event. The Custodian shall, subject to and in accordance with the provisions of this Agreement, have the rights, powers, duties and obligations set out in the Custody and Administration Agreement.

#### 6. INVESTMENT POLICY GUIDELINES

In exercising its powers under clause 5 above, the Manager shall comply with the following investment policy guidelines:

- (a) the Manager will adhere to the investment objectives and policy of the Partnership as set out in the Offering Document and shall have particular regard to the investment focus of the Partnership as set out in Schedule 2 to this Agreement. In particular investments will predominantly be made in Investee Companies based principally in [•] and which are engaged in [•] and/or [•]-related activities. Such investments will be made either directly or indirectly through an intermediate vehicle or structure.
- (b) the Manager will not make any Investment on behalf of the Partnership in any entity which, to its knowledge (having made reasonable enquiries of such entity), is focused upon operating in the tobacco industry, gambling services, waste incineration/toxic waste treatment, armaments/military equipment manufacture, construction of buildings for administrative activities/public administration itself, trade finance business, cold storage facilities, agricultural production or processing of agricultural and fisheries products provided that such prohibition shall not apply where any involvement in any such activity set out above forms an incidental or ancillary part of or does not form the focus of the operations conducted by such entity;

- 6.1.2 the Manager will not make any Investment on behalf of the Partnership in any entity which would be likely to cause offence or public scandal, or have a material adverse effect on the strategic or security interests of [•], provided that the above restriction will not prevent the Partnership from investing in entities in the [•] or [•] industry, or whose activities are related to those industries, including, without limitation, [•] development which may involve [•] subject always to the relevant laws and regulatory provisions;
- (a) the Manager will use reasonable efforts to ensure that each entity in which it makes an Investment on behalf of the Partnership has or is developing a policy in relation to ethical matters which will be subject to periodic review by such entity's board of directors (or equivalent body);
  - (b) the Manager will not make any Investment in an Investee Company which would cause the Acquisition Cost to the Partnership of all Investments in such Investee Company (including any guarantee, indemnity or loan given under clause 5.3(g) or 5.3(h) above and (subject as below) any existing Investment) to exceed 15% of the total Commitments to the Partnership (except with an Investor Consent);
  - (c) the Partnership may if the Manager so determines, and subject to the terms of clause 5.3(s), enter into several Temporary Investment transactions or obligations provided that at any one time the total amount invested by the Partnership in all such Temporary Investments (excluding amounts that are held or are expected to be held as Investments in the normal course) or which the Partnership may be obliged to invest pursuant to any obligations undertaken by it shall not exceed the lesser of 15% of the aggregate Commitments to the Partnership or 100% of undrawn Commitments (except with an Investor Consent) and further provided that to the extent that any such Temporary Investment is a Realised Temporary Investment then all such realisation proceeds will not be allocated or distributed in accordance with clauses 7 and 8 but will be allocated and distributed to the Limited Partners pro-rata to their respective Capital Contributions as soon as practicable after such termination or realisation and in such event an amount equal to the Acquisition Cost of any such Realised Temporary Investment shall be available for recall for subsequent investment. Notwithstanding the above the Manager may retain all or part of the Acquisition Cost of any Realised Temporary Investment if he reasonably determines that it shall be required for the purpose of making other investments for working capital purposes or to satisfy obligations of the Partnership. Any investment of this type may, if the Manager so determines, be made through a special purpose corporate vehicle owned and controlled by the Partnership or Partnerships. The income arising in relation to, and proceeds of any termination or realisation of a Temporary Investment other than a Realised Temporary Investment shall be allocated and distributed in accordance with clauses 7 and 8;
  - (d) the Manager shall have full power and authority on behalf of the Partnership as its agent and with the power to bind the Partnership thereby and without prior

consultation with any of the Limited Partners to take any action necessary or advisable (i) to cause the Partnership to qualify as a "venture capital operating company" (VCOC) within the meaning of the ERISA Plan Assets Regulation (including without limitation exercising "management rights" obtained by the Partnership as described in clause 6(e) and (ii) to cause the Partnership to be treated, for United States Federal income tax purposes, as a partnership and not as an association taxable as a corporation, including, without limitation, filing any returns, elections or statements by the Partnership with the applicable United States tax authorities, it being understood that, unless it has already done so prior to the Initial Closing Date, the Manager shall, following the Initial Closing Date, timely execute and file an entity classification election on Form 8832 by the Partnership with the US Internal Revenue Service pursuant to US Treasury Regulations 301.7791-3 electing that the Partnership be classified as a partnership for United States Federal income tax purposes;

- (e) the Manager shall use its reasonable efforts to ensure that the terms and conditions of Investments, and the contractual rights obtained and exercised with respect to Investments, will enable the Partnership to qualify as a VCOC within the meaning of the ERISA Plan Assets Regulation from and after the date the Partnership makes its first Investment. This will include requiring that the Partnership be accorded such management rights with respect to such Investee Companies as are sufficient in order that the Partnership qualifies as a VCOC within the meaning of the ERISA Plan Assets Regulation and the Manager, on behalf of each of the other Partnerships acknowledges this requirement. Subject to the foregoing, none of the other Partnerships or other co-investors shall be precluded from obtaining comparable additional rights from such Investee Companies for their own benefit. Within sixty (60) days after the end of each "annual valuation period" of the Partnership (within the meaning of the ERISA Plan Assets Regulation), the Manager shall deliver to each ERISA Partner a written certification to the effect that the Partnership should qualify as a VCOC (within the meaning of the ERISA Plan Assets Regulation) as of the end of each such annual valuation period;
- (f) the Manager shall use all reasonable efforts consistent with the other terms of this Agreement to ensure that any borrowings, guarantees, indemnities, covenants and undertakings will be structured in such a way that no Limited Partner (or any partner of a Limited Partner that is a partnership) who is exempt from US Federal income taxation pursuant to Section 501 of the Code is deemed to have recognised any UBTI attributable to the activities and investments of the Partnership. It is understood that none of the provisions of this Agreement (including clause 5.9 relating to certain fees being credited against the Management Fee and the arrangements contemplated by this Agreement relating to the Loans to be made by Limited Partners) shall in any event be deemed to be in violation of the foregoing requirement. In addition, the Manager shall in no event be deemed to be in violation of the foregoing requirement as a result of taking any action required to be taken by it pursuant to this Agreement;

- (g) the Manager will use reasonable efforts to conduct the affairs and operations of the Partnership in a manner which does not cause any Limited Partner that is not a "United States person" (as that term is defined in the Code) to be deemed, solely as a result of such Limited Partner's investment in the Partnership, to be engaged in "a trade or business in the United States" within the meaning of Section 864, 875, or 897 of the Code;
- (h) at the end of the life of the Partnership at least 80% of the total amount which has been invested by the Partnership in all Investee Companies, (calculated by reference to the Acquisition Cost of each Investment as at the time such investment is made) whether or not such investments have been realised or are still owned by the Partnership at such time, will have been invested in Investee Companies which are SMEs which are incorporated in or which conduct the main proportion of their operations in [•];
- (i) at the end of the life of the Partnership at least 10% of the total amount which has been invested by the Partnership in all Investee Companies, (calculated by reference to the value of the relevant Investment as at the time of such investment) whether or not such investments have been realised or are still owned by the Partnership at such time, will have been invested in Investee Companies which are incorporated in or which conduct the main proportion of their operations in Southern Europe, but only if each such potential Investee Company also satisfies the objectives of the Fund;
- (j) no Investment shall be made in a pooled investment fund or a incubator unless the Manager deems such an investment to be of strategic importance to the Fund and arrangements are made so that no additional management fee, management profit share or carried interest is payable by reason of such investment provided always that, in the aggregate, no more than 5% of total Commitments may, at any one time, be invested in such funds and/or incubators;
- (k) no Investment will be made involving an offer for securities which are the subject of a Listing; and
- (l) notwithstanding any other provision of this clause 6, loans given under this Agreement which do not constitute part of an Investment shall not, in the aggregate, at any one time exceed 10% of the total Commitments to the Partnership.

## **7. ALLOCATION OF LIABILITIES, PROFITS AND LOSSES**

### **7.1 Determining Amounts of Income, Capital and Losses to be Allocated**

For the purposes of determining the amount of Income, Capital and Losses, which shall be allocated between the Limited Partners and the Special Limited Partner, the following provisions shall apply:-

- (a) After the payment of or provision for fees, costs and expenses referred to in clause 5.7 above, including without limitation the Management Fee, or the

payment of or provision for liabilities howsoever arising, all Income, Capital and Losses (other than income and capital gain earned pursuant to clause 4.4(b) in relation to Loans drawn down before completing a particular Investment and any proceeds of termination or realisation of a Realised Temporary Investment), shall be allocated as follows:-

- (i) firstly to the General Partner in respect of amounts payable to the General Partner in relation to the General Partner's Profit Share pursuant to clause 7.4 below and not yet allocated to the General Partner or the Manager as the case may be;
- (ii) secondly to the Limited Partners in respect of an amount equal to their drawn down Commitments which remain outstanding (except for those Commitments applied to Realised Temporary Investments);
- (iii) thirdly to the Limited Partners in payment of an amount representing a return at 8% per annum compounded annually and calculated on a daily basis on the amount of drawdown Commitments which remain outstanding from time to time (other than (i) Commitments drawn down which are repaid to Limited Partners pursuant to clause 3.6(b), clause 4.4(c) or clause 6; and/or (ii) Commitments drawn down for Realised Temporary Investments), such amount to start accruing from the date of drawdown of such Commitments except where such drawdowns are for the purpose of making Investments when such amount will start to accrue from the date of completion of the Investment;
- (iv) fourthly to the Special Limited Partner until the Special Limited Partner has been allocated a sum equal to 25% of the total profits of the Partnership (being items of Income and Capital Gain and net of any losses allocated to the Limited Partners);
- (v) fifthly to the Limited Partners (pro-rata to their respective Capital Contributions) and the Special Limited Partner in the proportion 80:20;

in all cases after payment of or making appropriate provision (if any) for fees, costs and expenses referred to in clauses 5.7 and 5.8 and working capital requirements of the Partnership and taking into account where appropriate, payments (if any) required to be made to defaulting Limited Partners under clause 8.5.

- (b) In the event that, after sums have been allocated to the Special Limited Partner, further Commitments are drawn down from the Limited Partners, clauses 7.1(a)(ii), 7.1(a)(iii), 7.1(a)(iv) and 7.1(a)(v) shall first apply in respect of such further drawdown Commitments.

- (c) The sums to be allocated to the Special Limited Partner pursuant to clauses 7.1(a)(iv) and 7.1(a)(v) shall be calculated by the Manager and certified by the Auditors and shall constitute the Carried Interest of the Special Limited Partner.
- (d) For the purposes of establishing whether the amounts in clause 7.1(a)(iii) have been satisfied, any sums paid by a Limited Partner on admission to the Partnership after the Initial Closing Date (other than the Additional Payment pursuant to clause 3.6(g) which shall be disregarded for these purposes) shall be deemed to have been called down on the date or dates upon which they would have been called down had such Limited Partner been admitted to the Partnership on the Initial Closing Date and all Loans shall be deemed to have been called down on the date specified for payment in the relevant Drawdown Notice except where such Loans are drawn down for the purposes of making an Investment when such Loans will be deemed to have been called down on the date of completion of that Investment.
- (e) Subject to applicable tax or regulatory considerations, the Manager on behalf of the Partnership may dispose of all or part of an interest in an Investee Company for the purpose of acquiring an interest of a different nature in the same Investee Company provided that any such exchange of interests is in the best interests of the Partnership and that the new interest falls within the investment policy of the Partnership as set out in clause 6 and complies in all respects with the terms of this Agreement. In such circumstances, the Income and Capital arising upon realisation of that Investment shall not be allocated to investors to the extent that such Income and Capital is reinvested in such Investment. For the avoidance of any doubt, no such exchange of interests as contemplated in this clause 7.1(e) shall be made if such exchange would result in the liability of a Limited Partner exceeding the amount of its Commitment.
- (f) The proceeds of termination or realisation of a Realised Temporary Investment shall not be allocated pursuant to clause 7.1(a) above but shall be distributed to the Limited Partners only in accordance with clause 6(f) above.

## 7.2 Allocation of Liabilities

- (a) The Special Limited Partner and the Limited Partners and the SPV shall have no personal obligation for the debts, liabilities or obligations of the Partnership, except as provided in this Agreement and in the Act or in other applicable laws, if any. The General Partner shall otherwise be fully responsible for all the debts, liabilities and obligations of the Partnership; it being agreed that the General Partner shall not be liable to any other Partner for the return of any Commitments paid (including Loans made) to the Partnership.
- (b) If at any time following the date when the full amount of the Loans shall have been advanced pursuant to clause 4 hereof, the liabilities of the Partnership (other than the repayment of Capital Contributions and of the Loans) cannot be satisfied out of the Partnership's cash funds (including the amount of any borrowings made pursuant to clause 5.3(g) hereof), the General Partner will be liable to contribute an amount which, when added to the Partnership's cash

funds, will be sufficient to meet such liabilities, provided that any such contribution and all costs and expenses incurred by the General Partner in relation thereto shall subsequently be repayable to the General Partner pursuant to clause 15.4 if and when cash funds become available for the purpose in priority to any other payment or distribution to be made hereunder.

- (c) The following provisions shall apply in relation to the calculation of the General Partner's Profit Share:-
- (i) in the event that an Accounting Period shall cover a period of more or less than one (1) calendar year, the General Partner's Profit Share to be allocated to the General Partner, as the case may be, under clause 7.1(a)(i) above shall be increased or reduced (as the case may be) by multiplying the amount thereof which would otherwise be payable (on an annual basis) by a fraction, the numerator of which shall be the number of days in the relevant Accounting Period and the denominator of which shall be 365;
  - (ii) the General Partner shall be entitled in respect of each Accounting Period to make drawings out of the Partnership's cash funds at any time on or after a Drawings Date (save that in the case of the first Accounting Period such entitlement shall arise on the Initial Closing Date). For the avoidance of doubt the aggregate amount of such drawings shall not, in any Accounting Period, exceed the amount of the General Partner's Profit Share for such period. To the extent that drawings are repaid pursuant to the terms hereof such repayments shall either be retained by the Partnership and shall be available for reinvestment or for working capital purposes or shall be distributed to the Limited Partners in repayment of Loans but shall be capable of being redrawn from such Limited Partners for any of the purposes set out in clause 4.
  - (iii) allocations shall be set off against any drawings made pursuant to clause 7.2(c)(ii) above which remain outstanding. In the event that there is insufficient Income or Capital Gain during the life of the Partnership to allocate to the General Partner, as the case may be, to enable their respective drawings to be set off hereunder any balance outstanding shall be waived by the Partnership immediately prior to termination of the Partnership.

### 7.3 Accounts

The Partnership shall establish and maintain such accounts and records for each of the Partners as the Manager shall determine and amounts shall be credited or debited to and from these accounts as appropriate to reflect the allocation of Income, Capital Gain and Losses of the Partnership amongst the Manager, the General Partner, the Special Limited Partner and the Limited Partners on the basis set out in clauses 7.1, 7.2 and 7.4 hereof.

#### **7.4 Apportionment of Expenses and General Partner's Profit Share**

Insofar as is practicable and subject to clause 7.2(c)(ii) above, the Manager shall procure that the fees and expenses of the Partnership (other than those which specifically relate to a particular Investment) and the General Partner's Profit Share shall be apportioned between Income, in the case of the Management Fee (unless the Manager otherwise determines), and between Income or Capital Gain (as the case may be) arising on different Investments pro-rata to the respective Acquisition Costs of such Investments or on such other basis as the Manager shall consider to be fair and equitable between the Limited Partners. Where any such Income incorporates a Tax Credit, the General Partner's Profit Share the Management Fee and the Carried Interest shall be treated as satisfied to the extent of the net value of such Income excluding the relevant Tax Credit.

#### **7.5 Apportionment of Carried Interest**

Carried Interest may be allocated and distributed to the Special Limited Partner, out of such funds of the Partnership whether of an income or capital nature as the Manager may determine, and in exercising such discretion the Manager may take into account any preference expressed by either itself or the Special Limited Partner to receive a payment of Capital rather than an Income distribution or an Income distribution rather than a payment of Capital. For the avoidance of doubt any distributions in specie shall be made in accordance with clause 8.4 hereof.

#### **7.6 Computation of Tax Credits**

If a particular allocation of Income is assumed in computing the Tax Credits available to the Limited Partners for the purpose of calculating when each Limited Partner has received sums equal to the aggregate of amounts under clause 7.1(a) above then, notwithstanding any other provision of this clause 7, Income shall be allocated in accordance with that assumption.

### **8. DISTRIBUTIONS**

#### **8.1 Timings of Distribution**

Amounts allocated to the General Partner, the Manager, Limited Partners and Special Limited Partner pursuant to clause 7.1 above will be distributed to such persons in the same manner as so allocated as follows:

- (a) to the extent to which such allocations result from the cash realisation of an Investment then distributions will be made as soon as practicable after the relevant amount becomes available for distribution and, in any event, within three (3) months of the date of realisation;
- (b) to the extent to which such allocations result from the generation of Income the distributions will be made immediately prior to the termination of the Partnership and at any other time as the Manager shall determine.

#### **8.2 Nature of Distributions**

- (a) For the purpose of this clause distributions of Income and Capital shall include:-

- (i) all sums actually paid or distributed to the Limited Partners from the Partnership out of Capital or Income (without any deduction for any costs, expenses incurred by, or taxation payable by any Limited Partner in relation to such payments or distributions) including all sums applied in repayment of the Loans pursuant to clause 8.5 together with the amount of any Tax Credits deemed to attach to any Income so distributed to the Limited Partners and shall be deemed to be made on the date of payment or distribution;
- (ii) all distributions in specie to the Limited Partners and the Special Limited Partner made pursuant to clause 8.4 (which distributions shall be valued in accordance with clause 8.4 without any deduction for any costs, expenses or taxation payable by or on behalf of any Limited Partner in relation thereto) and shall be deemed to be made on the date of distribution; and
- (iii) all distributions in cash or in specie to the Limited Partners and the Special Limited Partner following termination of the Partnership which shall be valued in accordance with clause 10.6(d).

### 8.3 Clawback

- (a) At the date of termination of the Partnership in accordance with clause 10, the Special Limited Partner will be obliged to return to the Limited Partners in proportion to their Capital Contributions, a sum equal to the amount by which the aggregate amount previously distributed to it as Carried Interest exceeds 20% of the profits distributable to the Limited Partners less the amount of any taxation in respect of such Carried Interest suffered by such Special Limited Partner or assessed on or assessable on such Special Limited Partner or any person entitled to any interest in the Carried Interest by reason of a connection with such Special Limited Partner or any part thereof and not immediately recoverable by such person or the Special Limited Partner by filing appropriate tax returns. In addition, the Special Limited Partner shall be obliged to return any amount of taxation which has reduced the amount to be paid back by the Special Limited Partner pursuant to the foregoing sentence but is recoverable by the Special Limited Partner or any person entitled to any interest in the Carried Interest by reason of a connection with such Special Limited Partner or any part thereof after the date of termination of the Partnership by filing appropriate tax returns.
- (b) In connection with clause 8.3(a) above, during the Commitment Period, all Carried Interest to which the Special Limited Partner shall be entitled shall be credited to the Special Limited Partner in the Escrow Account as security for its obligations under clause 8.3(a).
- (c) The terms upon which such Carried Interest shall be deposited in, and released from, the Escrow Account shall be as follows:-

- (i) After the end of the Commitment Period and at such other time thereafter as the Manager may determine, Carried Interest to which the Special Limited Partner has become entitled up to such date, shall be released from the Escrow Account to the Special Limited Partner on the written instruction of the Manager provided that on each such occasion he has been advised by the Auditors that, given the current status of the Fund, the amounts remaining in the Escrow Account after such release represent a reasonable and prudent provision against the clawback liability of the Special Limited Partner and he has also received the consent of the Advisory Board (such consent not to be unreasonably withheld). For the above purposes in specie Carried Interest shall be valued in the manner set out in clause 8.4;
- (ii) if the Manager is satisfied that the Special Limited Partner or any person with any interest in the Carried Interest or any part thereof will suffer a charge to tax in respect of any Income or Capital Gain from which the Carried Interest derives, it will approve the release from the Escrow Account of such sum as shall, after any taxation borne thereon, be sufficient to enable such person to meet such charge to tax and such sum released shall be applied for such purpose only. Any such sum shall be released firstly out of Income comprised in the Carried Interest to the extent that such Income is available;
- (iii) Carried Interest standing to the credit of the Escrow Account shall be released from the Escrow Account at any time at which the Auditors have certified that such Carried Interest need not be repaid to Limited Partners in order to ensure that they have received distributions equal to, or greater than, the minimum return specified in clause 8.3(a). The Auditors shall prepare such certification upon the written request of, and at the cost of, the Manager;
- (iv) save as set out in sub-clauses 8.3(c)(i), (ii) or (iii) above or 10.6(e) no Carried Interest may be released from the Escrow Account without the prior written approval of the Manager provided that any Carried Interest held in specie may be released from the Escrow Account upon being replaced by a cash sum equal to the value of such Carried Interest calculated in accordance with the provisions of clause 10.6 on the date of distribution thereof;
- (v) any income accruing on any portion of Carried Interest (including interest, dividends or bonuses accruing on any security comprised in the Carried Interest) shall belong to and be paid out to such person as is or becomes entitled to receive the monies to which such income relates, pursuant to the terms of this Agreement; and

- (vi) all voting rights attaching to securities comprised in the Carried Interest shall be exercisable by or as directed by the Special Limited Partner but all title documents relating thereto shall be held on similar terms to which the Carried Interest is held in the Escrow Account.

#### 8.4 Distributions in Specie

- (a) No distribution in specie will be made of unlisted Investments except on termination of the Partnership in accordance with clause 10.6(d), or if each and every Limited Partner consents to such distribution. In addition the Manager may in its discretion (acting reasonably) make a distribution of any securities which are listed or about to be listed comprised in such Investment in specie to those Limited Partners who request such a distribution on the basis set out in this sub-clause. Distributions in specie of such securities shall be made at or as soon as practicable after Listing (having regard, inter alia, to any dealing restrictions which may apply) and shall be made in accordance with clauses 7.1(a) and 8.1 such that each Limited Partner who so requests such a distribution shall receive a proportionate amount of each class of securities available for distribution, or (if such method of distribution is for any reason impracticable) such that each such Limited Partner shall receive as nearly as possible a proportionate amount of each class of securities available for distribution together with a balancing payment in cash in the case of any such Limited Partner who shall not receive the full proportionate amount of any class of securities to which he would otherwise be entitled hereunder. For the avoidance of doubt, no Limited Partner shall be entitled to receive a distribution in specie which is (valued at the Mid Price) greater than the amount in cash which he would have received at such time had he not requested such a distribution in specie. If a distribution in specie is made under this clause the Manager shall take reasonable steps to procure that a certificate representing the securities to which each such Limited Partner is entitled pursuant to such distribution is sent to such Limited Partner and/or that appropriate steps are taken to record the transfer of title to such securities as appropriate. For the avoidance of doubt, the Special Limited Partner shall not be entitled to receive any Carried Interest in specie until such time as there are no circumstances in which the Special Limited Partner may be required to repay monies to the Partnership pursuant to the clawback obligations set forth in clause 8.3 hereof.
- (b) All listed securities distributed in specie pursuant to this clause shall for all purposes of this Agreement (including for the purpose of calculating the Carried Interest entitlements of the Special Limited Partner pursuant to clauses 7.1(a) and 8.1 hereof) be valued at the Mid-Price of the relevant securities. All distributions in specie shall be deemed to have been made on the date on which the Limited Partners become individually beneficially entitled to the relevant securities. For the avoidance of doubt, any stamp duty, stamp duty reserve tax or other transfer taxes payable on transfer shall be for the account of the relevant Limited Partners as appropriate.

- (c) In circumstances where a Limited Partner is unable to receive a distribution of securities in specie pursuant to this clause 8.4 and notifies the Manager of such circumstance, the Manager shall be obliged, to assist to the extent reasonable such Limited Partner in relation to the disposal of such securities on such terms as may be reasonably agreed (including without limitation as to remuneration and liability and indemnification) by the Manager and the relevant Limited Partner at the relevant time.

## 8.5 Repayment of Loans

Until the entire amount of the Loans from the Limited Partners shall have been repaid, all distributions of Capital or Income made by the Partnership to the Limited Partners shall be applied firstly in or towards repayment of the Loans outstanding from time to time in proportion amongst the Limited Partners pro-rata to their respective Capital Contributions (or, where the Capital Contribution of a defaulting Limited Partner has been cancelled under clause 4.5 and to the extent to which all of the Loan advanced by such defaulting Limited Partner is not cancelled pursuant to clause 4.5(c) or otherwise, in proportion amongst the Limited Partners and such defaulting Limited Partner pro-rata to their respective Capital Contributions prior to such cancellation, provided that such defaulting Limited Partner shall only be entitled to receive repayment out of the proceeds of realisations made prior to its default) and the appropriate entries shall be made in the Partnership's accounts to reflect such application. Where Loans are repaid to a defaulting Limited Partner pursuant to this clause the amount of Loan or capital required to be allocated and distributed to the SPV in relation to the interest of such defaulting Limited Partner distributed to it under clause 4.5 shall be reduced accordingly.

## 8.6 Tax Credits

- (a) For the purpose of clause 7 and this clause 8 the amount of Income allocated and distributed to the Limited Partners shall be deemed to include Tax Credits relating thereto (whether or not the same are actually available to a particular Partner) and shall be valued accordingly.
- (b) If the General Partner, the Manager or any person is required by law to deduct or withhold any taxes from or in respect of any sum payable to the Partnership or to any Partner and to pay the full amount deducted or withheld to the relevant taxation or other authority, the Manager shall use reasonable efforts to obtain from the applicable authority (or from such other person, if the Manager itself was not required to deduct or withhold the relevant taxes) the original or certified copy of a receipt evidencing payment of such taxes and, within a reasonable period of time after payment of such taxes, shall furnish copies of such receipt evidencing the payment to each Partner in respect of that Partner's share of such payment. The Manager agrees, subject to being provided by such Partner with all information reasonably required in order to make any filings to obtain the benefit of reduced withholding taxes and/or claim refunds of withholding taxes under applicable double tax treaties, to use reasonable efforts to assist such Partner with such filings and/or claims.

## 8.7 **Limitations on Distributions**

The Manager shall not be obliged to cause the Partnership to make any distribution pursuant to this clause 8:-

- (i) unless there is cash available therefor;
- (ii) which would render the Partnership insolvent;
- (iii) to the extent that the Manager has made a final determination to issue a Drawdown Notice in respect of an amount equal to or greater than the amount of such distribution within ten (10) Business Days of such determination (in which case the undrawn Commitments of the Limited Partners shall be deemed to be reduced by the amount of such distribution); or
- (iv) which, in the reasonable opinion of the Manager, would or might leave the Partnership with insufficient funds to meet any future contemplated obligations, liabilities or contingencies including obligations to the General Partner and the Special Limited Partner.

## 8.8 **Currency of Distributions**

All distributions shall be made in Euros or, if the Manager so determines, the currency in which they are received, (provided such currency is regularly traded on a recognised market), in which latter case the Euro value of such a distribution (whether in currency or in specie) shall be calculated at the Spot Rate of Exchange for the relevant currency at the date of the distribution and, in the case of distributions of listed securities, the Spot Rate of Exchange of the Mid-Price of the relevant securities in accordance with clause 8.4(b).

## 9. **ASSIGNMENT OF INTERESTS**

### 9.1 **Assignment of Interests of the General Partner**

The General Partner shall not (save for an assignment of its interest as General Partner to an Associate in circumstances where it is appropriate to do so for tax and/or regulatory reasons) sell, assign, transfer, exchange, pledge, encumber or otherwise dispose of or grant any participation in all or any part of its General Partnership interest or voluntarily dissolve or withdraw as the General Partner of the Partnership.

### 9.2 **Assignment of Interests of Limited Partners and Special Limited Partner**

- (a) No sale, assignment, transfer, exchange, pledge, encumbrance or other disposition or grant of any participation (transfer) of all or any part of the Special Limited Partner's or of any Limited Partner's interest (including any ultimate beneficial interest) in the Partnership (including, without limitation, all or any part of its Loan), whether voluntary or involuntary shall be valid or effective without the prior written consent of the Manager and, in the case of the transfer of the Special Limited Partner's interest as a result of taxation considerations or regulatory requirements without, in addition, the consent of a

majority of the members of the Advisory Board which shall not be unreasonably withheld and for reasons other than taxation considerations or regulatory requirements without, in addition, an Investor Special Consent which shall not be unreasonably withheld), which consent may be given or may be withheld (in its sole and absolute discretion) for any reason whatsoever or without assigning any reason thereto, including (without limitation):

- (i) if the Manager considers that the transfer would otherwise cause the Partnership to be disqualified as a limited partnership or to be terminated;
- (ii) if the Manager considers that the effect of such transfer of interest will result in (1) a violation of the Securities Act or any applicable securities law of any of the States of the United States; (2) the Partnership or any of the other Partnerships being required to register, or seek an exemption from registration, as an investment company under the United States Investment Company Act of 1940; (3) a loss of partnership status for US Federal income tax purposes for the Partnership or any of the other Partnerships; (4) the termination of the Partnership (or any of the other Partnerships) under Section 708 of the Code but only if such termination would result in material adverse tax consequences to the Limited Partners or the investors in any of the other Partnerships; or (5) a transaction effected through an established securities market within the meaning of the United States Treasury Regulations promulgated under Section 7704 of the Code or otherwise would cause the Partnership (or any of the other Partnerships) to be a publicly traded partnership within the meaning of Section 7704 of the Code, or would cause there to be more than 100 partners (as determined under the Treasury Regulations promulgated under Section 7704 of the Code). For purposes of determining the number of partners under this paragraph (5), a person ("a beneficial owner") owning an interest in a partnership, grantor trust or S corporation for United States Federal income tax purposes ("a flow-through entity") that owns directly, or through other flow-through entities, an interest in the Partnership is treated as a partner if (X) substantially all of the value of the beneficial owner's interest in the flow-through entity is attributable to the flow-through entity's direct or indirect interest in the Partnership and (Y) a principal purpose in using the tiered arrangement is to permit the Partnership to have not more than 100 partners. The Manager may rely on a certificate from a purchaser or transferee of an interest in the Partnership in making a determination as to the number of partners pursuant to the provisions of paragraph (5);
- (iii) if the Manager considers that any proposed transferee of the interest of a Partner intends to hold the said interest otherwise than for itself beneficially;

- (iv) if the Manager considers that the transfer will result in the assets of the Partnership being treated as plan assets for the purpose of the ERISA Plan Assets Regulation;
- (v) if the Manager considers that the transfer would or may subsequently violate any applicable law or any term of the Agreement or subjects the Partnership to other adverse legal or regulatory consequences; or
- (vi) if the Manager considers that the proposed transferee will be unable to meet its obligations hereunder in respect of Commitments.

In order for the Manager to make the determination set forth in clause 9.2(a)(iv) above any proposed transferee of interests in the Partnership will be required to confirm to the Manager to what extent it is a benefit plan investor for the purposes of the ERISA Plan Assets Regulation.

Notwithstanding the above however, if a Limited Partner wishes to transfer its interest in the Partnership to an Associate or to another entity under common control with it, the written consent of the Manager to such transfer may not be unreasonably withheld or delayed.

- (b) The Special Limited Partner or any Limited Partner wishing to transfer all or part of its interest in the Partnership (including, without limitation, all or any part of its Loan) shall apply to the Manager for consent to the transfer by giving not less than thirty (30) days' prior written notice and shall furnish such information in relation to the proposed transfer and the proposed assignee or transferee as may be required by the Manager provided that no such assignee or transferee of a Limited Partner's interest or a Special Limited Partner's interest in the Partnership shall become a Substitute Limited Partner or Substitute Special Limited Partner without the further written consent of the Manager, which consent may be given or withheld in its sole and absolute discretion and for any reason whatsoever or without assigning any reasons thereto. The transferring Limited Partner or Special Limited Partner shall bear all costs and expenses arising in connection with any such proposed transfer, including (without limitation) reasonable legal fees arising in relation thereto and the transferring Limited Partner or Special Limited Partner, the transferee and all other Partners shall be obliged to join in the giving of any election required by the Manager.
- (c) Prior to a proposed transfer, the Manager shall be entitled to require a written opinion of reputable counsel, satisfactory in form and substance to the Manager, to the effect that such transfer will not result in (i) a violation of the Securities Act or any applicable securities law of any of the States of the United States, (ii) the Partnership or any of the other Partnerships being required to register, or seek an exemption from registration, as an investment company under the United States Investment Company Act of 1940, (iii) a loss of partnership status for US Federal income tax purposes for the Partnership (or any of the other Partnerships), (iv) the termination of the Partnership (or any of the other

Partnerships) under Section 708 of the Code but only if such termination would result in material adverse tax consequences for the Limited Partners or the investors of any of the other Partnerships, or (v) the Partnership or any of the other Partnerships being considered a publicly traded partnership for US Federal income tax purposes. Such opinion shall also cover such other matters as the Manager may reasonably request.

- (d) The foregoing clause 9.2(c) shall not apply to a transfer of all or part of a Limited Partner's interest in the Partnership (including all or any part of its Loan) (i) to a person which succeeds to its business substantially as an entirety, or directly or indirectly, owns all the outstanding equity securities of such Limited Partner (or of the person of which such Limited Partner, directly or indirectly, is a wholly-owned subsidiary), (ii) to an Associate of such Limited Partner which is an accredited investor as defined in the Securities Act or (iii) to a Limited Partner provided that in all cases the transferee is not in the United States or a US Person. The Manager agrees to co-operate with any Limited Partner making a transfer by providing as soon as reasonably practicable such records and other factual information as may be reasonably requested with respect to any proposed transfer.
- (e) Any Substitute Limited Partner or Substitute Special Limited Partner shall be bound by all the provisions hereof and, as a condition of giving its consent to any transfer to be made in accordance with the provisions of this clause 9.2, the Manager shall require the proposed Substitute Limited Partner or Substitute Special Limited Partner to acknowledge its assumption (in whole or in part) of the obligations of the transferring Limited Partner or Special Limited Partner by entering into this Agreement as a signatory or by executing a deed of adherence in a form satisfactory to the Manager. Neither the Partnership nor the Manager shall incur any liability for allocations and distributions made in good faith to the transferring Limited Partner or Special Limited Partner until the written instrument of transfer has been received by the Partnership and recorded in its books and the effective date of the transfer has passed.
- (f) Notwithstanding any other provisions of this clause, each Limited Partner and Special Limited Partner undertakes to notify the Manager forthwith in writing of the full name of any entity or person to whom it proposes to transfer its interest pursuant to this clause, of any change in its own name and any other information which the Manager may reasonably request.

### 9.3 **Assignment of Interests in Violation of this Clause**

The Partnership shall not recognise the transfer of an interest (including any Loan) made in violation of this clause for the purposes of making distributions of Income or Capital, or repayments of Loan or Capital Contribution, or otherwise with respect to interests in the Partnership and any transfer of an interest to a Substitute Limited Partner or Substitute Special Limited Partner on the basis of any representation by such Partner which is untrue or which is subsequently breached by such Partner shall be void. Instead

all of the Capital Contributions relating to such an interest shall be cancelled and the provisions of clause 4.5(c) shall apply.

## 10. TERMINATION AND LIQUIDATION

### 10.1 Termination

The death, bankruptcy, insolvency, dissolution, liquidation, withdrawal, expulsion or removal of a Limited Partner or Special Limited Partner shall not (subject to the terms of sub-clause (a) below in respect of the Manager and/or the General Partner) operate to terminate the Agreement and the estate or trustee in bankruptcy or receiver or liquidator of a deceased, bankrupt, insolvent, dissolved, expelled or removed Limited Partner or Special Limited Partner shall not have the right to withdraw such Partner's Capital Contribution or require repayment of such Limited Partner's Loan prior to the liquidation of the Partnership. This Agreement shall terminate on the tenth anniversary of the Initial Closing Date (subject always to the provisions of clause 2.5 and clause 10.3) or shall terminate prior to such date upon the happening of any of the following events:-

- (a) the bankruptcy, insolvency, dissolution, liquidation, resignation, withdrawal, removal or expulsion of the Manager and/or the General Partner in which event the Partnership shall terminate automatically and without notice (and without any further action of any of the Limited Partners) unless the Partnership is reconstituted pursuant to clause 10.4 below;
- (b) notice served on the Manager and/or the General Partner pursuant to an Extraordinary Investor Consent that the Manager and/or the General Partner, in the reasonable opinion of the Limited Partners and on the production to the Manager of a Legal Opinion, has committed (i) a conscious and material breach of this Agreement or of any agreement relating to any other of the Partnerships which would also constitute a material breach of this Agreement, (ii) fraud, (iii) wilful illegal acts, (iv) gross negligence, (v) wilful default or (vi) gross professional misconduct by the General Partner or the Manager which, in the reasonable opinion of the Limited Partners, and according to the Legal Opinion, results in the Partnership and/or the Limited Partners suffering material financial disadvantage;
- (c) notice served on the Manager and/or the General Partner pursuant to an Extraordinary Investor Special Consent;
- (d) the written agreement of the General Partner, the Manager, the Special Limited Partner and the Limited Partners by an Investor Special Consent;
- (e) notice served by the Manager and/or the General Partner on the Limited Partners following any change in the law as a result of which in the reasonable opinion of the Manager the continuation of the Partnership becomes unlawful, or impractical or inadvisable;
- (f) notice served by the Manager on the Limited Partners that no further Loans may be drawn down under the terms of this Agreement and that all Investments have

been disposed of and the proceeds therefrom have been distributed pursuant to the terms of this Agreement.

#### **10.2 Provisions Surviving Termination**

In the event that this Agreement is terminated pursuant to this clause 10 then, notwithstanding any other provisions herein, the provisions of clauses 2.2, 5, 7, 8, 10.3, 10.4, 10.5, 10.6, 15.4, 15.6, this clause 10.2 and any other provisions herein which shall be necessary for the performance of obligations set out under those clauses, shall survive such termination.

#### **10.3 Extension of Life of the Partnership**

The Limited Partners and investors in the other Partnerships may, by an Investor Consent, agree with the Manager to extend the term of the Agreement for up to a further two (2) consecutive periods of one (1) year each. Any such elections shall be irrevocable but shall be without prejudice to the provisions for earlier termination of the Agreement for any reason specified in clause 10.1 above.

#### **10.4 Continuation of the Partnership**

If the Agreement would otherwise be terminated pursuant to clause 10.1(a), (b) or (c) (but not in other circumstances) the Partnership and its business may be continued in the event that Limited Partners and Investors in the other Partnerships, by an Investor Special Consent elect to continue the Partnership and appointing a new general partner(s) and/or manager provided that the investors in each of the other Partnerships do likewise. Such election must be obtained within forty five (45) days after all the Limited Partners have been notified of the event of termination, whereupon the General Partner or Manager shall cease to be the general partner or manager on the appointment of the new general partner or manager. Without prejudice to its right to receive amounts accrued due to it under this Agreement at the date of cessation, if the Partnership is terminated pursuant to clause 10.1(a) or (b), the General Partner shall not be entitled to any compensation whatsoever in respect of the cessation of its general partnership interest in the Partnership. In the event that a decision is made pursuant to this clause 10.4 to continue the Partnership, the General Partner and the Manager shall use their reasonable endeavours to transfer the business of the Partnership and all documentation and records directly relating thereto to the replacement general partner and manager.

#### **10.5 Treatment of Carried Interest on Continuation of the Partnership**

- (a) In the event that the Agreement is terminated pursuant to clause 10.1(a), (b) or (c) and continued pursuant to clause 10.4, the Special Limited Partner shall, subject to the terms of clause 8.3, and, where termination has occurred in accordance with clause 10.1(b), 10.5(b) below, remain entitled to (a) Carried Interest which has already been distributed to it or which is in the Escrow Account or which is available for distribution to it or to the Escrow Account; and (b) the Relevant Percentage of future Carried Interest which becomes so available after the date of termination. The Relevant Percentage for these purposes shall be the sum of  $(a/c \times 0.65)$  and  $(b/c \times 0.35)$  where

a = the number of days from the Initial Closing Date to the date of termination (subject to a maximum of 1826)

b = the number of days from fifth anniversary of the Initial Closing Date to the date of termination (subject to a maximum of 1826)

c = 1826

expressed as a percentage.

The remaining percentage of future Carried Interest receipts after deduction of the Relevant Percentage thereof, shall be available for any new general partner or manager following continuation of the Partnership.

- (b) In the event that the Agreement is terminated pursuant to clause 10.1(b) but the Partnership is continued pursuant to clause 10.4, any amounts to which the Special Limited Partner may become entitled under clause 7.1 after the date of the notice specified in clause 10.1(b), will be deposited in the Frozen Funds Account, subject always to the provisions of clause 8.3. Within three (3) months of any such termination pursuant to clause 10.1(b) the parties shall together appoint an independent arbitrator for the purpose of confirming whether one of the events set out in clause 10.1(b)(i)-(vi) has in fact occurred. Any determination of the Arbitrator shall be final and binding on the parties hereto. In the event that the Arbitrator confirms the basis on which termination was effected under clause 10.1(b) (which basis is as set out in the Legal Opinion and which is specified in the notice served on the Manager and/or the General Partner thereunder) such amounts as have been deposited in the Frozen Funds Account shall be forfeited by the Special Limited Partner and shall be released from the Frozen Funds Account and applied instead for the benefit of the Limited Partners and the costs and expenses of such arbitration proceedings, including but not limited to the fees and expenses of the Arbitrator shall be borne by the Manager. Further, in the event that the Partnership is terminated pursuant to clause 10.1(b) and continued pursuant to clause 10.4 and where the Arbitrator does not confirm the basis on which termination was effected under clause 10.1(b) any amounts to which the Special Limited Partner may be entitled under clause 7.1 and which have been deposited in the Frozen Funds Account shall be released from the Frozen Funds Account and applied in accordance with the terms of this Agreement. Any amounts to which the Special Limited Partner may be entitled shall be distributed to the Special Limited Partner and the costs and expenses of such arbitration proceedings, including but not limited to the fees and expenses of the Arbitrator shall be borne by the Partnership.
- (c) In the event that the Agreement is terminated pursuant to clause 10.1(a), (b) or (c) and continued pursuant to clause 10.4, the Special Limited Partner shall be subject to the obligation to repay monies by way of clawback pursuant to clause 8.3 hereof, but on the assumption that the date on which any termination occurs under this clause 10 is the date of termination for the purposes of such clause 8.3.

## 10.6 Liquidation of Interests of Partners

- (a) A Limited Partner or Special Limited Partner shall not have the right to the return of its Capital Contribution except upon the liquidation of the Partnership.
- (b) Neither the General Partner nor the Manager shall be personally liable for the return of the Capital Contributions made by or the Loans advanced by the Special Limited Partner or any of the Limited Partners.
- (c) Upon termination of the Partnership, no further business shall be conducted except for such action as shall be necessary for the winding-up of the affairs of the Partnership and the distribution of the Partnership Assets amongst the Partners. The Manager shall act as liquidating trustee provided however that if the Partnership is terminated for a reason set forth in clause 10.1(a) or (b) hereof the Limited Partners may, by an Investor Consent designate some other party or parties to act as a liquidating trustee or trustees and to receive such remuneration for so acting as may by Investor Consent be approved.
- (d) Upon termination of the Partnership, the liquidating trustee or trustees may sell any or all of the Partnership Assets on the best terms available. Alternatively it or they may, at its or their discretion (but subject to clause 8.4(c)), distribute all or any of the Partnership Assets in specie whether or not the same have achieved Listing on the basis set out in clause 8.4. Such Partnership Assets shall be valued (i), in respect of Partnership Assets which have achieved a Listing at the Mid-Price, and (ii) in respect of all other Partnership Assets, at current market value, such market value to be determined by an independent financial expert selected by the liquidating trustee other than in the event of dispute in which case the market value shall be determined by the Auditors unless such determination of market value by the liquidating trustee is agreed by the Advisory Board. The liquidating trustee shall cause the Partnership to pay all debts, obligations and liabilities of the Partnership and all costs of liquidation and the remaining proceeds and assets to be distributed in specie shall be allocated to the accounts of each of the Partners in accordance with the provisions of clause 7 and shall thereafter be distributed amongst the Partners on the basis set out in clause 8 hereof.
- (e) Subject to clause 8.3, all Carried Interest to which the Special Limited Partner has become entitled and which is held in the Escrow Account pursuant to clause 8.3 shall be released absolutely to the Special Limited Partner and in addition, the Special Limited Partner shall be entitled to share with the Limited Partners in all Income and Capital Gain less any Losses accruing after the termination date on any Investment held by the Partnership on termination in accordance with the respective entitlements of the Special Limited Partner and the Limited Partners as set out herein provided that the Limited Partners shall have received distributions equal to, or greater than, the amounts referred to in clause 8.3(a).

## 11. ACCOUNTS, REPORTS AND AUDITORS

### 11.1 Accounts

The Manager shall prepare and approve accounts of the Partnership in respect of each Accounting Period in accordance with generally accepted accounting principles in [•] (consistently applied, subject to any changes in such principles), including a balance sheet, profit and loss account and a summary of Investments. The Manager shall cause such accounts to be audited by the Auditors. A set of the accounts including the report of the Auditors and a statement of accounting policies shall be furnished to each Partner as soon as possible (but in any event within sixty (60) Business Days) following the end of each Accounting Period.

### 11.2 Reports

11.2.1 In addition to clause 11.1, within forty five (45) Business Days of the end of each period of three (3) months ending on the last day of March, June, September and December in each year, the Manager shall prepare and send to each Limited Partner an unaudited report approved by the directors of the Manager comprising a statement of the Investments and other property and assets in which the Partnership has an interest, details of the Investments purchased, sold and otherwise disposed of during the relevant period and the cost and value of each Investment forming part of the Partnership Assets as at the end of such period (but that it is hereby understood that valuation of Investments shall only occur once every three (3) months), a statement of the estimated net asset value of each Limited Partner's interest in the Partnership, the details of any changes to the composition of the Scientific Advisory Panel or the Investment Review Panel that may have occurred during the previous twelve calendar month period, and (in the case of the report prepared in respect of the last quarter of each calendar year) the number of employees in each Investee Company both as at the date of investment in such company and as at the end of the relevant quarter. Each such report shall be prepared in accordance with the applicable EVCA "Level Two" guidelines in operation at the date hereof. In calculating the value of any Investment the Manager shall use the guidelines issued by the EVCA from time to time (in a consistent manner, subject to any changes in such guidelines) and, exceptionally, any other adjustment which the Manager deems appropriate and explains by way of a note to such valuation. The first such report shall be in respect of the period from the Initial Closing Date to a date not later than 31 December 2008. The Manager shall send such report to each Limited Partner by post or by electronic means.

11.2.2 The Manager shall, upon the reasonable request of the Advisory Board, provide such information to the Advisory Board as may be reasonably required in order for it to determine whether the Manager has complied with the terms of clause 6(I).

### 11.3 **Auditors**

The Auditors may be removed by the Manager. Any replacement auditors to be appointed following such removal or resignation of the Auditors shall be appointed by the Manager with the approval of the Advisory Board provided always that such replacement auditors is a firm of chartered accountants which forms part of an internationally recognised accounting firm.

## 12. **MEETINGS OF LIMITED PARTNERS AND THE ADVISORY BOARD**

### 12.1 **Meetings of Limited Partners**

- (a) The Manager shall call at least two (2) (or such lesser number as it may, in consultation with Limited Partners, deem appropriate) meetings of Limited Partners and the investors in the other Partnerships in each calendar year. The Manager may also call a meeting of the Partners and the Limited Partners or other investors in the other Partnerships on the Manager's own initiative. In addition upon the written request of persons representing 25 % or more of the aggregate of the Capital Contributions advanced by Limited Partners to the Partnership and the capital contributions advanced by the Limited Partners or other investors in the other Partnerships, the Manager shall call a meeting of the partners and such Limited Partners and other investors in the other Partnerships. Notice of meeting requisitioned shall be given to each Partner and each of the Limited Partners or other investors in the other Partnerships within ten (10) Business Days after receipt by the Manager of such request and such meeting will be held within forty five (45) Business Days of the date on which such notice shall have been given to the Partners and each of the Limited Partners or other investors in other Partnerships but not earlier than ten (10) Business Days from the date of such notice. All meetings other than those requisitioned by Limited Partners shall be called by the Manager by giving notice of such meeting to each Partner and each of the Limited Partners or other investors in the other Partnerships not less than ten (10) nor more than sixty (60) Business Days prior to such meeting.
- (b) Each notice of a meeting of the Partners and each of the Limited Partners or other investors in the other Partnerships shall state the time and (unless such notice states that such meeting is to be held by telephone) the place at which such meeting shall be held (which time and place, if any, shall be reasonably selected by the Manager) and shall state briefly the purpose of and the business to be transacted at the meeting. Unless expressly stated otherwise in this Agreement all motions considered at any such meeting shall be capable of being determined by a resolution passed by Limited Partners in the Partnership and the other investors in the other Partnerships representing over 50% of the aggregate of the Capital Contributions made by Limited Partners to the Partnership and the capital contributions made by the Limited Partners or other investors in the other Partnerships.

## 12.2 Advisory Board

12.2.1 The Advisory Board, whose role is to represent the interests of Limited Partners and investors in other Partnerships, shall meet when requested by the Manager or by any member of the Advisory Board, subject to no member being entitled to request more than two (2) meetings in any one (1) calendar year period (but, in any event, at least twice in every calendar year) to carry out the following tasks:-

- (a) to review the Partnership's annual valuations;
- (b) to review the Fund's investment objectives, strategy and performance; and
- (c) to review any potential conflict of interest between the Manager or any of its Associates and the Partnerships, between the Partnerships and any other fund managed by the Manager or any of its Associates and any potential conflict between the Partnerships.

Provided always that the function of such Advisory Board except in relation to clause 12.2.1(c) shall be to consult with the Manager in relation to the above matters and the Manager shall not be required to follow any advice or recommendation of the Advisory Board but shall exercise its powers as set out in clause 5 hereof at its own discretion. In respect only of clause 12.2.1(c), the Manager shall abide by the advice of the Advisory Board. In particular the Advisory Board shall have no authority to take part in the management or control of the business of the Partnership. However, if the Manager does not abide by any advice or recommendation of the Advisory Board, the Advisory Board shall be entitled to request in writing a meeting with the Investment Review Panel in relation to the relevant issue. The Manager shall provide each of the members of the Advisory Board with such documentation and other information as they may reasonably request to carry out the functions referred to above.

12.2.2 The maximum number of members of the Advisory Board at any one time shall be five (5).

12.2.3 Notice of any meeting of the Advisory Board and details of the purpose and agenda of such meeting shall be given to each member of the Advisory Board not less than ten (10) Business Days prior to the date of such meeting, unless expressly provided otherwise herein all resolution and decisions of the Advisory Board may be made by a majority of such Advisory Board.

12.2.4 Each member of the Advisory Board shall be entitled to all reasonable expenses incurred in respect of each meeting of the Advisory Board which he attends.

12.2.5 If any Limited Partner fails to comply with a Drawdown Notice on the due date, and if any procedures relating to the service and enforcement of that Drawdown Notice contained in this Agreement or in any other Agreement between the Manager and that Limited Partner have been complied with, then any nominee

of such Limited Partner on the Advisory Board shall no longer be entitled to attend or vote at any subsequent meeting of the Advisory Board.

- 12.2.6 No employees of the Manager or any of its Associates shall be entitled to be a member of the Advisory Board.

### 12.3 **Scientific Advisory Panel**

12.3.1 The Scientific Advisory Panel will be established to provide scientific advice to, but not make decisions for the Manager, on, inter alia, Investment proposals, prior to investment by the Fund provided always that the function of such Scientific Advisory Panel shall be to consult with the Manager in relation to the above matters and the Manager shall not be required to follow any advice or recommendation of the Scientific Advisory Panel but shall exercise its powers as set out herein at its own discretion.

12.3.2 Members of the Scientific Advisory Panel may also from time to time assist Investee Companies in a consultancy capacity provided however, that any consultancy actively will not be carried out on behalf of the Partnership, the General Partner, the Fund Manager or any other appointed manager.

12.3.3 The Manager may increase the number of members of the Scientific Advisory Panel as the Fund's portfolio grows, depending on its requirements for specialists in any particular area provided that the costs and expense incurred by the Scientific Advisory Panel in the proper performance of its duties hereunder shall not (save with the consent of the Advisory Board) exceed Euros 65,000 in any one year. The Manager will use its reasonable endeavours to procure that the full Scientific Advisory Panel will meet at least twice a year and that committees, comprising individual members of the board with appropriate areas of expertise, will meet on an ad hoc basis to consider specific investment opportunities presented to the Manager.

### 12.4 **Investment Review Panel**

12.4.1 The Investment Review Panel will be established to provide advice to, but not make decisions for the Manager, on, inter alia, the progress of the Fund and conditions in the [●] sector generally provided always that the function of such Investment Review Panel shall be to consult with the Manager in relation to the above matters and the General Partner shall not be required to follow any advice or recommendation of the Investment Review Panel but shall exercise its powers as set out herein at its own discretion.

12.4.2 Members of the Investment Review Panel may also from time to time assist Investee Companies in a consultancy capacity provided, however, that any consultancy activity will not be carried out on behalf of the Partnership, the General Partner, the Fund Manager or any other appointed manager.

12.4.3 The Manager may increase the number of members of the Investment Review Panel as the Fund's portfolio grows, depending on its requirements for specialists in any particular area provided that the number of members of the

Investment Review Panel shall not exceed six (6). The Manager will use its reasonable endeavours to procure that the Investment Review Panel will meet on at least a quarterly basis.

12.4.4 Notwithstanding any other provisions of this Agreement, the fees and expenses of the Investment Review Panel shall not (save with the prior consent of the Advisory Board) exceed Euros 75,000 in any one year.

### 13. ERISA INVESTORS

#### 13.1 Definitions

For the purposes of this clause 13 the following expressions shall have the following meanings:

**"ERISA Partner"** means any Limited Partner that is an employee benefit plan subject to Title I of ERISA or a plan subject to paragraph 4975 of the Code, or an entity whose underlying assets include "plan assets" within the meaning of the ERISA Plan Assets Regulation by reason of investment in the entity by an employee benefit plan subject to Title I of ERISA;

**"Unaffected Limited Partners"** means the Limited Partners other than any ERISA Partner.

#### 13.2 ERISA Commitment

Notwithstanding the provisions of clause 3, no ERISA Partner shall be required to pay any part of its Commitment to the Partnership at any time prior to the date on which the Partnership acquires its first Investment (the **"First Investment"**) in accordance with clause 3.3, but instead its Commitment shall be payable in accordance with the terms of this clause 13.2 (but for the avoidance of doubt, at any time thereafter, the provisions of clause 3.3 shall apply and not the provisions of this clause 13.2). The amount of the Commitment otherwise required to be paid by an ERISA Partner pursuant to clause 3.3 shall be paid on the date when the Partnership acquires the First Investment and each ERISA Partner shall also owe, together with the Commitment, an additional amount equal to the amount of such Commitment multiplied by the product of (A) [insert interest rate] and (B) the number of days elapsed from the date on which the payment would have been required to have been made (without regard to this sentence) pursuant to clause 3.3 until the date of actual payment divided by 365. The ERISA Partner shall become a Limited Partner and not an Additional Limited Partner on that date. For the purposes of this clause 13.2, it is hereby understood that in accordance with clause 6(h) the Manager will use its reasonable efforts so that the Partnership will qualify as a **"venture capital operating company"** (within the meaning of the ERISA Plan Assets Regulation, a "VCOC") upon the making of the First Investment. If, on the date of the first closing at which Investors that are not affiliated with the Manager acquire interests in the Partnership, both ERISA Partners and persons that are not ERISA Partners are to be acquiring interests in the Partnership, then the acquisition of interests by such persons that are not ERISA Partners shall occur prior to the time of the acquisition of interests by ERISA Partners.

### 13.3 ERISA Partner Withdrawal

- (a) In the event that the Manager shall become aware that the Partnership does not qualify as a VCOC the Manager shall provide each ERISA Partner with written notice thereof.
- (b) If the Manager provides the notice referred to in clause 13.3(a), any or all ERISA Partners may be required by the Manager, by notice to such ERISA Partner, completely or partially to withdraw from the Partnership if, in the reasonable judgement of the Manager (having exhausted all reasonable mitigating measures) supported by an opinion of its US counsel which shall be supplied to the relevant ERISA Partner, the Partnership does not qualify as a VCOC.
- (c) If the Manager shall become aware that the Partnership's assets may constitute "plan assets" within the meaning of the ERISA Plan Asset regulation or if any ERISA Partner shall deliver to the Manager an opinion (a "Withdrawal Opinion") of counsel (which opinion and counsel shall be satisfactory to the Manager) to the effect either that, as a result of the manner in which the activities of the Partnership are conducted or the terms upon which any Investments are made or continued, the Partnership's assets constitute "plan assets" within the meaning of the ERISA Plan Assets Regulation (a copy of which opinion shall be provided by the Manager to all other ERISA Partners), the Manager shall then as promptly as practicable use all reasonable efforts to take such actions as it deems necessary and appropriate to prevent or cure such result, taking into account the interests of all Partners and of the Partnership as a whole. Without limiting the generality of the foregoing, the Manager may but shall not be obliged to:
  - (i) re-negotiate the terms of any Investment or otherwise modify the manner in which the Partnership conducts its business;
  - (ii) permit the transfer, in accordance with the provisions of clause 9, of all or a portion of the Interests of any or all of the ERISA Partners; and/or
  - (iii) require, by notice to any or all of the ERISA Partners, such ERISA Partners completely or partially to withdraw from the Partnership in accordance with the provisions of clause 13.3(d).

If within 30 days after receipt of a Withdrawal Opinion, the Manager has not delivered to all the ERISA Partners an opinion of counsel or such other evidence as shall be reasonably satisfactory to a majority (by amount of Commitments) of such ERISA Partners, that the relevant statement or opinion in the Withdrawal Opinion is not or is no longer accurate (or that the Partnership's assets are not otherwise "plan assets") then all the ERISA Partners will have the option within 30 days to withdraw completely or partially from the Partnership. If the Partnership receives from an ERISA Partner a notice of intent to withdraw due to the failure of the Partnership to deliver the

certification required under clause 6(h) and the Partnership does not provide such certification within 10 days following receipt of such notice, then the ERISA Partner shall have the option, within 30 days thereafter, to withdraw completely from the Partnership by giving notice thereof to the Manager.

- (d) A complete or partial withdrawal pursuant to clause 13.3(b) or 13.3(c) will be effected by the Partnership's purchase of the withdrawing ERISA Partner's Interest (or, in the case of a partial withdrawal, a portion thereof) at the purchase price and in accordance with the procedures set out in clause 13.3(g). The effective date of any such withdrawal shall be the last day of the month in which notice of such withdrawal was given by the Manager, in the case of a withdrawal pursuant to clause 13.3(b), or was given by the Manager or an ERISA Partner, as the case may be, in the case of a withdrawal pursuant to clause 13.3(c).
- (e) The costs of any ERISA Partner for obtaining or seeking to obtain an opinion of counsel for the purposes of clause 13.3(c) shall be borne by such ERISA Partner. The Partnership shall not be liable for any legal expenses incurred in relation to the issue by the Manager of any legal opinion or notice referred to in this clause 13.3 (such expenses being borne by the Manager out of the Management Fee alone).
- (f) If the Partnership does not qualify as a VCOC, then each ERISA Partner shall, at the request of the Manager identify to the Manager which of the persons or entities with whom the Partnership may have had non-exempt dealings are "parties in interest" or "disqualified persons" (as defined in sections 3 of ERISA and 4975 of the Code, respectively) with respect to such plan.
- (g) In the event that the Partnership purchases the Interest (or, in the case of a partial withdrawal, a portion thereof) of any Limited Partner pursuant to the provisions of this clause 13, the purchase price therefor shall be the amount which such Limited Partner would have been entitled to receive in respect of its Interest (or, in the case of a partial withdrawal, the relevant portion thereof) pursuant to clause 10 if the Partnership had been liquidated and terminated as of the last day of the immediately preceding calendar quarter determined on the basis of the audited and unaudited financial statements and records of the Partnership. Such valuation shall be made by the Manager in good faith and acting reasonably in consultation with the Advisory Board and the Auditors and shall be promptly notified to the Limited Partners (provided that if any Limited Partner or Limited Partners together holding 15% or more of total Commitments shall disagree with such valuation, it or they may, at any time within ten (10) days from the date it or they are given notice of such valuation, by written notice to the Manager, require the valuation to be carried out by an independent investment banking firm or other independent expert appointed by the Manager and reviewed by the Auditors (the cost of such valuation being borne by the Manager out of the Management Fee alone). Such purchase price shall be paid in cash, except that the Partnership may pay such purchase price in whole or in part through a distribution in specie of Partnership Assets, as soon

as reasonably practicable after such withdrawal pursuant to this clause 13 and, in any event, within one year thereof. The making of any such payment in specie shall be in the form of the withdrawing Limited Partner's pro-rata share of each Investment of the Partnership; provided that the Manager may require the withdrawing Limited Partner to give the Manager its proxy with respect to any securities distributed to it, provided that no such proxy will be required to be given by an ERISA Partner where to do so would constitute a delegation of fiduciary responsibility to the Manager. Notwithstanding the foregoing, the Partnership shall not be required to sell Investments, in order to make such payments, in advance of the time at which the Manager, in the best interests of the Partnership (in the Manager's judgement), would otherwise cause such Investments to be sold, although, if the relevant ERISA Partner has delivered an opinion of counsel to the Manager (which opinion and counsel shall be satisfactory to the Manager) to the effect that the holding of a particular Investment by such ERISA Partner would constitute a material breach of ERISA then the Manager shall seek to dispose of the relevant proportion of such Investment as soon as practicable and distribute the net proceeds of such disposal to such ERISA Partner, in lieu of making a distribution in specie to such ERISA Partner.

- (h) The Manager shall also be entitled to retain or permit any Limited Partner to withdraw from the Partnership in the event that either:
  - (i) such Limited Partner's interest will render the Partnership subject to registration requirements under the United States Investment Company Act of 1940; or
  - (ii) the continued involvement of such Limited Partner in the Partnership will result in a violation of law which in the reasonable opinion of the Manager would have a material adverse effect on the affairs of the Partnership,

in which event such withdrawal shall take place on the same terms mutatis mutandis as those which apply in relation to ERISA Partners as set out above.

- (i) In the event of the redemption of a withdrawing Partner's interest pursuant to this clause 13, an amount equal to the Capital Contribution of such withdrawing Partner shall be applied to increase the Capital Contributions of the remaining Limited Partners pro rata. The total Commitments of the Partnership shall be reduced by an amount equal to the amount of the Commitment of such Partner and thereafter such reduced total Commitment shall apply for the purposes of this Agreement in relation to any Investment acquired after the of withdrawal.
- (j) In the event of withdrawal of any Partner from the Partnership pursuant to this clause 13, there shall be deducted from the sums payable to such Partner or the in specie distributions to be made to such Partner out of the assets of the Partnership and retained by the Partnership for the purposes set out below,

- (i) an amount equal to the Management Fee calculated at the appropriate rate specified herein for the Accounting Period in which the Partner withdraws (and for which purpose the Accounting Period shall be assumed to be a period of 365 days) on the amount of the Commitments drawn down from such Partner prior to the date of withdrawal and such amount shall be a special Management Fee which shall be in addition to Management Fee accruing in respect of such Commitments in accordance with the terms hereof and shall be paid to the Manager prior to any payment to the withdrawing Partner; and
  - (ii) an amount equal to the Carried Interest that would have been payable in respect of the Partner's interest (on the assumption that the date of withdrawal was the date of termination of the Partnership and the Partner was the only Limited Partner in the Partnership) less any amount already received by the Special Limited Partners by way of Carried Interest which is referable to such Partner's interest in the Partnership
  - (iii) and such amounts shall be allocated and distributed to the Special Limited Partner prior to any payment to the relevant withdrawing Partner.
- (k) Except as provided in this clause 13.3, no Limited Partner shall have the right to withdraw from the Partnership (save for clause 13.3(h)).
  - (l) For purposes of this clause 13, the term "Interest" means the interest of a Limited Partner in the Partnership including its Commitment and all other rights which it has in the Partnership, including its rights to vote and inspect the books and records of the Partnership.
  - (m) The terms of this clause 13 (save for clause 13.3(h)) shall not be amended without the consent of ERISA Partners holding at least 75% of the drawn down Commitments of all the ERISA Partners.

## 14. BHC PARTNERS

### 14.1 Definitions

"BHC Partner" means any Limited Partner being a non-US bank or affiliate thereof that is subject to the U.S. Bank Holding Company Act of 1956, as amended (the "BHCA"), and that is a qualifying foreign banking organisation pursuant to the requirements of Section 211.23(b) of Regulation K.

"Regulation K" means Regulation K of the Board of Governors of the Federal Reserve System, as codified at 12 C.F.R. Part 211, and only successor regulation thereto.

"Regulation Y" means Regulation Y of the Board of Governors of the Federal Reserve System, as codified at 12 C.F.R. Part 225, and only successor regulation thereto.

## 14.2 **Investments**

The Manager will ensure that any Investments to be made by the Partnership prior to the Final Closing Date are not ones which, at the time any such Investment is made, would cause any BHC Partner to be in breach of the BHCA, which determination shall be made as if the powers and authorities provided under Section 4(k) of the BHCA, Subpart J of Regulation Y and Section 211.23(f)(5)(iii) of Regulation K are not available.

## 14.3 **Reporting**

The Manager shall make reasonable efforts to send to or procure that the relevant Investee Company sends to each BHC Partner, if any, after the date of the first Investment made by the Partnership the following information concerning any investment in any Investee Company that (i) is engaged in business in the United States, as defined by Regulation K, at the time of investment, (ii) owns, controls, or has power to vote five (5) % or more of any class of voting stock of any company that is engaged in business in the United States at the time of investment (a “**U.S. Issuer**”), (iii) becomes engaged in business in the United States subsequent to becoming an Investee Company, or (iv) acquires ownership, control, or the power to vote five (5) % or more of any class of voting stock of a U.S. Issuer (items (ii) and (iv) hereof an “**Immediate Reporting Event**”):

- (a) the date of purchase of the first and subsequent investment in the Investee Company, the date of any Immediate Reporting Event, and the date of any sale of any interest previously acquired in such company;
- (b) a description of or copies of any contractual or other arrangements with the Investee Company or any other party related thereto that would give the Manager or the Partnership rights that are additional to those that it holds solely by virtue of the security or other interests issued by the Investee Company, such as rights to receive information, rights of prior approval of management policies or compensation, or the right to one or more seats on the board of directors;
- (c) the full legal name of the Investee Company and the address of its headquarters;
- (d) the address of any office or offices of the Investee Company or of the headquarters, any other office or offices of any subsidiary (as defined by Regulation K) thereof located in the United States, and the full legal name of any such subsidiary that is engaged in business in the United States and the address of its headquarters and of any office thereof located in the United States;
- (e) the full legal name and address of the headquarters of any U.S. Issuer;
- (f) details of the assets and revenues for any Investee Company and any subsidiary thereof that is or becomes engaged in business in the United States, which would include an estimated breakdown of those amounts of assets and revenues which are located in or sourced from the United States, assets and revenues which are located in or sourced from outside the United States, and, if available, assets and revenues which are located in or sourced from particular countries,

all on the basis of a fiscal year and as of the last Business Day of a fiscal year, as appropriate.

The obligations upon the Manager as set out above in this clause are subject to the relevant BHC Partner agreeing to pay the reasonable internal and external costs, fees and expenses reasonably and properly incurred by the Manager or any of its Associates and to the relevant BHC Partner entering into any reasonable confidentiality obligations with the relevant Investee Company or any of its Associates in relation to such information so as to ensure that it is not used or disclosed save for the purposes of such BHC Partner's compliance with Regulation K and Regulation Y. Notwithstanding the above, the Manager will procure that any such confidentiality obligation required by an Investee Company or any of its Associates from the relevant BHC Partner will provide that such BHC Partner will not be in breach of its confidentiality obligation if, having made proper disclosure of such information for the purpose of its compliance with Regulation K and Regulation Y, the authorities use or disclose such information.

All such information shall be sent by the Manager no later than 10 Business Days following the date of investment or the date on which the Manager obtains knowledge that an Investee Company has become engaged in business in the United States, except that the Manager shall use reasonable efforts to send or procure the sending of such information promptly (and in any event within two (2) Business Days of the Manager becoming aware of such matter), in writing or if necessary orally, in the case of an Immediate Reporting Event. The Manager shall exercise its reasonable efforts to obtain additional information reasonably requested by any BHC Partner for the purpose of ascertaining its compliance with the BHCA.

For the avoidance of doubt the parties hereto agree that the Manager shall not be responsible for the accuracy or completeness of any such information and shall have no liability therefore. The parties hereto furthermore agree that any information sent to a BHC Partner pursuant to the terms hereof may only be used for the purposes of the relevant BHC Partner's compliance with Regulation K and Regulation Y, and may not be used or disclosed by such BHC Partner for any other purpose.

#### 14.4 **Voting**

If any limited partnership interest in the Partnership held for its own account by a BHC Partner is determined by such BHC Partner at any relevant time to be in excess of such level as may be permitted by the BHCA and Regulation Y due to the failure of such interest to qualify as a permissible investment by such BHC Partner under Regulation K, then such BHC Partner shall have the right to consent to, approve, adopt or take any action hereunder only to the extent that its limited partnership interest equals 4.99% or, if lower, such other percentage that the relevant BHC Partner's interest would otherwise represent, as a proportion of all outstanding interests of the Limited Partners, calculated on the basis of their respective Commitments, pursuant to the terms of this Agreement. For purposes of the immediately preceding sentence, the provisions of the BHCA, Regulation Y and Regulation K shall be applied as if the powers and authorities provided under Section 4(k), Subpart J and Section 211.23(f)(5)(iii), respectively, are not available.

Notwithstanding the above, the relevant BHC Partner shall be permitted to vote without regard to the restrictions set forth above on matters that would significantly and adversely affect the rights of such BHC Partner in respect of its limited partnership interest in the Partnership, including, for example, the issue of limited partnership interests with rights senior to those attaching to the interest held by the relevant BHC Partner.

15. **MISCELLANEOUS**

15.1 **Investment Intent of the Limited Partners**

Each Limited Partner by execution of this Agreement warrants to every other Partner and to the Partnership that it has received a copy of the Offering Document which draws attention to the need to evaluate the merits and risk of an investment in the Partnership and the need for a Limited Partner to evaluate its ability to bear the economic risk and lack of liquidity of an investment in the Partnership.

15.2 **Investment Opportunities**

- (a) The functions and duties which the General Partner and the Manager undertake on behalf of the Partnerships shall not be exclusive and the General Partner or the Manager and their Associates may perform similar functions and duties for itself and for others and, without limitation, may act as a General Partner, manager or investment adviser in or of other private equity or venture capital funds or engage in any other activity without an Investor Consent provided however that:
  - (i) the Manager shall continue properly to manage the affairs of the Partnership and is not thereby prevented from properly performing its duties hereunder; and
  - (ii) neither the General Partner or the Manager or their Associates will act as General Partner, manager or the primary source of transactions on behalf of another new pooled investment fund with investment objectives (including the geographical scope) substantially similar to those of the Partnerships nor engage in any active fundraising in respect of such a fund until the earlier of (i) the end of the Commitment Period; and (ii) such time as at least 75% of the total Commitments to the Partnership have been invested or committed for Investment including by way of follow-on financing, unless an Investor Special Consent has previously been given. For the above purposes the Advisory Board shall be entitled to review the accuracy of the amounts which the Manager has deemed to constitute amounts "committed for investment".
- (b) Any Limited Partner may directly or indirectly acquire an interest in companies in which the Partnership has an interest and shall not be liable to account to the Partnership for any profits arising therefrom. No Limited Partner shall be obliged to bring to the Partnership's attention any investment opportunities of which it may from time to time become aware.

- (c) On an exceptional basis and only and subject to the restrictions contained in this Agreement, the Manager or its Associates (other than the General Partner) may provide normal investment or financial services in respect of Investee Companies or companies in which the Partnership wishes to invest but in such circumstances the fees arising shall be for the benefit of the Partnership unless the Advisory Board, acting reasonably, deems that such fees may be retained by the Manager or such relevant Associate on the basis that no conflict of interest exists in relation to the performance of such services.
- (d) Where an investment opportunity may be taken up in whole or in part by the Fund and by any other fund in relation to which the Manager (or any of its Associates) acts as general partner, manager, adviser or primary source of transactions, the Manager will seek to allocate the investment opportunity between the Fund and such other funds fairly having due regard inter alia to the size and the investment objectives, policy and restrictions of each fund, the need to ensure that no fund has a holding of a type or size which is not suitable for it, the amounts available for investment in the relevant opportunity by each such fund, the interests of each such fund generally and such other factors which they may reasonably deem to be relevant.
- (e) Subject to the conflict of interest provisions in this Agreement, the Manager will not seek to invest the monies of the Partnership in any Investee Company in which any other fund in relation to which the Manager (or any of its Associates) acts as general partner, manager, adviser or primary source of transactions, or in which the Manager (or any of its Associates) itself holds a material interest, (any such investment to include for the avoidance of doubt a purchase of securities from any such fund or from the Manager (or any of its Associates)) unless the Advisory Board has been consulted prior to the making of the relevant investment and the Investment is made on terms which have been accepted by an independent third party investor or the consideration for the Investment has been approved as being fair from the Partnership's view point by an independent third party financial adviser selected by the Manager.
- (f) The Manager will not seek to sell transfer, assign, exchange or otherwise dispose of any Investment made by the Partnership to any other fund in relation to which the Manager (or any of its Associates) acts as general partner, manager, adviser or primary source of transactions, or to the Manager (or any of its Associates) itself or effect any other transaction involving such other parties as counterparties unless the Advisory Board has been consulted prior to the making of the relevant investment and such sale or other transaction is made on terms which have been accepted by an independent third party investor or the consideration for the disposal has been approved as being fair from the Partnership's view point by an independent third party financial adviser selected by the Manager.
- (g) Save with the prior consent of at least a majority of the members of the Advisory Board, none of the General Partner or the Manager or its Associates or the Key Executives may for its own account directly or indirectly acquire an

interest in companies in which the Partnership has an interest except (a) as a result of a distribution in specie from the Partnership pursuant to this Agreement, as a result of their investment in the Partnership itself; or (b) as a result of an interest in or a co-investment alongside any other venture capital or investment fund sponsored, managed or advised by the Manager, the General Partner or by any Associate of the General Partner or the Manager or a distribution in kind from any such other fund.

### 15.3 **Co-Investment**

To the extent to which part of an investment opportunity remains available following investment by the Partnerships in an Investment then the Manager shall be entitled to offer such co-investment opportunity to one or more of the Limited Partners and/or any other person on such basis, and utilising such procedures as he may in his absolute discretion determine. In exercising such discretion the Manager shall, in each case, make a prima facie assumption that such investment opportunity should be offered to all Limited Partners who have expressed an interest to the Manager in taking up such opportunity, on a pro rata basis by reference to their respective Commitments. However the Manager may also take into account such other matters as he may determine including without limitation, the size of investment intended to be made by such potential co-investor, the benefits which such potential co-investor may bring to any particular investment and the length of time for which the potential co-investor intends to hold such investment. All co-investors investing pursuant to an opportunity provided by the Manager under this clause shall be required to invest on terms identical with the terms applicable to Investors in the Fund (save as otherwise required for regulatory or tax reasons). The Advisory Board shall on a semi-annual basis and in accordance with clause 12.2, review any co-investments made pursuant to this clause 15.3.

### 15.4 **Indemnification**

- (a) The General Partner and the Manager and any of their Associates and their respective officers, partners, agents, consultants and employees and members of the Investment Review Panel, the Scientific Advisory Panel and the Advisory Board shall have no liability for any loss incurred by the Partnership or any Limited Partner howsoever arising in connection with the services provided by any of them pursuant to this Agreement provided however that such exculpation shall not apply with respect to any matter resulting from such person's gross negligence, fraud, wilful misconduct, wilful default or wilful illegal acts, and furthermore each of them shall be entitled to be indemnified out of the Partnership Assets against any and all claims, liabilities (including liabilities in contract or tort), costs or expenses incurred or threatened by reason of him or it being or having been the General Partner and the Manager or any of their Associates (including costs and expenses incurred pursuant to clause 7.2(b)) or an Associate, officer, partner, agent, consultant or employee of the General Partner or the Manager or having been appointed a director of an Investee Company or having been a member of the Investment Review Panel, the Scientific Advisory Panel or the Advisory Board provided however that such person shall not be so indemnified with respect to any matter resulting from its

gross negligence, fraud, wilful misconduct, or wilful illegal acts. Any person who shall become a General Partner of the Partnership shall similarly be indemnified in respect of its activities as a General Partner.

- (b) In particular, but without prejudice to the generality of the foregoing the General Partner and the Manager shall be indemnified against any tax liability in respect of tax on income or capital gains allocated to any Limited Partner or the Special Limited Partner, such indemnity to be satisfied in the first instance by the Limited Partner or Special Limited Partner concerned but, if not so satisfied, out of the Partnership Assets in which event the Partnership shall be subrogated to the rights of the General Partner and the Manager against such Limited Partner or Special Limited Partner hereunder.
- (c) The General Partner and the Manager shall not be liable to the Partnership or any Limited Partner for the gross negligence, dishonesty, wilful misconduct or wilful illegal acts of any agent acting on behalf of the General Partner or the Manager or the Partnership provided that such agent was selected and appointed by the General Partner or the Manager applying reasonable care.

#### 15.5 Confidential Information

The Limited Partners shall not, and shall use all reasonable endeavours to procure that neither they nor any person connected with or associated with each such Limited Partner shall disclose to any person, firm or corporation (except legal, accounting and other private equity consultancy advisers where appropriate confidentiality agreements (whether written or otherwise) have been obtained) or use to the detriment of the Partnership or any of the Partners any confidential information which may have come to its knowledge as a result of being a Limited Partner in the Partnership concerning:

- (a) the affairs of the Partnership; or
- (b) any of the Partners (including their identity); or
- (c) concerning any proposed or actual Investment by the Partnership,

unless required to do so by law or by the regulations of any relevant stock exchange or other regulatory authority the rules and regulations of which he or it is subject or any request from any tax authority, provided that a Limited Partner which is the trustee of a trust or which is itself a limited partnership, or a company established in a tax haven as an investment fund shall notwithstanding this clause be entitled to communicate information regarding the Partnership and Investments or proposed Investments to beneficiaries under such trust, investors within such limited partnership or shareholders in such company, as the case may be if required to do so under the terms of the relevant trust deed, limited partnership agreement or constitutional documentation, as the case may be, provided that such beneficiaries or investors are bound by such duties of confidentiality as if they were Limited Partners in the Partnership. Notwithstanding the provisions of this clause, a Limited Partner shall be entitled to disclose such information to its directors, officers, employees, agents and professional consultants and those of its Associates who are not at the relevant time engaging in any business which competes

with that of the General Partner or any of its Associates, subject to any such person agreeing to be subject to the confidentiality obligations in this clause.

#### **15.6 Variation of Agreement**

This Agreement (including the Schedules hereto) may be amended in whole or in part by the written consent of the General Partner, the Manager, the Special Limited Partner and of the Limited Partners and investors in the other Partnerships by an Investor Special Consent, provided however that no such variation shall be made which shall amend the terms of this clause 15.6, impose upon any Partner any obligation to make any further payment to the Partnership beyond the amount of its Capital Contribution and of its Loan (if any) or which would in the reasonable opinion of the Manager otherwise adversely affect the rights and interests of the General Partner, the Special Limited Partner or the Limited Partners, including without limitation any change in the allocation of Income, Capital Gain and Losses without the affirmative consent of all Partners adversely affected thereby.

#### **15.7 Notices**

Notices which may or are required to be given hereunder by any party to another shall be in writing and sent by telex, e-mail, facsimile, courier or by prepaid first class post, to the relevant party at its address set forth in Schedule 1 hereto or such other address as may be designated by any party hereto by notice addressed to the Partnership in the case of the Limited Partners and to each Limited Partner in the case of the Manager or the General Partner. Any notice sent by telex, e-mail or facsimile shall be deemed to be received immediately and any notice sent by prepaid first class post shall be deemed to be received five (5) days after the date of posting.

#### **15.8 Agreement Binding Upon Successors and Assigns**

Except as otherwise specified herein, this Agreement shall ensure to the benefit of and shall be binding upon the heirs, executors, administrators or other representatives, successors and assigns of the respective parties hereto.

#### **15.9 VAT**

If the General Partner or the Manager is liable to account for or pay any VAT by reason of being treated as making or receiving taxable supplies pursuant to this Agreement, the General Partner or the Manager (as the case may be) shall be entitled to be indemnified out of the Partnership Assets in respect of any such liability.

#### **15.10 Warranties of the General Partner and the Manager**

Each of the General Partner and the Manager represents and warrants, as of the date of this Agreement, that to the best of its knowledge, there is no material legal action, suit, arbitration or other material legal, administrative or other governmental investigation, inquiry or proceeding (whether federal, state, local or foreign) (each an "**action**") outstanding against the Partnership, the General Partner, the Manager or any of the Key Executives. For the purposes of this clause, neither the General Partner nor the Manager makes any representation or warranty regarding any litigation against a portfolio

company of the Partnership or against any other private equity fund or entity for which the General Partner or its Associates may act as a general partner, manager or investment adviser if none of the Partnership, the General Partner, the Manager or any of the Key Executives (to the extent that such litigation is brought against them in such capacity or otherwise as a fiduciary in respect of third party assets) is named as party thereto, unless an adverse outcome of such litigation could have a material adverse effect on the Partnership.

Each of the General Partner and the Manager further represents and warrants that, as of the date of this Agreement, the General Partner, the Manager and the Key Executives have all applicable licences, consents and authorisations necessary under any applicable laws for the performance of their duties and exercise of their discretions under this Agreement and any management or other agreement which the Partnership may conclude with any of them.

Each of the General Partner, the Manager and the Special Limited Partner further represents and warrants that the General Partner and the Special Limited Partner are and will remain special purpose vehicles established and operating solely in relation to the Fund.

Each of the General Partner and the Manager agrees to notify the Limited Partners as soon as practicable if it becomes aware that any of the representations and warranties set out in this clause above are not true and correct.

#### 15.11 **Side Letters**

The Partnership and the General Partner may enter into agreements or arrangements with any Limited Partner (or any Associate of such Limited Partner) on matters relating to the Partnership to address circumstances or requirements of such Limited Partner (or any such Associate), but neither the Partnership nor the General Partner will enter into any such agreement without notifying all other Limited Partners and providing to them copies of such agreements or arrangements. Furthermore any such other Limited Partner will be granted the benefit of any such agreement or arrangement to the extent that it is relevant to and capable of application to such Limited Partner whether entered into prior to, on or after any Closing Date (save to the extent that it relates to the right of a Limited Partner in particular circumstances to be a member of the Advisory Board) provided that such other Limited Partner confirms to the General Partner in writing no later than thirty days following the date of receipt of such agreements or arrangements that it wishes to be granted the benefits thereunder.

#### 15.12 **Governing Law**

- (a) This Agreement and the rights of the parties hereto shall be governed by and construed in accordance with English law.
- (b) Each of the parties hereto irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes which may arise out of or in connection

with this Agreement and, for such purposes, irrevocably submits to the jurisdiction of such courts.

- (c) Each of the parties irrevocably waives any objection which it might now or hereafter have to the courts of England being nominated as the forum to hear and determine any such suit, action or proceedings and to settle any such disputes and agrees not to claim that any such court is not a convenient or appropriate forum.
- (d) Nothing contained in this clause shall affect the right of either the General Partner or the Manager to serve process in any manner permitted by law or to bring proceedings in any other jurisdiction for the purpose of the enforcement of any judgement or settlement.

#### **15.13 Language of the Agreement**

This Agreement has been executed in the English language. In the event that this Agreement is also executed in any other language and there is any inconsistency between the English version and any other version of this Agreement, the English version shall prevail.

#### **15.14 Agent for Service of Process**

- (c) Unless otherwise agreed with the General Partner, each of the Partners not resident in [•] or [•] shall be treated as having [•] as its agent for the service of process in [•] and [•] on its standard terms and conditions, service upon whom shall be deemed completed whether or not forwarded to or received by the relevant appointor.
- (d) Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law or the right to bring proceedings in any other jurisdiction for the purposes of the enforcement or execution of any judgement or other settlement in any of the courts.

#### **15.15 Severability**

In the event that any provision hereof is for any reason held to be or become invalid or unenforceable, the validity of the remaining provisions hereof shall not be effected or impaired thereby. Instead of the invalid or unenforceable provision hereof, such valid or enforceable provision shall be deemed to be agreed upon which most closely corresponds to the intended economic purpose of the invalid or unenforceable provision. The same shall apply to any supplementary interpretation of any of the terms of this Agreement.

#### **15.16 Execution in Counterpart**

This Agreement may be executed in counterparts each of which shall be deemed to be an original hereof.



**SCHEDULE 2**  
**INVESTMENT FOCUS**

The Fund will invest in companies targeting major market needs through cutting edge technologies such as: