

**AGREEMENT OF LIMITED PARTNERSHIP**

**BIOSYS CAPITAL PARTNERS, LP**

*A Delaware limited partnership*

Dated as of \_\_\_\_\_, 2014

**THE LIMITED PARTNERSHIP INTERESTS (THE “INTERESTS”) IN BIOSYS CAPITAL PARTNERS, LP (THE “PARTNERSHIP”) HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY U.S. STATE OR FOREIGN SECURITIES LAWS, IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. SUCH INTERESTS MUST BE ACQUIRED FOR INVESTMENT ONLY AND MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF EXCEPT IN COMPLIANCE WITH (I) THE SECURITIES ACT, ANY APPLICABLE SECURITIES LAWS OF ANY U.S. STATE, AND ANY OTHER APPLICABLE SECURITIES LAWS; AND (II) THE TERMS AND CONDITIONS OF THIS AGREEMENT OF LIMITED PARTNERSHIP. PURCHASERS OF SUCH INTERESTS SHALL BE REQUIRED TO BEAR THE RISK OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.**

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## AGREEMENT OF LIMITED PARTNERSHIP

### BIOSYS CAPITAL PARTNERS, LP

**THIS AGREEMENT OF LIMITED PARTNERSHIP** (this “**Agreement**”) dated as of \_\_\_\_\_, 2014, is made by and among Biosys Capital Management, LLC, a Delaware limited liability company, in its capacity as the general partner (the “**General Partner**”), and the additional persons that are set forth in the books and records of the Partnership as limited partners.

## ARTICLE I

### FORMATION OF PARTNERSHIP

**Section 1.1. Formation.** Subject to the provisions of this Agreement, the parties do hereby form a limited partnership pursuant to the provisions of the Delaware Revised Uniform Limited Partnership Act (6 Del. C. Sections 17-101 *et seq.*, such Act, as amended from time to time, or any successor statute or statutes thereto, being called the “**Act**”).

**Section 1.2. Name.** The name of the Partnership shall be “Biosys Capital Partners, LP” Subject to all applicable laws, the business of the Partnership shall be conducted in the name of the Partnership unless, under the law of some jurisdiction in which the Partnership does business, such business must be conducted under another name or unless the General Partner determines that it is advisable to conduct Partnership business under another name. In those circumstances, the business of the Partnership in such jurisdiction or in connection with such determination may be conducted under such other name or names as the General Partner shall determine in its sole discretion, and the General Partner shall give prompt written notice to the Limited Partners of the use of such other name. The General Partner shall cause to be filed on behalf of the Partnership such partnership or assumed or fictitious name certificate or certificates or similar instruments as may from time to time be required by law.

**Section 1.3. Business.** Subject to the other provisions of this Agreement, the business of the Partnership shall be to make Investments in the healthcare and life-sciences industries and related opportunities. Investments may include (but shall not be limited to) Investments in companies which research, develop, market, or otherwise deal with (a) molecular medicine, genomics, and bio-informatics technologies, (b) electronic sensor and data aggregation and analysis technologies, (c) digital health platforms, and (d) other similar or related activities. Each Investment shall require the prior approval of the Investment Committee. The Partnership will generally make its Investments with the objective of obtaining interests in private companies which are headquartered in the United States, Canada or Mexico.

In connection with, and subject to, the foregoing, the Partnership shall have the power and authority to (i) make Investments in Securities and in other equity or debt instruments of any nature (including Investments in debt securities and other debt instruments in order to acquire distressed assets (through a bankruptcy process or otherwise)) and acquire other interests in properties and other assets; (ii) own, hold, exercise all rights in connection with, and otherwise sell or dispose of Investments; and (iii) carry on any activity relating to or arising from any of the above that a limited partnership organized under the Act may carry on as determined by the General Partner. The

General Partner shall manage the Partnership in a manner intended to maximize the Partnership's return on its invested capital, whether from capital appreciation or the receipt of interest, dividends and other items of income or gain of any nature.

**Section 1.4. *Places of Business; Registered Agent.***

(a) The address of the principal United States office and place of business of the Partnership and its street address shall be at 1707 L Street NW, Suite 400, Washington DC, 20036. The General Partner, at any time and from time to time, may change the location of the Partnership's principal place of business and may establish such additional place or places of business of the Partnership within the continental United States as the General Partner shall determine to be necessary or desirable, and in either such event shall give prompt written notice of such changed or additional place of business to the Limited Partners.

(b) The registered office of the Partnership in the State of Delaware shall be c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801, and the name of the registered agent for service of process on the Partnership at such address shall be The Corporation Trust Company. The General Partner, at any time and from time to time, may change the Partnership's registered office or registered agent or both by complying with the applicable provisions of the Act, and may establish, appoint and change additional registered offices and registered agents of the Partnership in such other states as the General Partner shall determine to be necessary or advisable.

**Section 1.5. *Term.*** The Partnership shall be formed and commence upon the completion of the initial filing for record of the Certificate with the Secretary of State of the State of Delaware and shall continue until terminated in accordance with Article IX.

**Section 1.6. *Filings.*** Upon the request of the General Partner, the Limited Partners shall promptly execute and deliver all such certificates and other instruments conforming hereto as shall be reasonably necessary for the General Partner to accomplish all filing, recording, publishing and other acts appropriate to comply with all requirements for the formation and operation of a limited partnership under the laws of the State of Delaware and for the qualification and operation of a limited partnership in all other jurisdictions where the Partnership shall propose to conduct business.

**Section 1.7. *Title to Partnership Property.*** All property owned by the Partnership, whether real or personal, tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually, shall have any ownership of such property.

## ARTICLE II

### DEFINITIONS, REFERENCES AND CONSTRUCTION

**Section 2.1. *Defined Terms.*** When used in this Agreement, the following terms shall have the respective meanings set forth below:

“**Act**” shall have the meaning assigned to it in Section 1.1.

“**Acquisition Value**” shall mean, with respect to each Investment in a Portfolio Company by the Partnership, the post-money valuation of the applicable Portfolio Company at the time of such Investment increased by an amount equal to interest thereon at a rate equal to the LIBOR Rate.

“**Additional Amount**” shall have the meaning assigned to it in Section 3.5(a)(v).

“**Additional Limited Partner**” shall have the meaning assigned to it in Section 3.5(a).

“**Adjusted Capital Account**” shall mean such Partner’s Capital Account, determined pursuant to Section 7.1(b) hereof as of the end of the relevant taxable year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Partner is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of each of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations.

The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

“**Admission Date**” shall have the meaning assigned to it in Section 3.5(a)(ii).

“**Advisor**” shall mean Biosys Capital Advisor, LLC, a Delaware limited liability company. The Advisor shall at all times be an Affiliate of the General Partner.

“**Advisory Agreement**” shall mean that certain Advisory Agreement entered into by and between the Partnership and the Advisor and dated as of the date hereof, as the same may be amended or restated from time to time.

“**Advisory Committee**” shall have the meaning assigned to it in Section 6.5(a).

“**Affiliate**” shall mean, when used with respect to another person, a person controlling, controlled by or under common control with such other person. Immediate family members of a person controlling the General Partner shall be deemed to be “**Affiliates**” of such person if the investment decisions of such immediate family member are controlled by such person or a person controlling such person or such person’s Affiliate. As used in this definition of “**Affiliate**”, the term “**control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract, or otherwise. For purposes of this Agreement, the members of the Investment Committee and the Principals will be deemed to be Affiliates of the General Partner. The Limited Partners in their capacities as limited partners of the Partnership shall not be deemed to be “**Affiliates**” of the Partnership, and no person or entity shall be deemed an affiliate of another by reason of common control by the Partnership. As used in this Agreement, the term “**person**”

shall include an individual, a corporation, a partnership, a limited liability company, an association or other entity, an estate, a joint stock company or a trust.

“**Affiliate Actions**” shall have the meaning assigned to it in Section 5.7(a).

“**Affiliate Agreements/Transactions**” shall have the meaning assigned to it in Section 6.5(i).

“**Affiliated Partner**” shall mean the General Partner and its Affiliates and any other Limited Partner designated by the General Partner as an Affiliated Partner at the time of acceptance of such Partner’s Subscription Agreement.

“**Agreement**” shall have the meaning assigned to it in the preamble.

“**Alternative Investment Vehicle**” shall have the meaning assigned to it in Section 5.10(a).

“**Annual Valuation Period**” shall mean the period of ninety (90) days beginning on the applicable anniversary of the Initial Investment Date.

“**Assessed Fee**” shall have the meaning assigned to it in Section 5.9(a).

“**Assignee**” shall have the meaning assigned to it in Section 10.1(a).

“**Assumed Income Tax Rate**” shall mean the highest effective marginal combined Federal, state and local income tax rate for a calendar year prescribed for an individual that is a direct or indirect owner of an interest in the General Partner (taking into account such Partner’s reasonable estimation of the character of the applicable income (e.g., long-term or short-term capital gain or ordinary or exempt) and the deductibility of state taxes for Federal income tax purposes).

“**Available Cash**” shall mean cash which is available in the accounts of the Partnership (other than Capital Contributions held or reserved for Investments or to pay Partnership Expenses), less such amounts as the General Partner determines to be necessary to meet current or reasonably foreseeable Partnership obligations or expenditures (including, but not limited to, Management Fees, Organizational Expenses and Partnership Expenses).

“**BHC Act**” shall have the meaning assigned to it in Section 8.7(a).

“**BHC Affiliates**” shall have the meaning assigned to it in Section 8.7(e).

“**BHC Partner**” shall have the meaning assigned to it in Section 8.7(a).

“**Bridge Financings**” shall mean all Securities, loans, guarantees or other instruments issued or obtained in connection with an Investment or potential Investment, including any Follow-On Investment, that are, at the time acquired by the Partnership, intended by the General Partner to provide interim or non-permanent financing or to be held on a temporary basis, whether or not the source of repurchase, repayment, sale, refinancing, retirement or other disposition of such

Securities or instruments is then known or committed. Any such Securities, loans, guarantees or other instruments may be convertible into equity in the related Investment. All Bridge Financings will be (i) senior to the Investment to which such Bridge Financing relates, (ii) bear interest or carry other compensation in amounts determined to be appropriate by the General Partner, and (iii) have a final maturity of not more than one year; provided, however, that in the event that a Bridge Financing is not repaid, refinanced or otherwise disposed of before the 12-month anniversary of the date that such Bridge Financing was made, such Bridge Financing shall cease to be treated as a Bridge Financing on such 12-month anniversary and shall thereafter be deemed to be part of the Investment with respect to which such Bridge Financing was made for all purposes of this Agreement.

“**Business Day**” shall mean a day other than a Saturday, Sunday or day on which commercial banks in the District of Columbia are authorized or required to be closed for business.

“**Call Notice**” shall have the meaning assigned to it in Section 3.2(a).

“**Capital Account**” shall have the meaning assigned to it in Section 7.1(b).

“**Capital Commitment**” shall mean, when used with reference to a Partner, (a) for each Limited Partner, the total amount of capital that such Limited Partner has committed to contribute to the Partnership, as set forth in the Subscription Agreement of such Partner, which amount shall be not less than \$10,000,000 unless the General Partner determines in its sole discretion to accept a lesser amount, and (b) for Biosys Capital Management, LLC, in its capacity as the General Partner and its members and/or Affiliates, their commitment to make Capital Contributions to the Partnership in an aggregate amount equal to the lesser of (i) \$15,000,000, and (ii) ten percent (10%) of the aggregate Capital Commitments of the Limited Partners (excluding the Capital Commitments of any members of the General Partner and/or their Affiliates), in each case payable in the ratio, at the times, and on the conditions set forth in Article III.

“**Capital Contributions**” shall mean, for any Partner at any time, the aggregate of the dollar amounts of any cash contributed by such Partner to the Partnership (used by the Partnership for whatever purpose) at that time.

“**Carried Interest**” shall mean the entire amount of distributions received by the General Partner pursuant to Section 4.3(b)(ii)(B) and under Section 9.2 to the extent distributions made thereunder are equivalent to distributions made under Section 4.3(b)(ii)(B).

“**Cause**” shall have the meaning assigned to it in Section 11.3(a).

“**Certificate**” shall mean the certificate of limited partnership of the Partnership as filed with the Secretary of State of the State of Delaware, as such certificate of limited partnership may be amended from time to time.

“**Clawback Determination Date**” shall mean the date of the completion of the dissolution and winding up of the Partnership and the final distribution of the Partnership’s assets among the Partners.

“**Co-Investment Opportunity**” shall have the meaning assigned to it in Section 5.3(b).

“**Confidential Information**” shall have the meaning assigned to it in Section 7.4(a).

“**Current Income**” shall have the meaning assigned to it in Section 4.3(a).

“**Defaulting Partner**” shall have the meaning assigned to it in Section 3.3(a).

“**Disposition Proceeds**” shall have the meaning assigned to it in Section 4.3(a).

“**ERISA**” shall mean the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time.

“**ERISA Partners**” shall mean each Limited Partner that is a “**benefit plan investor**” within the meaning of the Plan Asset Regulations.

“**Excess Distributions**” shall have the meaning assigned to it in Section 9.3(a).

“**Excess Withholding Obligation**” shall have the meaning assigned to it in Section 4.3(h).

“**Excluded Partner**” shall have the meaning assigned to it in Section 3.2(b).

“**Excused Partner**” shall have the meaning assigned to it in Section 3.2(b).

“**Failing Limited Partner**” has the meaning assigned to it in Section 5.10(b).

“**Fair Market Value**” shall mean, with respect to the assets of (other than Securities, the value of which is determined pursuant to clauses (i), (ii) or (iii) of Section 4.4(a) or Section 4.4(b)) or interests in the Partnership, other than cash, the value determined by the General Partner in good faith considering all factors, information and data deemed to be pertinent (and the General Partner may, in its sole discretion, seek a valuation from an appropriate independent expert); provided that, notwithstanding the foregoing, for purposes of paragraphs (2) and (7) of Section 3.3(a) hereof the Fair Market Value of the Partnership Interest of a Defaulting Partner shall be equal to the unreturned Capital Contributions of the Defaulting Partner (i.e. the aggregate Capital Contributions made by the Defaulting Partner to the Partnership, minus the aggregate distributions received or deemed received by the Defaulting Partner pursuant to Section 4.3(b)(i)) after giving effect to any reduction in the Defaulting Partner’s Capital Contributions pursuant to paragraph (1) of Section 3.3(a).

“**FATCA**” shall have the meaning assigned to it in Section 5.10(b).

“**Fee Payment Date**” shall have the meaning assigned to it in Section 5.9(b).

“**Feeder Fund**” shall mean a Limited Partner that may be formed by the General Partner to serve as a collective investment fund.

“**Feeder Fund Organizational Expenses**” shall mean all costs and expenses incurred in connection with the formation and organization of, and sale of interests in, a Feeder Fund, as determined by the General Partner, including all placement fees and all out-of-pocket legal, accounting, printing, travel and filing fees and expenses.

**“Final Closing Date”** shall have the meaning assigned to it in Section 3.5(a).

**“Follow-On Investment”** shall mean an Investment by the Partnership after the termination of the Investment Period in an existing Investment, the making of which is determined by the General Partner in its sole discretion to be necessary or advisable to maintain, protect or enhance the value of such existing Investment.

**“Foundation Limited Partner”** shall mean a Limited Partner that is a tax-exempt private foundation for purposes of the Internal Revenue Code.

**“Freely Tradable Security”** shall mean any Security that meets all of the following criteria: (a) the Partnership’s or the Partners’ holding of such Security can be immediately sold by the Partnership and/or the Limited Partners to the general public without the necessity of any Federal, state, local or foreign government consent, approval or filing (other than any notice filings of the type required pursuant to Rule 144(h) under the Securities Act), (b) such Security is either listed on a generally recognized U.S. or foreign securities exchange or carried on the NASDAQ system or similar system and market quotations are readily available therefor and (c) such Security is not subject to any lockup or contractual restriction on the sale or transfer thereof.

**“Fully Invested”** shall have the meaning assigned to it in Section 5.3(a).

**“General Partner”** shall mean Biosys Capital Management, LLC, a Delaware limited liability company, in its capacity as the general partner of the Partnership, and any person who becomes a substituted or additional general partner of the Partnership pursuant to the terms hereof.

**“Indemnified Person”** shall mean the General Partner, each member of the Management Group, each member of the Investment Committee, each member of the Advisory Committee, and their respective Affiliates, stockholders, partners, members, officers, directors, employees or agents, and any Affiliates of any of the aforesaid.

**“Indemnifying Partner”** shall have the meaning assigned to it in Section 5.7(g)(i).

**“Initial Closing Date”** shall mean the first date on or as of which the General Partner determines that a sufficient amount of Capital Commitments has been received and a Partner is admitted to the Partnership.

**“Initial Funding Date”** shall mean such date following the formation of the Partnership (as selected by the General Partner in its sole discretion) on which the Partners’ initial Capital Contributions to the Partnership (or any direct payments in respect of Partnership Expenses, Management Fees and Organizational Expenses, as described in Section 3.2(a)) are due.

**“Initial Investment Date”** shall have the meaning assigned to it in Section 3.2(e).

**“Initial Period”** shall have the meaning assigned to it in Section 5.9(a).

**“Internal Revenue Code”** shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time, and any comparable successor statute or statutes.

**“Investment”** shall mean any investment made or acquired by the Partnership (including, for the avoidance of doubt, Follow-On Investments), which investment may take the form of (without limitation) Securities or other equity or debt instruments of any nature, and interests in properties or other assets with respect to the types of business described in Section 1.3, and other interests of any and every kind, and anything issued in liquidation of, as a dividend on or in exchange for, any of the aforesaid. For the avoidance of doubt, a Bridge Financing shall not be an Investment of the Partnership unless such Bridge Financing is not repaid, refinanced or otherwise disposed of on or before the 12-month anniversary of the date that such Bridge Financing was made, in which case such Bridge Financing shall cease to be treated as a Bridge Financing on such 12-month anniversary and shall thereafter be deemed to be part of the Investment with respect to which such Bridge Financing was made for all purposes of this Agreement.

**“Investment Committee”** shall mean the four-member investment committee of the General Partner that is formed to evaluate and approve Investments of the Partnership, as such committee is constituted from time to time. The members of the Investment Committee shall be selected by the General Partner. The Investment Committee shall meet (i) on a regular basis in order to review market conditions and the Partnership’s investment strategy and (ii) at such other times as necessary to provide consideration and approval of (or withhold approval of, if applicable) proposed Investments of the Partnership. The initial members of the Investment Committee are Boris Nikolic, Hayes Nuss, David Schwarz, and Peter Corsell.

**“Investment Percentage”** shall mean at the time of determination, with respect to a Partner, an amount (expressed as a percentage) equal to A divided by B, where “A” is the amount of the Capital Contributions contributed by such Partner to the Partnership and where “B” is the aggregate amount of all Capital Contributions contributed by all of the Partners to the Partnership. The Investment Percentage of each Partner may be adjusted (i) upon the admission of any Additional Limited Partner or the increase in the Capital Commitment of any existing Limited Partner pursuant to Section 3.5(a) and (ii) to reflect a 33% reduction by the General Partner of a Defaulting Partner’s Capital Contributions pursuant to Section 3.3(a)(1).

**“Investment Period”** shall mean the period of time commencing as of the Initial Closing Date and ending upon the earlier of (a) the fifth anniversary of the Final Closing Date, and (b) the date of any early termination of the Investment Period pursuant to Section 3.2(j) or Section 11.3(a). If the Investment Period is suspended but not terminated pursuant to Section 3.2(j), the Investment Period will be extended automatically for each day the suspension was in effect as further described in Section 3.2(j).

**“Key Man Event”** shall have the meaning assigned to it in Section 3.2(j).

**“LIBOR Rate”** shall mean the 1-month LIBOR rate of interest which is equal to (a) the rate published from time to time in The Wall Street Journal, Southwest Edition (or any successor publication thereto) designated therein as the 1-month LIBOR rate, or if not so published, the rate of interest publicly announced from time to time by any money center bank as the 1-month LIBOR rate in effect at its principal office, as identified in writing by the General Partner to the Limited Partners (adjusted to reflect any changes in such rate determined hereunder), plus (b) six percentage points.

**“LIBOR Plus Rate”** shall mean a rate of interest per annum which is equal to the lesser of (a) the LIBOR Rate or (b) the maximum rate from time to time permitted by applicable law

**“Limited Partner”** shall mean each person that executes a Subscription Agreement that is accepted by the General Partner and is set forth in the books and records of the Partnership as a limited partner, and any other person who becomes a limited partner of the Partnership pursuant to the terms hereof.

**“LP Voting Percentage”** shall mean at the time of determination, with respect to any Limited Partner, an amount (expressed as a percentage) equal to A divided by B, where “A” is such Limited Partner’s Capital Commitment to the Partnership and where “B” is the aggregate amount of the Capital Commitments of all Limited Partners to the Partnership, in each case as determined without regard to any Affiliated Partner, any Principal or any member of the Investment Committee and determined without regard to the Non-Voting Interest of any BHC Partner or any Defaulting Partner. The LP Voting Percentage of each Limited Partner shall be adjusted upon the admission of any Additional Limited Partner or the increase in the Capital Commitment of any existing Limited Partner pursuant to Section 3.5(a).

**“Management Fee”** shall have the meaning assigned to it in Section 5.9(a).

**“Management Fee Base”** shall have the meaning assigned to it in Section 5.9(a).

**“Management Group”** shall mean the General Partner, the Advisor and any of their respective members, managers, officers and directors, and each of the Principals.

**“Material Affiliate Agreements/Transactions”** shall have the meaning assigned to it in Section 6.5(i).

**“Minimum Gain”** shall mean (a) with respect to Partnership Nonrecourse Liabilities, the amount of gain that would be realized by the Partnership if it disposed of (in a taxable transaction) all Partnership assets that are subject to Partnership Nonrecourse Liabilities in full satisfaction of Partnership Nonrecourse Liabilities, computed in accordance with applicable Treasury Regulations, or (b) with respect to each Partner Nonrecourse Debt, the amount of gain that would be realized by the Partnership if it disposed of (in a taxable transaction) the Partnership assets that are subject to such Partner Nonrecourse Debt in full satisfaction of such Partner Nonrecourse Debt, computed in accordance with applicable Treasury Regulations.

**“Net Profit”** or **“Net Loss”** shall mean, with respect to any fiscal year or other fiscal period, the net income or net loss of the Partnership for such period attributable to Investments determined in accordance with Federal income tax accounting principles and Section 703(a) of the Internal Revenue Code (including any items that are separately stated for purposes of Section 702(a) of the Internal Revenue Code), with the following adjustments:

(a) any income of the Partnership that is exempt from Federal income tax shall be included as income;

(b) any expenditures of the Partnership that are described in Section 705(a)(2)(B) of the Internal Revenue Code or treated as so described pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) shall be treated as current expenses;

(c) if Partnership assets are distributed to the Partners in kind, such distributions shall be treated as sales of such assets for cash at their respective Fair Market Values (subject, in the case of Securities, to the provisions of Section 4.4) in determining Net Profit and Net Loss; and

(d) all items of income, gain, loss or deduction specially allocated pursuant to Section 4.2 shall be excluded from the determination of Net Profit or Net Loss.

**“Nonrecourse Deductions”** shall have the meaning set forth in Treasury Regulations Sections 1.704-2(b)(1) and 1.704-2(c).

**“Non-Participating Partners”** shall have the meaning assigned to it in Section 3.2(b).

**“Non-Voting Interest”** shall have the meaning assigned to it in Section 8.7(a).

**“Nuss Service Event”** shall have the meaning assigned to it in Section 3.2(j).

**“Organizational Expenses”** shall mean all out-of-pocket fees, costs, expenses and liabilities incurred by the Partnership, the General Partner, the Advisor or any of their respective Affiliates, in each case associated with (a) the formation of the Partnership, the General Partner, any Parallel Fund and any subsidiaries of the Partnership or of any Parallel Fund, (b) the offering and sale of Partnership Interests and interests in any Parallel Fund, and (c) the negotiation, execution and delivery of this Agreement, the partnership agreement or other similar agreement in respect of any Parallel Fund, the Advisory Agreement and any related or similar documents, including, without limitation, all legal, accounting, consulting, marketing, mailing, courier, filing, travel, office set-up and supplies and other start-up costs and expenses; provided, however, that Organizational Expenses shall not include placement agent fees of any kind.

**“Parallel Funds”** shall have the meaning assigned to it in Section 5.5(c).

**“Partner Nonrecourse Debt”** shall mean any nonrecourse debt of the Partnership for which any Partner bears the economic risk of loss, as determined under applicable Treasury Regulations.

**“Partner Nonrecourse Deductions”** shall mean the amount of deductions, losses and expenses equal to the net increase during the year in Minimum Gain attributable to a Partner Nonrecourse Debt, reduced (but not below zero) by proceeds of such Partner Nonrecourse Debt distributed during the year to the Partners who bear the economic risk of loss for such debt, as determined in accordance with applicable Treasury Regulations.

**“Partners”** shall mean, collectively, the General Partner and the Limited Partners, and **“Partner”** shall mean, individually, either the General Partner or any Limited Partner.

**“Partnership”** shall mean Biosys Capital Partners, LP, a Delaware limited partnership.

“**Partnership Counsel**” shall have the meaning assigned to it in Section 13.12.

“**Partnership Expenses**” shall mean all out-of-pocket fees, costs, expenses and liabilities incurred by the Partnership, the General Partner, the Advisor or any of their respective Affiliates, in each case relating to the management, conduct and operation of Partnership business or otherwise attributable to the activities of the Partnership, including, without limitation: (i) Organizational Expenses (up to a maximum of \$500,000), (ii) the Management Fee, (iii) legal, accounting, audit, custodial, consulting and other professional fees, (iv) consulting fees relating to services rendered to the Partnership that could not reasonably have been rendered by the General Partner in the ordinary course of its activities, (v) all costs and expenses associated with the purchase (or attempted purchase), holding or sale or exchange or other disposition of Investments or other Partnership assets, including, but not by way of limitation, placement and finder’s fees paid to third-parties unaffiliated with the General Partner related to the acquisition or disposition of Partnership assets, transfer, capital and other taxes, duties and fees and travel costs associated with evaluation, monitoring or disposition of portfolio securities, (vi) research expenses, (vii) fees and expenses of investment advisers and independent consultants unaffiliated with the General Partner that are incurred in investigating and evaluating investment opportunities, acquiring and disposing of Partnership assets and maintaining and monitoring the Partnership’s assets, (viii) banking, brokerage, broken-deal, registration, qualification, finders, depositary and similar fees or commissions, (ix) expenses associated with meetings of the Limited Partners and the Advisory Committee, (x) insurance premiums, indemnifications, costs of litigation and other extraordinary expenses, (xi) costs of financial statements and other reports to Partners as well as costs of all governmental returns, reports and other filings, (xii) interest and other expenses relating to any indebtedness of the Partnership, (xiii) amounts paid to or for the benefit of Portfolio Companies, (xiv) advertising and public notice costs, (xv) insurance costs and expenses relating to protection against liability for loss and damage which may be occasioned by the activities to be engaged in by the Partnership, including, for the avoidance of doubt, indemnity payments and premiums for insurance protecting the Partnership and any Indemnified Person(s) from liabilities to third persons in connection with the Partnership’s business and affairs and E&O or similar insurance coverage, (xvi) the fees, costs and expenses (including due diligence costs) incurred in connection with investigating, negotiating, acquiring, holding, selling or exchanging of Investments (including fees and expenses of lawyers, accountants, consultants, brokers, finders and investment bankers and other financing sources), (xvii) all Feeder Fund Organizational Expenses, and (xviii) any other expenses not listed in the preceding clauses (i) through (xvii) that are reasonably related to the activities of the Partnership. Notwithstanding the foregoing, “**Partnership Expenses**” shall not include (i) the ordinary administrative and overhead expenses of the General Partner, the Advisor or any of their Affiliates in connection with the management of the Partnership, including salaries, other compensation and costs of providing benefits, rent, communications, travel, and the cost of office equipment, or (ii) legal, accounting, filing and other fees and expenses incurred in connection with the General Partner’s or the Advisor’s registration and ongoing compliance with any applicable regulatory requirements (including the Alternative Investment Fund Managers Directive or “AIFMD” and the Investment Advisers Act of 1940), including, but not limited to, any costs and expenses relating to the implementation and maintenance of compliance policies and procedures, preparing, filing and amending any Forms ADV and Forms PF and responding to and defending any SEC audits, inquiries, investigations or claims related to such compliance matters, but excluding any costs or expenses relating to those requirements or any other applicable requirements that are imposed on the General Partner or the Advisor solely and directly as a result

of the organization or operation of the Partnership (e.g., the cost of providing audited financial statements and other reports to the Limited Partners, maintaining the assets of the Partnership with a qualified custodian, reporting to the SEC beneficial ownership of the Partnership on Form 4 or Schedule 13G, etc.), which shall be included in Partnership Expenses hereunder.

**“Partnership Interest”** shall mean the partnership interest owned by a Partner in the Partnership at any particular time, including the right of such Partner to any and all benefits to which such Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement.

**“Partnership Nonrecourse Liabilities”** shall mean nonrecourse liabilities (or portions thereof) of the Partnership for which no Partner bears the economic risk of loss, as determined under applicable Treasury Regulations.

**“Percentage Share”** shall mean, when used with reference to a Partner, an amount (expressed as a percentage) equal to A divided by B, where “A” is such Partner’s Capital Commitment, and where “B” is the Total Capital Commitments. The **“Percentage Share”** of each Partner shall be adjusted (i) upon the admission of any Additional Limited Partner or the increase in the Capital Commitment of any existing Limited Partner pursuant to Section 3.5(a) and (ii) to reflect the decision by the General Partner to accept no further Capital Contributions from a Defaulting Partner (i.e. a reduction in such Defaulting Partner’s Capital Commitment) pursuant to Section 3.3(a)(1). For the avoidance of doubt, each Partner’s **“Percentage Share”** with respect to the Management Fee shall be calculated in the manner set forth in Section 5.9 with respect to such Partner.

**“Permissible Withdrawal”** shall have the meaning assigned to it in Section 11.1(a).

**“Placement Fees”** shall have the meaning assigned to it in Section 5.9(h).

**“Plan Asset Regulations”** shall mean U.S. Department of Labor Regulation 29 C.F.R. Section 2510.3-101, *et seq.*, as modified by Section 3(42) of ERISA.

**“Portfolio Company”** shall mean any corporation, general partnership, limited partnership, limited liability company, joint venture, trust, business trust, cooperative, association or other entity in which, or with respect to which, the Partnership has (whether directly or indirectly) made an Investment.

**“Principals”** shall mean each of Boris Nikolic, Hayes Nuss, David Schwarz, and Peter Corsell as well as any other individual whom the General Partner may from time to time designate.

**“PPM”** shall mean that certain Confidential Private Placement Memorandum of the Partnership dated as of September 2014.

**“Proceeding”** shall have the meaning assigned to it in Section 6.3(c)(i).

**“Realized Investment”** shall mean any Investment (or portion thereof) that has, prior to the date of determination, been the subject of a disposition by the Partnership (but solely to the extent of the portion sold or otherwise disposed of), has been distributed in kind to the Partners, or

has been the subject of any write-off where the General Partner has determined that such Investment shall not be repaid or recouped by the Partnership.

“**Regulation K**” shall have the meaning assigned to it in Section 8.7(a).

“**Related Limited Partner**” means, with respect to a member of the Advisory Committee, the Limited Partner that appointed such member to serve on the Advisory Committee.

“**Relevant Year**” shall have the meaning assigned to it in Section 4.3(e).

“**Remaining Amount**” shall have the meaning assigned to it in Section 3.1(b).

“**Removal Date**” shall have the meaning assigned to it in Section 11.3(b).

“**Return of Capital**” shall mean the cost basis in the case of Realized Investments or Bridge Financings, as the case may be, and other applicable customary returns of basis for any Investment or Bridge Financing, as the case may be, all as determined by the General Partner in good faith in accordance with its customary accounting practices for financial reporting.

“**Rules**” shall have the meaning assigned to it in Section 13.12.

“**SEC**” shall mean the U.S. Securities and Exchange Commission.

“**Securities**” shall mean securities of every kind and nature and rights and options with respect thereto, including stock, notes, bonds, evidence of indebtedness and other business interests of every type, including interests in any Portfolio Company, and “**Security**” shall be construed accordingly.

“**Securities Act**” shall mean the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Short Term Investments**” shall mean (a) time deposits of any domestic commercial bank having capital and surplus in excess of \$250,000,000; (b) securities issued or directly and fully guaranteed or insured by the United States Government or any agency or instrumentality thereof or any agency or instrumentality otherwise backed by the full faith and credit of the United States Government; (c) commercial paper of any domestic issuer rated at least A-1 or the equivalent thereof by Standard & Poor’s Corporation or P-1 or the equivalent thereof by Moody’s Investors Service, Inc.; (d) other investment grade obligations of corporations and municipalities; and (e) repurchase obligations for underlying securities of the types described in clauses (a) or (b) of this definition.

“**Subscription Agreement**” shall mean, in relation to each Limited Partner, the subscription agreement entered into between that Limited Partner and the Partnership and pursuant to which that Limited Partner shall subscribe for a Partnership Interest or pursuant to which that Limited Partner (if an existing Limited Partner) shall subscribe for an increased Capital Commitment.

“**Subscription Facility**” shall have the meaning assigned to it in Section 5.1(e)(i).

“**Subsequent Fund**” shall have the meaning assigned to it in Section 5.4.

“**Total Capital Commitments**” shall mean the sum of the Partners’ Capital Commitments.

“**Transaction Documents**” shall have the meaning assigned to it in Section 7.4(b).

“**Transfer**” shall have the meaning assigned to it in Section 10.1(a).

“**Transfer Costs**” shall have the meaning assigned to it in Section 10.1(a).

“**Treasury Regulations**” shall mean regulations promulgated by the U.S. Treasury Department under the Internal Revenue Code.

“**Unfunded Capital Commitment**” shall mean, with respect to any Partner at a given point in time, A minus B, where “A” is equal to such Partner’s Capital Commitment, and where “B” is equal to the aggregate Capital Contributions previously made to the Partnership by such Partner hereunder, subject to adjustment pursuant to Section 3.2(c)(i), Section 3.2(i), Section 3.2(k), Section 3.3(a)(3), Section 3.5(a)(v) and Section 5.10(a). Notwithstanding the foregoing, the Unfunded Capital Commitments of the General Partner and each Affiliated Partner shall be decreased by the Capital Contributions that would have been made by such Partner had it been required to pay Management Fees.

“**VCOC**” shall mean a “**venture capital operating company**” within the meaning of the Plan Asset Regulations.

“**Write-Up Event**” shall mean, with respect to a Portfolio Company, (1) a primary issuance of Securities equivalent to at least \$1,000,000 in value by such Portfolio Company at a valuation that is greater than the Acquisition Value of the Partnership’s investment in such Portfolio Company, (2) a secondary transaction representing the sale of at least one-half of one percent (0.5%) of the fully diluted capital stock of such Portfolio Company or a series of related secondary transactions at least one-twentieth of one percent (0.05%) each, where the weighted-average purchase price of such transactions implies a Portfolio Company valuation that is greater than the Acquisition Value of the Partnership’s investment in such Portfolio Company, or (3) another event (such as an impending sale of part or all of the stock or assets of such Portfolio Company) that, in the General Partner’s sole discretion, establishes a valuation for such Portfolio Company that is greater than the Acquisition Value of the Partnership’s investment in such Portfolio Company.

## **Section 2.2. *References and Construction.***

(a) All references in this Agreement to Articles, Sections, subsections, clauses and other subdivisions refer to corresponding Articles, Sections, subsections, clauses and other subdivisions of this Agreement unless expressly provided otherwise.

(b) Titles appearing at the beginning of any of such subdivisions are for convenience only and shall not constitute part of such subdivisions and shall be disregarded in construing the language contained in such subdivisions.

(c) The words “this Agreement”, “this instrument”, “herein”, “hereof”, “hereby”, “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

(d) Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires. Pronouns in masculine, feminine and neuter genders shall be construed to include any other gender.

(e) Examples shall not be construed to limit, expressly or by implication, the matters they illustrate.

(f) The word “**includes**” and its derivatives means “**includes, but is not limited to**” and corresponding derivative expressions.

(g) All references herein to “\$” or “**dollars**” shall refer to U.S. Dollars.

(h) The word “**Federal**” shall refer to the U.S. Federal government.

### ARTICLE III

#### CAPITALIZATION

##### **Section 3.1. *Capital Contributions of Partners.***

(a) Subject to the terms hereof, each Partner agrees to make Capital Contributions to the Partnership at the times and in the manner provided for herein in proportion to such Partner’s Percentage Share; provided, however, that in no event shall any Partner be required to make a Capital Contribution in excess of such Partner’s Unfunded Capital Commitment determined at such time and in accordance with the terms of this Agreement (but this shall not, for the avoidance of doubt, affect any obligation of a Partner to return distributions to the extent provided in Section 6.3(b)).

(b) Capital Contributions shall only be called by the General Partner and used by the Partnership for the purposes contemplated hereunder (including making Investments, funding and paying Organizational Expenses, Management Fees and Partnership Expenses); provided, however, that pending application for the foregoing purposes, Capital Contributions may be invested in one or more Short Term Investments. No Partner shall be obligated to make any further Capital Contributions after the expiration or earlier termination of the Investment Period, other than (i) to the extent considered by the General Partner to be necessary to pay or meet expenses, including the payment of Management Fees and Partnership Expenses, (ii) for the purposes of enabling the Partnership to complete Investments with respect to which the Partnership made a binding commitment before the termination of the Investment Period (whether contingent or absolute, and whether the subject of a definitive agreement, binding letter of intent or binding memorandum of understanding or otherwise), (iii) for purposes of enabling the Partnership to repay sums owing by the Partnership with respect to borrowings made by the Partnership under any Subscription Facility prior to the termination of the Investment Period, and (iv) to make Follow-On Investments; provided that the Capital Contributions called by the General Partner with respect to such Follow-On Investments following the termination of the Investment Period shall

not exceed the lesser of (A) 20% of the Total Capital Commitments and (B) the aggregate Unfunded Capital Commitments as of such time. If, at any time after the termination of the Investment Period, the General Partner determines that all or any Capital Contributions called or reserved in respect of any commitment to make an Investment referred to in clause (ii) shall not be fully utilized in connection with that Investment (the part that shall not be utilized being the “**Remaining Amount**”), then all or a portion of the Remaining Amount may, in the General Partner’s sole discretion, be used to make one or more additional Investments in other existing Portfolio Companies or otherwise be used with respect to other existing Investments.

(c) After the termination of the Investment Period, if the aggregate Unfunded Capital Commitments exceed the aggregate amount that the General Partner has determined is necessary for the purposes set forth in Section 3.1(b), then the Unfunded Capital Commitments of the Partners shall be reduced proportionately by any such excess.

(d) The Capital Commitments of the Partners may be transferred by the General Partner (without being reduced in the aggregate) between and among the Partnership, any Alternative Investment Vehicles and any Parallel Funds.

### **Section 3.2. Payment of Capital Contributions.**

(a) In connection with the payment by the Partners of Capital Contributions other than those set forth in Section 3.5, each Partner shall pay to the Partnership the Capital Contribution set forth in a written notice (a “**Call Notice**”) from the General Partner. Notwithstanding the foregoing, the General Partner shall not be authorized to issue Call Notices until such time as the General Partner reasonably determines is necessary in order to satisfy the Partnership’s funding obligations with respect to its first Investment; provided, that prior to such time, each Limited Partner shall be required to make direct payments in respect of Partnership Expenses, Management Fees and Organizational Expenses; and, provided further, that in no event shall any Partner be required to make a Capital Contribution to the Partnership pursuant to a Call Notice that exceeds such Partner’s Unfunded Capital Commitment. Subject to the foregoing, in connection with a Call Notice, the amount of each Partner’s Capital Contribution shall equal the product of A and B, where “A” is the aggregate amount of Capital Contributions being requested of the Partners by the General Partner, and where “B” is such Partner’s Percentage Share.

(b) A Limited Partner may be (i) excused (an “**Excused Partner**”) from making a Capital Contribution with respect to an Investment if (A) the participation by such Limited Partner in such Investment would be reasonably likely to cause such Limited Partner to be in violation of a law or regulation to which it is subject, (B) such Limited Partner notifies the General Partner in writing no later than five Business Days after delivery of the relevant Call Notice (or such later date as the General Partner may determine) of its intention to avail itself of the provisions of this Section 3.2(b) and (C) such Limited Partner delivers to the General Partner (y) an opinion of counsel reasonably satisfactory to the General Partner to the effect that the Limited Partner’s participation in the subject Investment would be reasonably likely to cause such Limited Partner to be in violation of a law or regulation to which it is subject and (z) such other information concerning the circumstances giving rise to the excuse as the General Partner may reasonably request, and (ii) excluded (an “**Excluded Partner**” and, together with one or more Excused Partners, the “**Non-Participating Partners**”) from an Investment if the General Partner

determines in good faith that a significant delay, extraordinary expense or material adverse effect on the Partnership, its Affiliates, an Investment or future Investment is likely to result from such Limited Partner's participation in such Investment. Each Limited Partner agrees that its rights under clause (i) of this Section 3.2(b) will be exercised on an Investment-by-Investment basis and in good faith, and will not be exercised based on a judgment as to prospective Investment results or for the purpose of improving the Investment results of such Limited Partner relative to other Partners. A Non-Participating Partner shall have no right to receive any distributions in respect of an Investment from which it is excused or excluded, as the case may be. In the case of an Investment from which a Limited Partner is excused or excluded, as the case may be, the General Partner may (1) increase the Capital Contributions with respect to such Investment from the other Partners in proportion to, but not in excess of, their Unfunded Capital Commitments to the extent necessary to fund the excused or excluded amount; provided, however, that another Limited Partner shall not be required to contribute to any portion of such excused or excluded amount if, as a result of such contribution, such Limited Partner's interest in the Investment to which such contribution relates would exceed the Investment limitation set forth in Section 5.2(a)(i) (assuming for such purposes that such Investment limitation is being applied on a Partner-by-Partner basis), and/or (2) treat such excused or excluded amount, as the case may be, as a Co-Investment Opportunity and offer such Co-Investment Opportunity to other persons (which may include the Partners) in accordance with the terms of Section 5.3(b). The operation of this Section 3.2(b) shall not limit the obligation of any Non-Participating Partner to contribute to the Partnership the full amount of its Unfunded Capital Commitment in respect of all subsequent Investments and all Organizational Expenses and Partnership Expenses. It is agreed that no Non-Participating Partner excluded in accordance with this Section 3.2(b) shall be deemed a Defaulting Partner for purposes of this Agreement and that a Non-Participating Partner shall not be liable to any Partner, the Partnership or any other person for the non-payment of a Capital Contribution with respect to an Investment for which it is excused or excluded, as the case may be, in accordance with the provisions of this Section 3.2(b). If in connection with a particular Investment a Feeder Fund is excused with respect to a portion of such Feeder Fund's Partnership Interest attributable to a separate interest holder in such Feeder Fund, the provisions of this Section 3.2(b) shall be applied to such Feeder Fund only to the portion of the Partnership Interest attributable to the interest holder that has been excused with respect to such Investment and the General Partner shall not designate such Feeder Fund as an Excused Partner or Excluded Partner, as the case may be, with respect to any other portion of the Partnership Interest held by such Feeder Fund. The General Partner shall have full authority to interpret in good faith the remaining provisions of this Section 3.2 to give effect to the intent of the preceding sentence.

(c) If the General Partner determines that, as a result of a Limited Partner's continued participation in the Partnership, there is a reasonable likelihood that (x) any or all of the assets of the Partnership would be deemed to be "plan assets" for purposes of ERISA, (y) the Partnership or any Partner would be required to register as an Investment Company under the Investment Company Act of 1940, or (z) the continuing participation in the Partnership by such Limited Partner would likely cause a significant delay, extraordinary expense or material adverse effect on the Partnership, its Affiliates, an Investment or future Investment, such Limited Partner will, upon the written request and with the reasonable cooperation of the General Partner, use commercially reasonable efforts to dispose of such Limited Partner's entire Partnership Interest (or, at the General Partner's discretion, such portion of its Interest that the General Partner determines is sufficient to prevent the occurrence of the circumstances set forth in clauses (x), (y) and/or (z), as

applicable) to another person at a price reasonably acceptable to such Limited Partner in a transaction that complies with Section 10.1. If a Limited Partner has not disposed of its entire Partnership Interest (or such portion of its Interest that the General Partner determines is sufficient to prevent the occurrence of the circumstances set forth in clauses (x), (y) and/or (z), as applicable) within thirty (30) days of the General Partner having notified such Limited Partner of the General Partner's determination that the circumstances described in clauses (x), (y) and/or (z) are reasonably likely occur as a result of such Limited Partner's continued participation in the Partnership, then, notwithstanding anything to the contrary herein, the General Partner shall have the right, but not the obligation, upon five (5) Business Days' prior written notice, to do any or all of the following to prevent the occurrence of the circumstances set forth in clauses (x), (y) and/or (z), as applicable:

(i) prohibit such Limited Partner from making a Capital Contribution with respect to any and all future Investments and reduce its Unfunded Capital Commitment to any amount greater than or equal to zero;

(ii) offer to each Partner (other than the affected Limited Partner or any Defaulting Partner) the opportunity to purchase a portion of such Limited Partner's Partnership Interest at the Fair Market Value thereof, including all or such portion of such Limited Partner's Unfunded Capital Commitment (calculated prior to giving effect to paragraph (i) above of this Section 3.2(c)), in each case as the General Partner shall determine;

(iii) offer to any other Limited Partner the opportunity to purchase at the Fair Market Value thereof, all or any portion of such Limited Partner's Partnership Interest that remains after giving effect to the transactions contemplated by paragraph (ii) above of this Section 3.2(c);

(iv) cause the Partnership to make a special distribution to such Limited Partner of cash, cash equivalents, Securities, a promissory note (the terms of which shall be mutually agreeable to the General Partner and such Limited Partner) or any combination of the foregoing, as determined by the General Partner, in an amount (or having a Fair Market Value) equal to the Fair Market Value of such Limited Partner's Partnership Interest, in which case such Limited Partner's right to receive future distributions pursuant to Articles IV and IX shall be appropriately adjusted in good faith by the General Partner; or

(v) dissolve and terminate the Partnership and distribute the Partnership's assets in accordance with Article IX.

(d) Each Call Notice shall be submitted by the General Partner to the Partners and shall set forth therein (i) the name of the Partnership, (ii) the date by which the Capital Contributions being called are due and payable, which date shall not be less than ten (10) calendar days from the date of the Call Notice, (iii) the total amount of the Capital Contributions being called from all Partners, (iv) the Capital Contribution to be made by the Partner to which the Call Notice is directed, (v) the Partnership account to which any cash Capital Contribution is to be paid, including wiring information, and (vi) the purposes for which the Capital Contributions will be used.

(e) Notwithstanding the foregoing, with respect to the Call Notice given to each ERISA Partner relating to the first Capital Contribution, the Capital Contribution shall be due on the anticipated closing date of the Partnership's first Investment (the "**Initial Investment Date**"), and the General Partner shall provide a follow-up notice to each such ERISA Partner identifying the actual closing date thereof; provided, that each such ERISA Partner shall fund such Capital Contribution as early as practicable on such actual closing date; provided, further, that in lieu of the procedure prescribed in the foregoing proviso, the General Partner may, in its sole discretion, require each such ERISA Partner to fund an escrow account pursuant to the provisions of Section 3.2(f). The preceding sentence shall not apply if the General Partner delivers to each such ERISA Partner simultaneously with such Call Notice a certificate of the General Partner to the effect that the Partnership's assets shall be, as of the date of such first Capital Contribution, exempt from being "**plan assets**" of any ERISA Partner under Section 2510.3-101(f) of the Plan Asset Regulations.

(f) The General Partner may, in its sole discretion, establish an escrow account in connection with the initial Capital Contribution by each ERISA Partner and require that such Capital Contributions be funded into such escrow account at such time as set forth for Capital Contributions in the related Call Notice. Such account shall yield a market rate of interest and shall comply with any requirements set forth by the U.S. Department of Labor with respect thereto, whether in regulations or advisory opinions, including advisory opinion 95-04A.

(g) The General Partner shall deliver to the ERISA Partners on the Initial Investment Date either (i) an opinion of counsel to the effect that as of such date and after giving effect to such Investment the Partnership is a VCOC or (ii) a certificate of the General Partner to the effect that the Partnership assets are exempted from being "**plan assets**" of any ERISA Partner under Section 2510.3-101(f) of the Plan Asset Regulations which certificate shall set forth in reasonable detail the basis for the conclusion set forth therein.

(h) All cash Capital Contributions to the Partnership by the Limited Partners shall be made by wire transfer of immediately available funds to the account designated by the General Partner in the applicable Call Notice.

(i) Subject to Section 3.1(b), if (i) any proposed Investment in respect of which Partners have made Capital Contributions is not consummated or (ii) the General Partner determines that any proposed Investment shall not require the full amount of Capital Contributions made therefor, then the General Partner shall refund to the Partners that made such Capital Contributions within ninety (90) days following the date such Capital Contributions were due the amounts of such Capital Contributions not required by the Partnership, net of Management Fees, Partnership Expenses (and reserves for either of them) and any amounts that the General Partner reasonably determines shall be the subject of a new Call Notice issued within the foreseeable future. Any amount refunded pursuant to this Section 3.2(i) shall be treated as never having been contributed to the Partnership and each Partner to whom such Capital Contribution is returned shall have its Unfunded Capital Commitment increased accordingly.

(j) If (i) Boris Nikolic ceases to provide advice to the Partnership or fails to devote such time and effort as is reasonably necessary to oversee the Partnership's affairs (a "**Nikolic Service Event**") or (ii) Hayes Nuss ceases to provide advice to the Partnership or fails to devote

such time and effort as is reasonably necessary to oversee the Partnership's affairs (a "**Nuss Service Event**" and together with a Nikolic Service Event, each a "**Key Man Event**"), the General Partner will notify the Limited Partners and the Investment Period shall automatically be suspended. Any such suspension shall result in the termination of the Investment Period unless, within twelve (12) months of the occurrence of the Key Man Event, the General Partner presents to the Advisory Committee and the Advisory Committee approves a plan regarding the future management of the Partnership (which may include the identification of one or more replacement key persons to assist with the management of the business and affairs of the Partnership and/or the Advisor). If the Advisory Committee provides such approval within the aforementioned period, then the suspension of the Investment Period shall be lifted as of the date of such approval. If the suspension of the Investment Period is lifted pursuant to this Section, the Investment Period shall be extended automatically by the number of days that such suspension was in effect. Any suspension or termination pursuant to this Section shall not affect the Partnership's obligation to fund amounts (A) that it or any Affiliate was contractually obligated to fund prior to the occurrence of the applicable Key Man Event, or (B) called by the General Partner following the termination of the Investment Period pursuant to Section 3.1(b).

(k) Notwithstanding anything to the contrary in this Article III, if at any time prior to the expiration or earlier termination of the Investment Period, the Partnership receives any payment with respect to the sale or other disposition of any Investment and distributes the amount received on account of such sale or other disposition of such Investment to the Partners on or before the expiration of the twenty four (24) month period commencing on the date of closing such Investment, then each Partner's Unfunded Capital Commitment shall be increased, on a dollar-for-dollar basis, by the amount of such distribution that constitutes a Return of Capital and, in accordance with Section 3.1(b), may be recalled by the Partnership for the purpose of making Investments and for other Partnership purposes contemplated hereunder.

(l) Notwithstanding anything to the contrary in this Article III, at any time prior to the termination of the Investment Period, any amount drawn down from the Unfunded Capital Commitments of the Partners to pay Management Fees, Organizational Expenses or Partnership Expenses may, to the extent that the Limited Partners receive subsequent distributions from the Partnership, either be retained by the Partnership or added back to the Partners' Unfunded Capital Commitments. In the event such amounts are added back to the Partners' Unfunded Capital Commitments, such amounts may be recalled by the Partnership in accordance with Section 3.1(b) for the purpose of making Investments and for other Partnership purposes contemplated hereunder. The General Partner shall provide the Limited Partners with prompt written notice of any sums added back to their Unfunded Capital Commitments hereunder.

(m) Notwithstanding anything to the contrary in this Article III, to the extent permitted by ERISA, if the General Partner determines that it is possible that "**benefit plan investors**" (as defined in the Plan Asset Regulations) may ultimately acquire sufficient Partnership Interests to cause their equity participation to be "**significant**" within the meaning of the Plan Asset Regulations or if the General Partner otherwise believes it is prudent to do so, each Partner shall pay its *pro rata* share of each payment of Partnership Expenses and Management Fees directly to the General Partner at any time prior to the Initial Investment Date. For purposes of calculating the Partners' Unfunded Capital Commitments and for purposes of calculating gains, losses, distributions, Capital Contributions and Percentage Shares, all amounts so paid shall be treated as

having been paid into the Partnership as a Capital Contribution by each Partner and as then having been paid by the Partnership to the General Partner as Partnership Expenses, Management Fees or otherwise.

**Section 3.3. *Non-payment of Capital Contributions.***

(a) In the event any Limited Partner defaults in its obligation to pay the full amount of a Capital Contribution called for under Section 3.2 by the date on which such Capital Contribution is required to be paid pursuant to Section 3.2, then (i) such unpaid Capital Contribution shall automatically accrue interest on a retroactive basis from the date such Capital Contribution was due at the LIBOR Plus Rate (which interest, once paid, shall constitute Partnership assets and shall not increase the Capital Account of such Limited Partner), (ii) such Limited Partner shall be required to pay the costs and expenses of collection (including attorneys' fees and expenses) of such unpaid Capital Contribution and accrued interest, (iii) the General Partner shall provide written or telephonic notice of such default to such Limited Partner, and (iv) if such Limited Partner is an owner or employee of the General Partner or the Advisor, the General Partner shall notify the Advisory Committee of such default and shall continue to keep the Advisory Committee apprised of all actions taken by the General Partner with respect thereto. If such default is not cured within five (5) Business Days after written or telephonic notice thereof given by the General Partner has been received by such Limited Partner, then such Limited Partner shall be a "**Defaulting Partner**" for purposes of this Agreement, and the General Partner shall have the right, in its discretion, to take any or all of the following steps:

(1) accept no further Capital Contributions from the Defaulting Partner and, for purposes of calculating the Defaulting Partner's Investment Percentage and its share of Net Profits and distributions hereunder, to take into account all prior Capital Contributions of the Defaulting Partner at \$0.67 per \$1.00 contributed;

(2) cause the Partnership to acquire all or any part of such Defaulting Partner's Partnership Interest (valued without giving effect to unrealized appreciation, but after giving effect to unrealized depreciation, in the Partnership's assets) in return for a non-interest bearing, non-recourse, ten-year promissory note, or offer all or any part of such Partnership Interest to one or more third parties (which need not be other Limited Partners) on such terms as the General Partner determines, in its sole discretion, represent the Fair Market Value of such Partnership Interest; provided, that the Fair Market Value of such Partnership Interest shall reflect the reduction in such Defaulting Partner's Capital Contributions as set forth under paragraph (1) of this Section 3.3(a), if applicable;

(3) withhold amounts that would otherwise be distributed to the Defaulting Partner hereunder and instead apply such amounts against the amount of the unpaid Capital Contribution (plus interest at the LIBOR Plus Rate and any related costs); provided, that any amounts so applied shall be deemed for purposes of this Agreement to have been distributed to the Defaulting Partner under Section 4.3;

(4) pursue any remedy existing at law or in equity for the collection of the unpaid amount;

(5) whenever the vote or consent of the Defaulting Partner would otherwise be required or permitted under this Agreement, prevent the Defaulting Partner from participating in such vote or consent, and calculating such vote or consent as if the Defaulting Partner were not a Partner (and, for the avoidance of doubt, such Defaulting Partner's LP Voting Percentage shall be zero);

(6) advance all or a portion of the Defaulting Partner's unpaid Capital Contribution to the Partnership on behalf of the Defaulting Partner, and in such circumstances such advance shall be repaid by the Defaulting Partner to the General Partner with interest at the LIBOR Plus Rate for the account of the General Partner on the amount outstanding from time to time commencing on the date of the advance; provided, that, to the extent the General Partner advances funds to the Partnership on behalf of a Defaulting Partner pursuant to this Section 3.3(a)(6), all Partnership distributions that would otherwise be made to the Defaulting Partner pursuant to this Agreement shall instead be paid to the General Partner (with any such amounts being applied first against accrued but unpaid interest and then against principal) until all amounts payable by the Defaulting Partner to the General Partner pursuant to this Section 3.3(a)(6) (including interest) have been paid in full;

(7) offer to the non-defaulting Partners (*pro rata* in accordance with their respective Capital Commitments) the option of purchasing the Defaulting Partner's Partnership Interest on such terms as the General Partner determines, in its sole discretion, represent the Fair Market Value of such Partnership Interest; provided, that the Fair Market Value of such Partnership Interest shall reflect the reduction in such Defaulting Partner's Capital Contributions as set forth under paragraph (1) of this Section 3.3(a), if applicable;

(8) send an amended or new Call Notice to the non-defaulting Partners in an amount equal to the unpaid amount of the Defaulting Partner's Capital Contribution (except with respect to Management Fees) previously requested by the General Partner and otherwise in accordance with Section 3.2; provided that, no non-defaulting Limited Partner shall be required to contribute any portion of the unpaid amount of the Defaulting Partner's Capital Contribution if, as a result of such contribution, such non-defaulting Limited Partner's interest in the Investment to which such contribution relates would exceed the Investment limitation set forth in Section 5.2(a)(i) (assuming for such purposes that such Investment limitation is being applied on a Partner-by-Partner basis); and/or

(9) treat the unpaid amount of the Defaulting Partner's Capital Contribution as a Co-Investment Opportunity and offer such Co-Investment Opportunity to other persons (which may include the Partners) in accordance with the terms of Section 5.3(b).

The Partners agree (A) that the damages suffered by the Partnership as the result of a failure by a Limited Partner to make a Capital Contribution that is required by this Agreement cannot be estimated with reasonable accuracy, (B) that the foregoing provisions of this Section 3.3 shall act as liquidated damages for the default by the Defaulting Partner (which each Partner hereby agrees are reasonable), and (C) that the foregoing provisions of this Section 3.3 are also agreed upon by the Partners in reliance on Section 17-502(c) of the Act.

(b) Except as otherwise provided herein, no right, power or remedy conferred upon the Partnership or the General Partner under this Section 3.3 shall be exclusive, and each such right, power or remedy shall be cumulative and in addition to every other right, power or remedy, whether conferred under this Section 3.3 or now or hereafter available at law or in equity or by statute or otherwise. The Defaulting Partner shall be liable for the costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Partnership or the General Partner in enforcing any of the remedies or rights set forth in this Section 3.3. Each Limited Partner acknowledges by its execution of this Agreement that it has been admitted to the Partnership in reliance upon its agreement that the Partnership and the General Partner may have and exercise any and all rights, powers and remedies provided for in this Section 3.3 or otherwise available at law or in equity, and furthermore specifically acknowledges and agrees that, notwithstanding anything to the contrary in this Agreement, the General Partner shall have the right and power to take such other action as it in its sole discretion may deem reasonably necessary or advisable to protect the interests of the Partnership and the other Partners upon a Limited Partner's default.

(c) Upon a default in the obligation of a Feeder Fund (with respect to a portion of such Feeder Fund's Partnership Interest attributable to a separate interest holder in such Feeder Fund) to pay the full amount of a Capital Contribution called for under Section 3.2 by the date on which such Capital Contribution is required to be paid pursuant to Section 3.2, the provisions of this Section 3.3 shall be applied to such Feeder Fund only with respect to the portion of the Partnership Interest attributable to the interest holder that has defaulted on its capital commitment to such Feeder Fund and the General Partner shall not designate such Feeder Fund as a Defaulting Partner with respect to any other portion of the Partnership Interest held by such Feeder Fund. The General Partner shall have full authority to interpret in good faith the remaining provisions of this Section 3.3 to give effect to the intent of the preceding sentence.

**Section 3.4. *Interest on and Return of Capital Contributions.*** No interest shall accrue on any Capital Contributions and no Partner shall have the right to withdraw or to be repaid any Capital Contributions made by such Partner except as otherwise specifically provided in this Agreement.

**Section 3.5. *Admission of Additional Limited Partners.***

(a) At any time and from time to time up to eighteen (18) months after the Initial Closing Date (the "**Final Closing Date**"), the General Partner may, in its sole discretion and without the approval of the Limited Partners, admit one or more persons as additional Limited Partners (each, an "**Additional Limited Partner**") or, upon the written request of any existing Limited Partner, permit such Limited Partner to increase its Capital Commitment. For purposes of this Section 3.5, an existing Limited Partner that increases its Capital Commitment shall be treated as an Additional Limited Partner with respect to the amount by which its Capital Commitment is increased. In connection with the foregoing:

(i) any such party becoming an Additional Limited Partner shall be required to execute and deliver a counterpart of this Agreement confirming its agreement to the terms hereof and such party's agreement to make its Capital Commitment;

(ii) the General Partner shall reflect in the books and records of the Partnership the addition of an Additional Limited Partner as a party hereto and its concomitant Capital Commitment, which Capital Commitment shall be deemed to have been given as of the date specified by the General Partner (the date of the admission of such Additional Limited Partner shall be called the “**Admission Date**”);

(iii) at the Admission Date, each Additional Limited Partner shall be required to make a Capital Contribution to the Partnership equal to the following: (1) such Additional Limited Partner’s Percentage Share of the Management Fees due and owing retroactive to the Initial Closing Date plus interest on the amount described in this clause (1) at the LIBOR Rate from the Initial Funding Date or such later payment date to the date of payment of such Capital Contribution; and (2) such Additional Limited Partner’s Percentage Share of the Organizational Expenses and Partnership Expenses previously paid by the Partnership plus interest on the amount described in this clause (2) at the LIBOR Rate from the Initial Funding Date or such later payment date to the date of payment of such Capital Contribution;

(iv) each Additional Limited Partner shall receive all allocations and distributions pursuant to Article IV and shall acquire a Percentage Share with respect to Investments made prior to its Admission Date (other than Investments disposed of prior to its Admission Date). In accordance therewith, such Additional Limited Partner shall make a Capital Contribution equal to the aggregate of (1) such Additional Limited Partner’s Percentage Share of the Partnership’s original cost of any such Investment made prior to its Admission Date in which it shall participate, plus (2) interest on the amount described in clause (1) at the LIBOR Rate from the date such Capital Contributions were payable by the original Partners to fund such Investment to the date of payment of such Capital Contributions. Notwithstanding the foregoing, (A) the General Partner may determine, in its discretion, that it is impracticable or inequitable for Additional Limited Partners to share in an Investment funded prior to such Admission Date (in which case none of the Additional Limited Partners admitted on or after such date shall share in, and no reimbursement of capital and interest shall be due for, such Investment), and (B) the General Partner may determine, in its discretion, that a pro rata Capital Contribution from an Additional Limited Partner would not appropriately reflect a material change in the value of one or more Investments held by the Partnership due the occurrence of a Write-Up Event or otherwise (such value to be determined by the General Partner in its discretion, provided that for purposes of this clause, the aggregate value of all of the Partnership’s Investments shall not be less than the aggregate cost basis thereof), in which case the General Partner shall be authorized to adjust the Capital Contribution of such Additional Limited Partner(s) to appropriately reflect such change in value;

(v) the interest component of each of the amounts described in subsections (iii) and (iv) of this Section 3.5(a) shall be called the “**Additional Amount**”. The amount described in clause (1) of subsection (iii) above shall be paid by the Partnership to the Advisor. The amounts described in clause (2) of subsection (iii) above or in subsection (iv) above shall be distributed by the Partnership to the prior Partners that had made Capital Contributions to the Partnership pro rata based upon their relative Percentage Shares of such earlier Capital Contributions and, with respect to the Additional Amount, taking into

account the length of time each such Partner made such Capital Contributions to the Partnership. Any amount distributed to a Partner under the circumstances contemplated under the immediately preceding sentence, exclusive of that portion attributable to the Additional Amount, shall be deemed to increase on a dollar-for-dollar basis such Partner's Unfunded Capital Commitment and shall be deemed to decrease on a dollar-for-dollar basis the Capital Contributions previously paid by such Partner to the Partnership. Notwithstanding anything to the contrary herein, distributions of the Additional Amount to any Partner shall not increase the Capital Account of the contributing Limited Partners and shall not reduce any distributee Partner's Capital Account, except to the extent such Capital Account is first increased as a result of the payment of such Additional Amount to the Partnership;

(vi) the foregoing provisions of this Section 3.5(a) shall be applied and construed as if the Partnership and all Parallel Funds were a single partnership, and the General Partner shall make the appropriate transfers of cash and investment percentages among the Partnership and the Parallel Funds to accomplish such application and construction.

(vii) the General Partner shall not admit any person to the Partnership as an Additional Limited Partner pursuant to this Section 3.5(a) after the Final Closing Date unless it shall first obtain the consent of Limited Partners whose aggregate LP Voting Percentages equal or exceed 75%.

(b) For purposes of this Agreement and for all tax reporting purposes, the admission of each Additional Limited Partner pursuant to this Section 3.5 shall be treated, in accordance with Section 707(a) of the Internal Revenue Code, as the purchase of a *pro rata* portion of a Partnership Interest by each Additional Limited Partner (or existing Limited Partner increasing its Capital Commitment) from Partners who do not increase their Capital Commitment, for a purchase price equal to the amount distributed to existing Partners pursuant to Section 3.5(a)(v) hereof (including any Additional Amount). Each Additional Limited Partner shall succeed to an allocable portion of the existing Partners' Capital Contributions and Capital Accounts. No portion of any Additional Amount contributed shall be credited to the Capital Account of an Additional Limited Partner and no portion shall enter into the computation of Net Profit or Net Loss.

(c) No person shall be admitted to the Partnership as an additional General Partner without the affirmative vote or written consent of the General Partner and Limited Partners whose aggregate LP Voting Percentages equal or exceed 75%, other than as set forth in Section 11.3.

**Section 3.6. *No Other Capital Contributions.*** The obligations of the Partners to make Capital Contributions to the Partnership are contained only in this Article III.

## ARTICLE IV

### ALLOCATIONS AND DISTRIBUTIONS

**Section 4.1. *Allocations of Net Profit and Net Loss.***

(a) Net Profit or Net Loss and, in the discretion of the General Partner, individual items of income, gain, loss or deduction, for each fiscal year shall be allocated to the Partners, after giving effect to the allocations set forth in Section 4.2, to the extent necessary to cause the Capital Account balance of each Partner to be equal to (i) the amount that would be distributable to such Partner under Section 9.2 (subject to Section 9.3), if, at the time of the allocation pursuant to this Section 4.1(a), the Partnership were dissolved, its affairs wound up, and the Partnership sold all of its remaining assets for an amount equal to their respective book values, repaid all Partnership liabilities (limited, in the case of nonrecourse liabilities to the book value of the property securing such liability) and distributed all remaining proceeds to the Partners in accordance with Section 9.2 (subject to Section 9.3) on the last day of such fiscal year, minus (ii) such Partner's share of Minimum Gain, minus (iii) in the case of the General Partner, any obligation of the General Partner to make a capital contribution to the Partnership pursuant to Section 9.3 if the Partnership were dissolved at such time, plus (iv) in the case of each Limited Partner, such Limited Partner's share of the amount of the capital contributions of the General Partner referred to in clause (iii) hereof (if it had been made at such time).

(b) The Net Loss allocated pursuant to Sections 4.1(a) and 4.2 shall not exceed the maximum amount of Net Loss that can be so allocated without causing any Partner to have an Adjusted Capital Account deficit at the end of any taxable year. In the event some but not all of the Partners would have deficits in their Adjusted Capital Accounts as a consequence of an allocation of Net Loss pursuant to Sections 4.1(a) or 4.2, the limitation set forth in this Section 4.1(b) shall be applied on a Partner-by-Partner basis so as to allocate the maximum permissible Net Loss to each Partner under Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations. All Net Loss in excess of the limitation set forth in this Section 4.1(b) shall be allocated in accordance with Section 704(b) of the Internal Revenue Code and the Treasury Regulations thereunder.

(c) The General Partner shall make the foregoing allocations as of the last day of each fiscal year; provided, however, that if during any fiscal year of the Partnership there is a change in any Partner's Partnership Interest, the General Partner shall make the foregoing allocations as of the date of each such change in a manner which takes into account the varying Partnership Interests of the Partners and in a manner the General Partner reasonably deems appropriate; provided, further, however, that for the initial fiscal year of the Partnership (and the next subsequent fiscal year of the Partnership if an Additional Limited Partner is admitted to the Partnership during such subsequent fiscal year under Section 3.5), to the extent that pursuant to Section 3.5(a)(iv) or otherwise, any Partner is allocated items of income, gain, loss, deduction and credit in a lesser amount than such items would have been allocated if all Partners admitted into the Partnership as of the end of such fiscal year had been Partners at the time such items arose, the General Partner shall be authorized in its discretion to allocate items of income, gain, loss, deduction and credit arising after the Partner's admission into the Partnership in greater amounts until the aggregate amount of each such item allocated to such Partner equals the amount that would have been allocated to such Partner had all Partners been Partners in the Partnership at the time each item arose.

#### **Section 4.2. *Special Allocations.***

(a) The following items shall be allocated to the Partners (including the General Partner) in proportion to their respective Percentage Shares: (i) Organizational Expenses, and (ii) Partnership Expenses. Any allocations relating to Management Fees shall be allocated only to the Partners who paid such Management Fees (and among them in proportion to the amounts of Management Fees paid by them).

(b) Notwithstanding any of the provisions of Section 4.1 or this Section 4.2 to the contrary:

(i) if during any fiscal year of the Partnership there is a net increase in Minimum Gain attributable to a Partner Nonrecourse Debt that gives rise to Partner Nonrecourse Deductions, each Partner bearing the economic risk of loss for such Partner Nonrecourse Debt shall be allocated items of Partnership deductions and losses for such year equal to such Partner's share of Partner Nonrecourse Deductions, as determined in accordance with applicable Treasury Regulations;

(ii) if during any fiscal year of the Partnership there is a net increase in Minimum Gain attributable to a Partnership Nonrecourse Liability that gives rise to Nonrecourse Deductions, such Nonrecourse Deductions shall be allocated to the Partners *pro rata* in accordance with their Percentage Shares;

(iii) if for any fiscal year of the Partnership there is a net decrease in Minimum Gain attributable to Partnership Nonrecourse Liabilities, each Partner shall be allocated items of Partnership income and gain for such year equal to such Partner's share of such net decrease, as determined in accordance with applicable Treasury Regulations;

(iv) if for any fiscal year of the Partnership there is a net decrease in Minimum Gain attributable to a Partner Nonrecourse Debt, each Partner bearing the economic risk of loss for such Partner Nonrecourse Debt shall be allocated items of Partnership income and gain for such year equal to such Partner's share of such net decrease, as determined in accordance with applicable Treasury Regulations;

(v) in the event that a Partner unexpectedly receives any adjustment, allocation or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) that causes or increases a deficit balance in such Partner's Adjusted Capital Account, after taking into account the foregoing provisions of this subsection (b), items of Partnership income and gain shall be allocated to that Partner in an amount and manner sufficient to eliminate the deficit balance as quickly as possible; and

(vi) in the event any Partner has a deficit Capital Account at the end of any taxable year which is in excess of the sum of (A) the amount such Partner is obligated to restore pursuant to any provision of this Agreement, and (B) the amount such Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Treasury Regulations, each such Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible; provided, that an allocation pursuant to this Section 4.2(b)(vi) shall be made only if and to the extent that such Partner would have a deficit Capital Account in excess of such

sum after all other allocations provided for in this Article IV have been made as if Section 4.2(b)(v) hereof and this Section 4.2(b)(vi) were not in this Agreement.

(c) In accordance with Section 704(c) of the Internal Revenue Code and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the Partnership or revalued by the Partnership in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f) shall, solely for Federal income tax purposes, be allocated among the Partners in a manner to take into account any variation between the adjusted tax basis of such property to the Partnership and its Fair Market Value at the time of contribution or revaluation. In making such allocations, the General Partner shall use such method of allocation as it shall determine to be reasonable and in accord with applicable Treasury Regulations.

### **Section 4.3. Distributions.**

(a) Available Cash attributable to (i) proceeds from the sale of all or a portion of an Investment (collectively, “**Disposition Proceeds**”) shall be distributed to the Partners as soon as reasonably practicable following receipt thereof; and (ii) current cash receipts from dividends, interest and other non-sale cash distributions from Investments (collectively, “**Current Income**”), net of expenses (and reserves), shall be distributed at such times as the General Partner determines, but no less frequently than annually.

(b) Any Available Cash shall be allocated among the Affiliated Partners and the other Partners *pro rata* in proportion to their respective Investment Percentages. Except as otherwise provided in Section 3.3(a)(3), the Available Cash allocable to the Affiliated Partners shall be distributed to and among the Affiliated Partners *pro rata* in proportion to their respective Investment Percentages, and the Available Cash allocable to the other Partners shall be distributed as follows:

(i) first, 100% to such other Partners (in proportion to their respective Investment Percentages), until they have received cumulative distributions pursuant to this clause (i) in an amount equal to their aggregate Capital Contributions made to the Partnership prior to the date of such distribution; and

(ii) second, (A) 80% to such other Partners (in proportion to their respective Investment Percentages) and (B) 20% to the General Partner.

(c) Notwithstanding anything herein to the contrary, distributions to the Affiliated Partners pursuant to this Section 4.3 and Section 9.2 shall not be subject to the Carried Interest (i.e. such distributions shall be made to the Affiliated Partners without any reduction for the Carried Interest).

(d) In the event that the General Partner distributes Freely Tradable Securities to one or more Partners pursuant to this Section 4.3, the amount of such distribution shall be considered for all purposes under this Agreement as a distribution of cash in an amount equal to the fair market value of such Freely Tradable Securities (such value to be determined pursuant to Section 4.4).

(e) Prior to April 15 of each year (for purposes of this Section 4.3(e), the “**Relevant Year**”), after the General Partner has determined the allocations to be made pursuant to Section 4.1

and Section 4.2, but before the General Partner has made distributions pursuant to this Section 4.3, the General Partner may, at its discretion, cause the Partnership to make distributions from Available Cash, if any and limited to the amount thereof, to the General Partner of amounts that it determines are sufficient to satisfy all or a portion of the projected deemed income tax liability of the owners of interests in the General Partner arising with respect to the General Partner's interest in the Partnership (calculated based upon the Assumed Income Tax Rate), but only to the extent that the General Partner has not received during the Relevant Year sufficient distributions pursuant to this Section 4.3 to satisfy such projected deemed income tax liability.

Any distributions to the General Partner under this Section 4.3(e) shall be determined by the General Partner, in its reasonable discretion, based on the Assumed Income Tax Rate, and otherwise based on such reasonable assumptions as the General Partner determines in good faith to be appropriate. Any distributions to the General Partner under this Section 4.3(e) shall be treated as a preliminary distribution of future amounts due to the General Partner under Section 4.3(b) and any future distributions due to the General Partner under Section 4.3(b) shall be adjusted so that, to the greatest extent possible, all distributions are according to Section 4.3(b) priorities.

(f) The General Partner shall have the discretion, but shall not be required, to cause the Partnership to distribute any assets held by the Partnership in-kind, and for all purposes of this Agreement the value of any Securities distributed by the Partnership shall be as determined in accordance with Section 4.4; provided, however, that except in connection with the final liquidation of the Partnership, the General Partner shall permit the Partnership to make in-kind distributions only of Freely Tradable Securities. Any distributions of Securities or other property by the Partnership to the Partners shall be made in such a manner that each Partner shall receive a *pro rata* interest (based on the portion it is entitled to receive of such distribution in accordance with Section 4.3(b)) in each such Security or property.

(g) If a Limited Partner has on file with the General Partner a written request that such Limited Partner wishes to decline any distribution in-kind pursuant to Section 4.3(f) and such request has not been revoked prior to the proposed date of any such distribution, then, in lieu of distributing to such Limited Partner its share of such Securities, the General Partner shall use its reasonable best efforts to dispose of such Limited Partner's share of such Securities; provided, however, that for purposes of this Agreement, such Securities shall have the same value, as determined in accordance with Section 4.4 (gross of disposition commissions and expenses), as such Securities that are distributed to the other Partners. In the event that a Limited Partner elects to decline such in-kind distribution as described above, the General Partner shall hold such Securities for the benefit of such Limited Partner until such Securities are liquidated. For the avoidance of doubt, the Carried Interest to be distributed to the General Partner with respect to such Securities shall be calculated according to the valuation thereof on the General Partner's original planned distribution date. Costs associated with the sale of such Securities with respect to a Limited Partner shall be borne by such Limited Partner and shall include, without limitation, out-of-pocket costs of the General Partner and its Affiliates and market fees for facilitating the sale.

(h) To the extent the Partnership receives tax credits that are allocated to one or more Partners (such allocations to be made by the General Partner in its discretion), the amount of such credits shall for purposes of Section 4.3(b) be treated as distributions to such Partner or Partners. In addition, the General Partner shall be entitled to withhold tax on distributions or otherwise as

required by applicable law, and such withheld amounts shall for purposes of Section 4.3(b) be deemed to have been distributed to the Partner or Partners with respect to which such withholdings are made on the earlier of (i) the day on which the tax is paid by the Partnership, or (ii) the last day of the Partnership's taxable year for which the tax is paid. To the extent that any such required payment exceeds the cash distribution that such Partner would have received but for such withholding (an "**Excess Withholding Obligation**"), the General Partner shall notify such Partner as to the amount of such excess and such Partner shall make a prompt payment to the Partnership of such amount by wire transfer, which payment shall not constitute a Capital Contribution and, consequently, shall not reduce the Unfunded Capital Commitment or increase the Capital Account of such Partner. The General Partner may, but shall not be required to use Partnership funds to pay any Excess Withholding Obligations on behalf of a Partner. In such event, the amount of the Excess Withholding Obligation paid by the Partnership on behalf of the Partner shall be deemed to be a loan by the Partnership to such Partner which such loan shall accrue interest at a rate equal to the prime rate (as published in the Wall Street Journal as of the Business Day immediately preceding the date on which the Excess Withholding Obligation is paid by the Partnership). The amount of a Partner's loan and interest charge shall be offset against the amount of future distributions to such Partner under Section 4.3. Each Limited Partner shall furnish to the General Partner from time to time all such information as is required by applicable law or otherwise reasonably requested by the General Partner (including certificates in the form prescribed by the Internal Revenue Code and applicable regulations or applicable state, local or foreign law) to permit the General Partner to ascertain whether and in what amount withholding is required of such Limited Partner. Notwithstanding the foregoing, the General Partner shall have no liability to the Partnership or any Limited Partner for failure to request or obtain such information from a Limited Partner or for withholding or failing to withhold in respect of any Partner who has not furnished such information to the General Partner.

#### **Section 4.4. Valuations of Partnership Assets.**

(a) For the purposes of this Agreement, including, without limitation, Section 4.3(f), the value of any Security as of any date (or in the event such date is a holiday or other day which is not a Business Day, as of the next preceding Business Day) shall be determined as follows:

(i) marketable Securities listed on a national securities exchange (such as the NYSE, AMEX, Toronto Exchange, etc.) or quoted on a National Market System (such as the NASDAQ Global Market) shall be valued in accordance with generally accepted accounting principles in the United States consistently applied and consistent with the Partnership's financial statements as prepared in accordance with generally accepted accounting principles in the United States consistently applied;

(ii) marketable Securities traded in the over-the-counter market and reported in the National Association of Securities Dealers' Automated Quotation System shall be valued at the closing bid price as reported by such System;

(iii) Securities (other than Securities of a type specified in clause (i) or (ii) above) for which prices are regularly quoted by at least two independent recognized dealers shall be valued at the most recent market price; and

(iv) subject to Section 4.4(b) hereof, all other Securities and all assets of the Partnership which are not Securities described in clauses (i) – (iii) shall be valued at their respective Fair Market Values.

(b) All valuation decisions pursuant to Section 4.4(a) shall be made by the General Partner and shall be binding on all of the Partners. However, for purposes of Section 4.3(f), the General Partner's valuation of any Securities which cannot be valued in accordance with clauses (i) – (iii) of Section 4.4(a) shall be reviewed and approved by the Advisory Committee. In the event that the General Partner and the Advisory Committee shall be unable to agree upon such valuation within fifteen (15) days, the General Partner shall, at the expense of the Partnership, select an independent appraiser acceptable to the Advisory Committee to value such Securities, which valuation shall be binding on the Partners. If the General Partner and the Advisory Committee shall fail to agree on an appraiser within fifteen (15) days, the General Partner shall select one appraiser and the Advisory Committee shall select another appraiser to value such Securities. If such appraisers cannot agree within fifteen (15) days on the valuation of the Securities there shall be a valuation arrived at by a third independent appraiser chosen by the mutual consent of such two appraisers.

## ARTICLE V

### MANAGEMENT

**Section 5.1. Power and Authority of General Partner.** Except as provided in Section 5.2 and elsewhere in this Agreement, the General Partner shall have full, exclusive and unilateral power and authority on behalf of the Partnership to manage, control, administer and operate the properties, business and affairs of the Partnership in accordance with this Agreement and to do or cause to be done any and all acts necessary or incidental thereto, and (except as aforesaid) the scope of such power and authority shall encompass all matters in any way connected with such business or incident thereto, including (except as aforesaid) the power and authority:

- (a) to cause the Partnership to identify, investigate, make and/or purchase Investments;
- (b) to monitor the Partnership's Investments and to vote, take any action or exercise any right, directly or indirectly, required of or accorded to the Partnership with respect to the Investments or any other Partnership assets;
- (c) to sell, exchange, transfer, mortgage, pledge or otherwise dispose of all or any portion of the Investments or other Partnership assets;
- (d) to alter or restructure the Partnership's Investments at any time during the term of the Partnership without any precondition that the General Partner make any distributions to the Partners in connection therewith;
- (e) to (i) cause the Partnership to borrow monies pursuant to one or more credit, financing, refinancing or subscription facilities (each, a "**Subscription Facility**"), in each case, on such terms as the General Partner shall from time to time determine and without limitation as to amount or manner and time of repayment, and, (ii) in connection with a Subscription Facility, to issue, accept, endorse and execute promissory notes and other negotiable and non-negotiable

evidences of indebtedness, and to secure the payment of such or other obligations of the Partnership by mortgage upon, or pledge or hypothecation of, all or part of the Securities and other assets of the Partnership (including the Partnership's right to receive Capital Contributions) whether at the time owned or thereafter acquired; provided, however, that, the General Partner may elect to give one or more Limited Partners who are tax-exempt entities the opportunity, upon two (2) Business Days' written notice, to make a Capital Contribution to the Partnership in an amount equal to such Limited Partner's *pro rata* share of the amount to be borrowed pursuant to a Subscription Facility (such *pro rata* share to be determined based on such Limited Partner's Investment Percentage), as the case may be, and, if such Limited Partner elects to contribute such *pro rata* share, the General Partner shall reduce the amount borrowed by such amount, and such Limited Partner shall not participate in such borrowing by the Partnership;

(f) to guarantee in the name or on behalf of the Partnership the payment of money or the performance of any contract or other obligation of any person;

(g) to form subsidiaries of the Partnership;

(h) to cause subsidiaries of the Partnership to borrow monies pursuant to one or more credit, financing, refinancing or subscription facility, in each case, on such terms as the General Partner shall from time to time determine and without limitation as to amount or manner and time of repayment;

(i) to cause subsidiaries of the Partnership to enter into hedging transactions to manage risk in connection with an Investment;

(j) to create special purpose entities, including Parallel Funds and Alternative Investment Vehicles, and to make or pursue Investments either alone or as a joint venturer with other persons in a manner consistent with the provisions of this Agreement;

(k) to negotiate, make and to enter into such agreements and contracts with such parties and to give such receipts, releases and discharges with respect to any and all of the foregoing and any matters incident thereto as the General Partner may deem advisable or appropriate;

(l) to employ from time to time persons to render services to the Partnership, including but not limited to, investment bankers, attorneys, independent certified public accountants, consultants, brokers, agents and advisors (including investment bankers, attorneys, accountants, consultants, brokers, agents and advisors who also may act in such respective capacities for the General Partner or any of its Affiliates);

(m) to procure and maintain in force such insurance as the General Partner shall deem prudent to serve as protection against liability for loss and damage which may be occasioned by the activities to be engaged in by the Partnership;

(n) to control any matters affecting the rights and obligations of the Partnership, including the conduct of any litigation or arbitration proceedings and the incurring of legal expenses and the settlement of claims and litigation;

(o) to enter into one or more and to terminate or amend the terms of any such agreement in accordance with the terms thereof, and to enter into successor agreements;

(p) to open, maintain and close bank accounts and custodial accounts and to execute and deliver all checks, drafts, endorsements and other orders for the payment of Partnership funds;

(q) to appear and to represent the Partnership before any governmental authority or regulatory agency and to make all necessary or appropriate filings before such authority or agency;

(r) to manage and conduct the affairs of the Partnership in a manner which, in the discretion of the General Partner, is necessary or advisable to comply with the laws, rules, and regulations promulgated by any United States federal, state or local governmental, quasi-governmental, regulatory or administrative authority, agency, bureau, department, tribunal, or commission or similar body or instrumentality thereof, including without limitation the rules promulgated under the Investment Advisers Act of 1940 and the rules promulgated by the United States Commodity Futures Trading Commission;

(s) to take such other action, execute and deliver such other documents and perform such other acts as may be deemed by the General Partner to be necessary or advisable to carry out the business and affairs of the Partnership.

In connection with the performance of its duties hereunder, the General Partner may, but shall not be obliged to, delegate to the Advisor all or a portion of its rights and duties to manage and operate the Partnership and formulate its investment policy in accordance with the terms of this Agreement and the investment policy described in the Partnership's PPM; provided, that notwithstanding such delegation, the General Partner shall remain liable for its obligations hereunder. The terms of any such delegation shall be determined by the General Partner in its discretion, and upon such delegation and for the duration of such delegation, the Partnership shall become obligated to make payments to the Advisor of reimbursable expenses and indemnification payments that would otherwise be payable to the General Partner hereunder.

**Section 5.2. Restrictions on General Partner's Power and Authority.** Notwithstanding any other provisions of this Agreement to the contrary:

(a) Without having received the prior written consent of the Advisory Committee, the General Partner shall not have the power or authority to make, and shall not authorize, an Investment in a Portfolio Company if, as a result, the Partnership would have invested (on a net basis after taking into account any distributions received by the Partnership with regard to such Investment that represent a Return of Capital) more than the greater of (i) twenty percent (20%) of the Total Capital Commitments in any single Portfolio Company or its Affiliates (including any related Bridge Financings), and (ii) \$20,000,000 in the aggregate in such Portfolio Company; provided, that for purposes of the foregoing sentence, there shall be disregarded any portion of an Investment by the Partnership that merely represents the Partnership's *pro rata* share of a financing round (with such *pro rata* share based on the Partnership's percentage ownership of the Portfolio Company's outstanding equity immediately prior to such Investment).

(b) Without having received the prior written consent of Limited Partners whose aggregate LP Voting Percentages equal or exceed 75%, the General Partner shall not have the

power or authority to, and shall not, do, perform or authorize (i) any merger or consolidation of the Partnership with any partnership or other entity or convert the Partnership into another type of entity, or cause the Partnership to participate in an exchange of interests or some other type of business combination with any partnership or other entity or (ii) any change to the limitations imposed by Section 5.2(a).

### **Section 5.3. Investments.**

(a) Except as otherwise provided in Section 5.3(b), Section 5.4 and Section 5.5, from the Initial Closing Date until the earlier of (i) the expiration or earlier termination of the Investment Period, and (ii) such time after the Final Closing Date when at least seventy percent (70%) of the Total Capital Commitments have been invested, expended, committed and/or reserved for Investments and for reasonably anticipated Partnership Expenses (at which time the Partnership shall be deemed to be “**Fully Invested**”), the General Partner shall use its best efforts to ensure that each of the Principals shall offer to the Partnership and any Parallel Fund (and among them based on their relative Capital Commitments), each investment opportunity that is substantially similar to the type of Investments described in Section 1.3 of this Agreement; provided, however, that (x) any investment opportunity in excess of what the General Partner determines is appropriate for the Partnership may be treated as a Co-Investment Opportunity and offered to the persons and on the terms described in Section 5.3(b), (y) the General Partner may allocate an Investment between the Partnership and a Subsequent Fund, in equal amounts or on such other basis as the General Partner determines to be reasonable under the circumstances, and (z) a Principal need not offer to the Partnership or any Parallel Funds any investment opportunity in entities in which such Principal acquired an interest prior to the Initial Closing Date.

(b) The General Partner may, to the extent it believes in its sole discretion that it is appropriate to do so, offer to one or more Limited Partners and/or third parties (which may include, without limitation, one or more strategic investors and/or one or more co-investment entities established for purposes of this Section 5.3(b)) the opportunity to invest in any transaction in which the Partnership and/or Affiliate Partners has made or will make an Investment (a “**Co-Investment Opportunity**”); provided, however, that without the prior approval of the Advisory Committee (i) the Partnership shall not make an Investment in any entity in which a Principal, the General Partner, or any of the Affiliates of any of them, acquired an interest prior to the Initial Closing Date, and (ii) the General Partner shall not offer such Co-Investment Opportunity to a Principal or to any Affiliate of the Principals or the General Partner. The structure and terms of any such Co-Investment Opportunity and the priority accorded to potential co-investors shall be established at the sole discretion of the General Partner; provided that the terms of such investment will be substantially the same among such co-investors on the one hand and the Partnership on the other hand. Any potential co-investor shall be solely responsible for making its own decision as to the merits of such opportunity, and the General Partner (and the Advisor) shall not be deemed to have provided investment advice with respect to any such Co-Investment Opportunity. Any investment made by a Partner in a Co-Investment Opportunity hereunder shall have no effect upon or reduce the Unfunded Capital Commitment of such Partner. The Partnership’s interest in the Co-Investment Opportunity will be liquidated at the same time and on the same terms as the other co-investors in such Co-Investment Opportunity. Notwithstanding anything else in this Agreement to the contrary, the Partnership shall not invest in any portfolio company of an affiliated investment

fund that is managed by the General Partner (or its Affiliate) unless it shall first obtain the approval of the Advisory Committee.

**Section 5.4. Formation of Subsequent Fund.** Except for (a) the formation of any Parallel Fund, Alternative Investment Vehicle contemplated by Section 5.10, or any co-investment entity contemplated by Section 5.3, or (b) transactions which have been approved in writing by the Advisory Committee, no Principal shall commence investing on behalf of another pooled investment vehicle (or managed account) that has investment objectives that are substantially similar to those of the Partnership as described in Section 1.3 of this Agreement (a “**Subsequent Fund**”) until the earlier of (x) the expiration or earlier termination of the Investment Period, (y) the date on which the Partnership is deemed to be Fully Invested, and (z) the dissolution of the Partnership.

**Section 5.5. Other Activities.**

(a) The General Partner shall not engage in any business other than business activities relating to or in connection with the management of the Partnership, any Parallel Funds, any Alternative Investment Vehicles, and other activities permitted or contemplated by this Agreement.

(b) Subject to, and except as provided in, Section 5.3, Section 5.4 and Section 5.5(a), the parties hereto acknowledge that members of the Management Group may engage or invest, directly or indirectly, in any business activity or venture of any nature or description (subject to any applicable provisions of their governing documents), including without limitation, engaging in all aspects of the health care industry, and the members of the Management Group shall have no obligation to offer any such business activity or venture to the Partnership.

(c) The Partners recognize that in conjunction with the formation or operation of the Partnership, the General Partner or an Affiliate may also organize and/or manage one or more limited partnerships or other investment vehicles or other investment advisory programs (“**Parallel Funds**”) to facilitate participation by certain other investors in investment opportunities of the type for which the Partnership has been organized, and in order to accommodate legal, tax, regulatory or other similar considerations of such other investors, subject to the following terms and conditions:

(i) Subject to the last sentence of this Section 5.5(c)(i), such Parallel Funds (whether one or more and if organized) shall co-invest in each investment opportunity (other than Short Term Investments, as determined by the General Partner) selected by the General Partner for the Partnership, with such differences in the form of such co-investment as may be required by the legal, tax, regulatory or other similar considerations referred to above. Notwithstanding the foregoing provisions of this Section 5.5(c)(i), the Partners agree that, to the extent practicable, and in each case subject to any changes or adjustments as are necessitated by the legal, tax, regulatory or other considerations applicable to the Partnership or to one or more of the Parallel Funds, (A) the organizational documents of any such Parallel Fund shall provide for terms and conditions that are not materially more favorable to the partners or other beneficial owners of any such Parallel Fund as compared to those set forth in this Agreement with respect to the Limited Partners,

(B) any co-investment by the Parallel Funds with the Partnership shall be made at the same time the applicable Investment is made by the Partnership and on terms and conditions (including price of Securities or loan amount, liquidation, distribution and maturity features, as applicable) that are substantially the same as the terms and conditions of the Partnership's investment, and (C) all investments in and divestments of Investments by the Partnership and any Parallel Fund shall be made *pro rata* based on the respective commitments of the Partners of the Partnership and the partners or other beneficial owners of any Parallel Fund.

(ii) Any waiver, modification, termination or amendment of any term and provision of this Agreement which has a material impact on the partners or other beneficial owners of any Parallel Fund shall be effected contemporaneously with a similar waiver, modification, termination or amendment of the terms and provisions of the corresponding governing documents of such Parallel Fund.

(iii) Whenever any vote or consent which has a material impact on the partners or other beneficial owners of any Parallel Fund is required by this Agreement or the corresponding governing documents of any Parallel Fund by a specified percentage in interest of the Limited Partners or the limited partners or other beneficial owners of any Parallel Fund, such action shall be deemed to require the aggregate vote or aggregate consent of the Limited Partners and the limited partners or other beneficial owners of any Parallel Fund, and such action shall be deemed to be valid if taken upon the aggregate vote or aggregate written consent by those Limited Partners and limited partners or other beneficial owners of any Parallel Fund who represent the specified percentage in interest of all Limited Partners and limited partners and other beneficial owners of any Parallel Fund at the time voting as a single class.

(iv) The General Partner may, in its sole discretion, permit an existing Limited Partner to withdraw from the Partnership to facilitate such Limited Partner's participation in any Parallel Fund and, in connection therewith, may transfer to a Parallel Fund such Limited Partner's proportionate share of one or more of the Investments of the Partnership, and take any other necessary action to consummate the foregoing; provided, that if such Limited Partner's proportionate share of any Investment remains in the Partnership, such share of such Investment shall constitute the entire remaining Partnership Interest of such Limited Partner and such Limited Partner shall with respect to such Investment thereafter be treated like a Limited Partner that has exercised its rights to withdraw from the Partnership pursuant to Section 8.6(d); provided, further, that the foregoing shall not result in a material adverse effect on the Partnership Interests of the other Limited Partners.

(v) Following the Final Closing Date, no investors shall be admitted to any Parallel Fund other than as a result of any permitted transfer of existing interests in the Parallel Fund and no investors in any such Parallel Fund shall be permitted to increase their capital commitments to any such Parallel Fund other than as a result of any permitted transfer of existing interests in the Parallel Fund or any failure of any investor in such Parallel Fund to make capital contributions to such Parallel Fund.

(d) The interest holders of a Feeder Fund shall participate indirectly in the Partnership through such Feeder Fund. The Partnership shall establish on its books and records separate Capital Accounts, and shall have the authority to make separate computations under Articles IV and IX, with respect to each portion of a particular Feeder Fund's Partnership Interest attributable to a separate interest holder in such Feeder Fund. The provisions of this Agreement shall be applied to each Feeder Fund as if each portion of its Partnership Interest attributable to an interest holder of such Feeder Fund were held by a separate Limited Partner. A Feeder Fund may make any election, or give or withhold any vote, waiver or consent, with respect to any such portion of its limited partner interest without prejudice to such Feeder Fund's right to take such action with respect to the other portions of the Partnership Interests held by such Feeder Fund. The General Partner shall have full authority, without the consent of any other person, including any other Partner, to amend or interpret this Agreement as may be necessary or appropriate to give effect to the intent of the provisions of this Section 5.5(d).

**Section 5.6. *Liability; Standard of Care.***

(a) All debts and obligations of the Partnership shall be paid or discharged first with the assets of the Partnership, and the General Partner shall not be obligated to pay or discharge any such debt or obligation with its personal assets unless the General Partner is required to do so pursuant to the Act or other applicable law and to the extent that the documents creating such debts or obligations do not otherwise release the General Partner from such obligation.

(b) No Indemnified Person shall be liable, responsible, or accountable in damages or otherwise to the Partnership or to any Limited Partner for any action taken or failure to act (**EVEN IF SUCH ACTION OR FAILURE TO ACT CONSTITUTED THE SOLE, CONCURRENT OR COMPARATIVE NEGLIGENCE OF SUCH INDEMNIFIED PERSON**) in connection with the operations, business and affairs of the Partnership, unless such act or failure to act was (i) with regard to any Indemnified Person other than a member of the Advisory Committee acting in its capacity as such (or its Related Limited Partner), the result of fraud, willful misconduct, gross negligence, bad faith, violation of applicable securities laws or material breach of this Agreement (that has a material adverse effect on the Partnership) by such Indemnified Person, or (ii) with regard to any Indemnified Person that is a member of the Advisory Committee acting in its capacity as such (or its Related Limited Partner), the result of its bad faith.

(c) The General Partner and the Advisor may consult with legal counsel, accountants, appraisers, investment bankers, and other consultants and advisers selected and retained by them with due care, and any written opinion of any such person as to matters which the General Partner and/or the Advisor reasonably believes to be within such person's professional or expert competence shall be full and complete authorization and protection in respect of any action taken or omitted by the General Partner and/or the Advisor hereunder in good faith and in accordance with such opinion.

(d) Subject to Section 5.6(c), the General Partner and the Advisor may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

(e) The express provisions of this Agreement, to the extent that they are deemed (i) to limit or modify a duty or other obligation that may be otherwise owed by the General Partner to the Partnership or the Limited Partners at law or in equity, (ii) to identify certain activities in which the General Partner may engage without being deemed to violate any such duty, (iii) to set forth certain standards by which compliance by the General Partner with any such duty or obligation is to be measured or (iv) to limit or modify any right that a Limited Partner may have at law or in equity, shall be deemed reasonable in form, scope and content and shall be deemed to waive the applicable standards of care set forth in the Act; provided, that each Limited Partner shall have the duty to act in accordance with the implied covenant of good faith and fair dealing.

(f) Neither the members of the Advisory Committee, nor the Limited Partners on behalf of whom such members act as representatives, shall owe any duties (fiduciary or otherwise) under this Agreement, or at law or in equity, to the Partnership or any other Limited Partners in respect of the activities of the Advisory Committee, other than the duty to act in good faith. For purposes of this Section 5.6 and Section 5.7, the Partners acknowledge that, in taking or omitting to take any action hereunder, each member of the Advisory Committee shall be permitted to take into consideration solely the interests of the Limited Partner represented by such member and, in so doing, such member shall be deemed to have fulfilled its duty to act in good faith.

#### **Section 5.7. Indemnification.**

(a) To the fullest extent permitted by applicable law, the Partnership shall and does hereby agree to indemnify and hold harmless, and pay all judgments and claims against, each Indemnified Person (each of whom (to the extent not already a party hereto) shall be a third party beneficiary of this Agreement solely for purposes of this Section 5.7 and, to the extent applicable, Section 11.3(d)) from and against any loss or damage incurred by them or by the Partnership for any act or omission taken or suffered by each Indemnified Person (including, without limitation, any act or omission performed or omitted by any of them in reasonable reliance upon and in accordance with the opinion or advice of experts, including, without limitation, of legal counsel as to matters of law, of accountants as to matters of accounting, or of investment bankers or appraisers as to matters of valuation) in connection with the operation, business or affairs of the Partnership (including, without limitation, acting as a director, officer, manager or member of a Portfolio Company), including costs and reasonable attorneys' fees and any amount expended in the settlement of any claims or loss or damage, except with respect to (i) any such amounts incurred by an Indemnified Person, other than a member of the Advisory Committee acting in its capacity as such (or its Related Limited Partner), which arise out of such Indemnified Person's own fraud, willful misconduct, gross negligence, bad faith or violation of applicable securities laws or a material breach of this Agreement or the Advisory Agreement by the Indemnified Person (that in either case has a material adverse effect on the Partnership), (ii) any such amounts incurred by an Indemnified Person that is a member of the Advisory Committee acting in its capacity as such (or its Related Limited Partner), and which arise out of such Indemnified Person's bad faith, (iii) economic losses incurred by an Indemnified Person as a result of such Indemnified Person's ownership of an interest in the Partnership or any Investment, (iv) any expenses to the extent that they relate solely to actions among Affiliated Partners, members of the General Partner and/or their respective Affiliates (other than the Partnership) (collectively, "**Affiliate Actions**"), (v) any such amounts incurred by an Indemnified Person as a result of its capacity as a controlling Person, director, officer, manager, partner, employee or agent of a Portfolio Company to the extent (and

only to the extent) that such amounts were incurred as a result of claims relating to events occurring after the Partnership sold its entire interest in such Portfolio Company, or (vi) expenses of the Partnership that an Indemnified Person has agreed to bear. The provisions set forth in this Section 5.7 shall survive the dissolution of the Partnership and the termination of this Agreement.

(b) (i) Notwithstanding anything to the contrary in this Section 5.7, to the extent that an Indemnified Person is also entitled to be indemnified by, or receive advancement from, a Portfolio Company (or prior Portfolio Company, if applicable), or insurance of such Portfolio Company (or prior Portfolio Company, if applicable), such Indemnified Person, prior to seeking indemnification from the Partnership pursuant to Section 5.7(a) hereof, shall first seek indemnification or advancement with respect to liability arising from service as a director, manager, officer, member or the equivalent of such Portfolio Company (or prior Portfolio Company, if applicable) from such Portfolio Company (or prior Portfolio Company, if applicable), or insurance of such Portfolio Company (or prior Portfolio Company, if applicable); provided, however, that the foregoing shall not prevent or otherwise restrict the Partnership from indemnifying or advancing expenses to such Indemnified Person in accordance with this Section 5.7 if the General Partner reasonably believes that any delay in receiving indemnification or advancement from such other sources would adversely affect such Indemnified Person. In any such instance, to the extent of any amounts paid or advanced by the Partnership pursuant to this Section 5.7, the Partnership shall be (A) fully subrogated to the rights of such Indemnified Person to the extent of any other sources of indemnification or advancement available to such Indemnified Person from such Portfolio Company (or prior Portfolio Company, if applicable) or its insurance company, and (B) assigned all of such Indemnified Person's right to indemnification and advancement from such Portfolio Company (or prior Portfolio Company, if applicable) or its insurance company. It is agreed and understood that the foregoing obligations to seek indemnification and advancement from other sources shall only reduce the Partnership's obligation of indemnification and advancement hereunder to the extent indemnification or advancement is received by the Indemnified Person from such other sources.

(ii) The indemnification and advancement provided by this Section 5.7 shall not be deemed to be exclusive of any other rights to which any Indemnified Person may be entitled under any agreement, as a matter of law, in equity or otherwise. In particular, to the maximum extent permitted by law, the Partnership's obligation to indemnify or advance expenses to an Indemnified Person hereunder shall be secondary to any rights to indemnification, advancement of expenses and/or insurance provided by a Portfolio Company (or prior Portfolio Company, if applicable) or its insurance company to such Indemnified Person, whether such indemnification or advancement is provided by law, contract or otherwise. For example, in the event that an Indemnified Person is entitled to indemnification from a Portfolio Company or its insurance company, it is agreed and understood that such Portfolio Company and/or its insurance company shall be liable for one hundred percent (100%) of the indemnifiable amount (regardless of whether, for example, the Partnership advanced expenses to such Indemnified Person or paid any other amounts pursuant to this Section 5.7).

(iii) Subject to Sections 5.7(b)(i) and 5.7(b)(ii) above, and prior to any Indemnified Person seeking indemnification from the Partnership pursuant to

Section 5.7(a) hereof, such Indemnified Person shall seek payment, to the extent available, under any insurance policy of the Partnership, the General Partner or the Advisor.

(c) The Partnership shall, to the maximum extent permitted under the Act, pay or reimburse expenses incurred by an Indemnified Person in connection with the Indemnified Person's appearance as a witness or other participation in a proceeding involving or affecting the Partnership at a time when the Indemnified Person is not a named defendant or respondent in the proceeding, except with respect to any such amounts which arise out of actual or threatened actions, suits or proceedings exclusively among or between any member of the Management Group.

(d) The indemnification provided by this Section 5.7 shall be in addition to any other rights to which each Indemnified Person may be entitled under any agreement or vote of the Partners, as a matter of law or otherwise, and shall continue as to an Indemnified Person who has ceased to serve in any particular capacity and shall inure to the benefit of the heirs, successors, assigns, administrators and personal representatives of the Indemnified Persons.

(e) Except as otherwise provided herein, in no event shall any Limited Partner have any obligation to make Capital Contributions to fund its share of any indemnification obligations hereunder in excess of its Unfunded Capital Commitment, and no Limited Partner shall have any personal liability on account thereof; provided, that each Limited Partner shall be obligated to return any or all amounts distributed to it in order to fund any deficiency in such indemnity obligation to the extent provided in Section 6.3(b).

(f) Unless a determination has been made (by final, nonappealable order of a court of competent jurisdiction or by any other means approved by the General Partner) that indemnification is not required, the Partnership shall, upon the request of any Indemnified Person, advance or promptly reimburse such Indemnified Person's reasonable costs of investigation, litigation, or appeal, including reasonable attorneys' fees; provided, that the affected Indemnified Person shall, as a condition of such Indemnified Person's right to receive such advances and reimbursements, undertake in writing to promptly repay the Partnership for all such advancements or reimbursements if a court of competent jurisdiction or arbitrator determines, by final, nonappealable order (or by any other means approved by the General Partner), that such Indemnified Person is not then entitled to indemnification under this Section 5.7. The written undertaking described in the immediately preceding sentence to repay the amount paid or reimbursed to an Indemnified Person by the Partnership must be an unlimited general obligation of the Indemnified Person but need not be secured and it may be accepted by the Partnership without reference to financial ability to make repayment. Notwithstanding the foregoing, no Indemnified Person shall be entitled to advancement of expenses hereunder to the extent that the expenses relate to Affiliate Actions or any action brought by Limited Partners whose aggregate LP Voting Percentages exceed 50%.

(g) (i) If the Partnership is obligated to pay any amount to a governmental agency or any other person (or otherwise makes a payment) specifically attributable to a Partner as a result of a change in structure or legal status of a Partner or conduct or actions by such Partner, then such Partner (the "**Indemnifying Partner**") shall, to the fullest extent permitted by law, indemnify the Partnership in full for the entire amount paid (including, without limitation, any interest, penalties

and expenses associated with such payment). At the option of the General Partner, the amount to be indemnified may be charged against the Capital Account of the Indemnifying Partner, and either:

(A) promptly upon notification of an obligation to indemnify the Partnership, the Indemnifying Partner shall make a cash payment to the Partnership equal to the full amount to be indemnified (and the amount paid shall be added to the Indemnifying Partner's Capital Account); or

(B) the Partnership shall reduce subsequent distributions which would otherwise be made to the Indemnifying Partner until the Partnership has recovered the amount to be indemnified (provided, however, that the amount of such reduction shall be deemed to have been distributed for all purposes of this Agreement, but such deemed distribution shall not further reduce the Indemnifying Partner's Capital Account).

The provisions of this Section 5.7(g)(i) shall not apply to any withholding taxes, as to which the provisions set forth in Section 4.3(h) hereof shall be exclusive.

(ii) A Partner's indemnification obligation to the Partnership under this Section 5.7(g) shall survive the termination, winding up and dissolution of the Partnership. The Partnership may pursue and enforce all rights and remedies it may have against each Partner under this Section 5.7(g), including instituting a lawsuit to enforce such obligation with interest calculated at the LIBOR Plus Rate.

(iii) Notwithstanding anything herein to the contrary, a person that has ceased to hold a position that previously qualified such person as an Indemnified Person shall be deemed to continue as an Indemnified Person with regard to all matters arising from or attributable to the period during which such person held such position.

(h) In the absence of fraud on the part of the Indemnified Person or any of its Affiliates, and provided that the transaction was otherwise permitted and approved pursuant to the terms of this Agreement, an Indemnified Person shall not be denied indemnification in whole or in part under this Section 5.7 by virtue of the Indemnified Person having had an interest in the transaction with respect to which the indemnification applies.

**(i) THE PARTNERSHIP SHALL INDEMNIFY TO THE MAXIMUM EXTENT PERMITTED UNDER SECTION 17-108 OF THE ACT AND SAVE HARMLESS EACH INDEMNIFIED PERSON FROM ALL LIABILITIES FOR WHICH INDEMNIFICATION IS PERMITTED UNDER THE ACT; PROVIDED, HOWEVER, THAT (A) NO INDEMNIFIED PERSON THAT IS A MEMBER OF THE ADVISORY COMMITTEE ACTING IN ITS CAPACITY AS SUCH SHALL BE INDEMNIFIED BY THE PARTNERSHIP FOR ANY ACTS OR OMISSIONS BY THE INDEMNIFIED PERSON THAT CONSTITUTE BAD FAITH AND (B) NO INDEMNIFIED PERSON (THAT IS NOT A MEMBER OF THE ADVISORY COMMITTEE ACTING IN ITS CAPACITY AS SUCH), SHALL BE INDEMNIFIED BY THE PARTNERSHIP FOR ANY ACTS OR OMISSIONS BY SUCH INDEMNIFIED PERSON THAT CONSTITUTE FRAUD, WILLFUL MISCONDUCT, GROSS NEGLIGENCE, BAD FAITH OR MATERIAL**

**BREACH OF THIS AGREEMENT OR THE ADVISORY AGREEMENT (THAT IN EITHER CASE HAS A MATERIAL ADVERSE EFFECT ON THE PARTNERSHIP). THE PARTIES RECOGNIZE THAT AN INDEMNIFIED PERSON MAY BE ENTITLED TO INDEMNIFICATION FROM ACTS OR OMISSIONS THAT MAY GIVE RISE TO ORDINARY, CONCURRENT OR COMPARATIVE NEGLIGENCE.**

**Section 5.8. *Payment of Certain Costs.***

(a) The Partnership shall pay or shall reimburse the General Partner, the Advisor or any Affiliate of either of them for their payment of Organizational Expenses, up to an amount not exceeding \$500,000. The General Partner and its Affiliates shall bear (i) any such Organizational Expenses in excess of \$500,000, and (ii) those expenses further described in the last sentence of the definition of “Partnership Expenses” in Article II hereof. Each Parallel Fund shall pay, or shall reimburse the Partnership, the General Partner, the Advisor or any Affiliate of them for their payment of, its *pro rata* share (based on the amount by which commitments to such Parallel Fund bear to the aggregate of all commitments to the Partnership and all Parallel Funds) of Organizational Expenses; provided, that all actual expenses incurred in organizing and raising capital for such Parallel Fund and all expenses (other than the administrative and overhead expenses to be paid from a management fee charged to such Parallel Fund) attributable to such Parallel Fund’s activities shall be paid solely by such Parallel Fund. The co-investors (including the Partnership) in any Co-Investment Opportunity shall pay, or shall reimburse the Partnership, the General Partner, the Advisor or any Affiliate of them for their payment of, such co-investors’ *pro rata* share (based on the amount by which the commitments made by such co-investors to the Co-Investment Opportunity bear to the aggregate of all commitments to the Co-Investment Opportunity) of any expenses relating to such Co-Investment Opportunity (with respect to which the Partnership, the General Partner, the Advisor or their Affiliates are entitled to reimbursement pursuant to the terms of the Co-Investment Opportunity).

(b) The Partnership shall pay, or shall reimburse the General Partner, the Advisor or any Affiliate of either of them for its payment of, all Partnership Expenses.

(c) Subject to the final sentence of this Section 5.8(c):

(i) to the extent that any of the Partnership and any Parallel Funds and one or more other co-investors invest in a particular Investment, any Partnership Expenses or other costs and expenses relating to that Investment shall be allocated among such entities based on their respective interests in such Investment; and

(ii) the Partnership and each Parallel Fund shall bear, *pro rata* on the basis of the respective aggregate commitments of the Partners of the Partnership and the partners or other beneficial owners of each Parallel Fund, all Partnership Expenses or other costs and expenses (other than those referred to in clause (i)) incurred by the Partnership or any Parallel Fund.

Notwithstanding the preceding provisions of this Section 5.8(c), the General Partner may allocate any Partnership Expenses or other costs or expenses to any of the Partnership, any Parallel Fund or any co-investor if and to the extent that the General Partner determines in its sole discretion

that any such Partnership Expenses or such other costs or expenses were incurred solely due to the unique requirements of the Partnership, such Parallel Fund or such co-investor (as the case may be).

### **Section 5.9. Management Fee.**

(a) Except as provided in Section 5.9(c), the Partnership shall pay to the Advisor an annual fee (the “**Management Fee**”) equal to the aggregate of all fees assessed to all Limited Partners (for each such Limited Partner, such fee assessed to that Limited Partner (other than Affiliated Partners) being the “**Assessed Fee**”) pursuant to this Section 5.9(a). A Limited Partner’s (other than an Affiliated Partner) Assessed Fee shall be an amount equal to such Limited Partner’s *pro rata* share (in accordance with their Percentage Shares, calculated without taking into account the Percentage Share of the Affiliated Partners) of the applicable Management Fee Base. For purposes hereof, the “**Management Fee Base**” shall equal, during the period commencing (i) on the Initial Closing Date and continuing until the fifth anniversary of the Final Closing Date (the “**Initial Period**”), two percent (2%) of the Total Commitments, and (ii) for all periods after the Initial Period, two percent (2%) of the cost basis of all Investments held by the Partnership at the commencement of each fiscal quarter (less any amount which has been permanently written off by the General Partner).

(b) Except as provided below, payments of the Management Fee shall be made in advance on each Fee Payment Date; provided, however, that the Advisor may elect to defer its receipt of the Management Fee in the event that the Partnership does not have adequate cash available or for any other reason; provided, that no such deferral shall affect the right of the Advisor to receive the Management Fee on demand at any future time or the Partnership’s obligation to pay the Management Fee at such time. The first Management Fee payment (i) shall be due on the Initial Funding Date (or with respect to Limited Partners admitted to the Partnership pursuant to Section 3.5, on the date provided for in Section 3.5) for the period from the first day of the Investment Period up to but not including the first Fee Payment Date following the Initial Funding Date, and (ii) shall be prorated based on the number of days in such period. On the first Fee Payment Date following the Initial Funding Date, and on each Fee Payment Date thereafter, the Management Fee for the next three-month period shall be due. As used in this Section 5.9, the term “**Fee Payment Date**” shall mean the first day of each fiscal quarter of each fiscal year of the Partnership.

(c) Until such time as the Partnership has made its first Investment, the Management Fee shall be payable by the Limited Partners (other than Limited Partners that are Affiliated Partners) directly to the Advisor on the relevant Fee Payment Date (which payments will reduce their Unfunded Capital Commitments on a dollar-for-dollar basis); and, thereafter, the Management Fee shall be paid by the Partnership to the Advisor on the relevant fee payment date.

(d) To the extent that the General Partner, the Advisor, any Principal or any Affiliate thereof receives (i) financing fees, commitment fees or closing fees from Portfolio Companies (or Co-Investment Opportunities) in which the Partnership has invested (whether paid in cash or other consideration), (ii) directors’ fees, monitoring fees, advisory fees, investment banking fees, structuring fees or success fees from Portfolio Companies or Co-Investment Opportunities (whether paid in cash or other consideration), (iii) management fees from any Portfolio Companies

(other than any Co-Investment Opportunities) in which the Partnership has invested, or (iv) break-up fees in connection with unconsummated investments or other Partnership activities (which does not include reimbursements received for employee time and expenses incurred at the request and for the benefit of other parties), 100% of such fees set forth in clauses (i) through (iv), above, shall be applied to reduce the next quarterly payment of the Management Fee which is due pursuant to this Section 5.9. To the extent that the General Partner, the Advisor, any Principal or any Affiliate thereof receives management fees paid by a Co-Investment Opportunity (or the investors therein) then only that portion of such fees that is attributable to the Partnership's investment in such Co-Investment Opportunity shall be applied to reduce the next quarterly payment of the Management Fee which is due pursuant to this Section 5.9. If the amount of the fees to be applied exceeds the Management Fee, then the General Partner shall continue to apply the remaining portion of such fees against Management Fees for each succeeding quarter until the full amount of the fees have been so applied. At the end of the term of the Partnership, any remaining excess Management Fee offsets under this Section 5.9(d) shall be paid by the General Partner and/or the Advisor to the Partnership and such excess shall be returned *pro rata* to the Limited Partners (in accordance with their Percentage Shares) other than any Affiliated Partners and other than any Limited Partners that decline to accept such amounts. If a fee that is required to be applied to reduce Management Fees, as provided above, is initially received in a form of consideration other than cash, then the reduction required pursuant hereto shall be made at the time that such consideration is converted to cash; provided that to the extent that any such non-cash consideration has not been converted to cash by the end of the term of the Partnership then such consideration will be valued at its Fair Market Value for purposes of the final Management Fee offset.

(e) If the General Partner or Advisor receives any such fees or other consideration referred to in Section 5.9(d) in the form of options or warrants, then Management Fees shall not be reduced until such options or warrants are exercised and then only by the amount of profit actually received; provided that to the extent that any such options or warrants have not been exercised (or otherwise converted to cash) by the end of the term of the Partnership then such options or warrants will be valued at their Fair Market Value for purposes of the final management fee offset.

(f) All of the foregoing calculations relating to any fees of the types referred to in Section 5.9(d) shall be limited to the proportionate interest that the Partnership has in any related Investment or proposed Investment, and, except as expressly provided to the contrary in Section 5.9(d), the foregoing provisions of this Section 5.9 shall not apply in any respect to the proportionate interests that the Parallel Funds or any co-investors may have in such Investment.

(g) Any reduction in the amount of the Management Fee which would otherwise be paid by the Limited Partners, as a result of the foregoing provisions of this Section 5.9, shall not reduce the Capital Commitments of the Limited Partners.

(h) To the extent that the General Partner retains a placement agent to assist with the sale of Partnership Interests, any placement fees payable to such placement agent (the "**Placement Fees**") will be borne by the General Partner and the Advisor and either paid by them or paid by the Partnership (with a corresponding dollar for dollar reduction of the Management Fee). To the extent that any Placement Fees are paid by the Partnership then such Placement Fees shall be applied to reduce the next quarterly payment of the Management Fee which is due pursuant to this

Section 5.9. If the amount of the Placement Fees to be applied exceeds the next quarterly payment of the Management Fee, then the General Partner shall continue to apply the remaining portion of such Placement Fees against Management Fees for each succeeding quarter until the full amount of the Placement Fees have been so applied. At the end of the term of the Partnership, any remaining excess Management Fee offsets under this Section 5.9(h) shall be paid by the General Partner and/or the Advisor to the Partnership and such excess shall be returned *pro rata* to the Limited Partners (in accordance with their Percentage Shares) other than any Affiliated Partners and other than any Limited Partners that decline to accept such amounts. To the extent that, with respect to any Limited Partner, there are legal or regulatory restrictions applicable to such Limited Partner on paying such Placement Fee in this manner, if such Limited Partner has notified the General Partner of such restrictions on or prior to the date that such Limited Partner submits its Subscription Agreement, then the General Partner shall pay the Placement Fee in respect of such investor directly (rather than through an offset of the Management Fee described above), and such Limited Partner shall not be charged with any payment of such Placement Fees.

(i) The Advisory Agreement and the transactions between the Partnership and the Advisor contemplated thereby are expressly permitted under this Agreement and shall not be considered Material Affiliate Agreements/Transactions nor subject to the approval of the Advisory Committee.

#### **Section 5.10. *Alternative Investment Vehicles.***

(a) For legal, tax, regulatory, or other reasons, the General Partner may cause the Partnership to make Investments outside of the Partnership through an entity (an “**Alternative Investment Vehicle**”) that is separate and distinct from the Partnership and formed for the purpose of making such Investment. The general partner, manager or other controlling person of such Alternative Investment Vehicle shall be the General Partner (or an Affiliate of the General Partner, including any other person controlled by the members of the General Partner) and the limited partners or other owners of such Alternative Investment Vehicle may include one or more of the Limited Partners as determined by the General Partner. Any such Partners shall be required to make Capital Contributions to such Alternative Investment Vehicle to the same extent, for the same purposes and on the same terms and conditions as Partners are required to make Capital Contributions to the Partnership, and such Capital Contributions shall reduce the Unfunded Capital Commitments of such Partners to the same extent as if Capital Contributions were made to the Partnership with respect thereto. The General Partner shall provide each Limited Partner that owns an interest in any such Alternative Investment Vehicle with the underlying formation documents of such entity.

(b) Each Partner that invests in an Alternative Investment Vehicle shall have the same interest in all material respects in the Alternative Investment Vehicle’s distributions and allocations as such Partner would have if the Investment had been made by the Partnership, and the other terms of such Alternative Investment Vehicle shall be substantially identical in all material respects to those of the Partnership; provided, that (i) such Alternative Investment Vehicle (or the Portfolio Company in which such Alternative Investment Vehicle invests) shall provide for the limited liability of the Partners investing in such Alternative Investment Vehicle as a matter of the organizational documents of such Alternative Investment Vehicle (or the Portfolio Company in which such entity invests) and as a matter of local law, (ii) the General Partner or an Affiliate

thereof shall serve as the general partner or in a similar managing fiduciary capacity with respect to such Alternative Investment Vehicle, and (iii) any direct investment by any Partner that is subject to ERISA pursuant to this Section 5.10 shall not, in the good faith judgment of the General Partner, violate ERISA or give rise to a “**prohibited transaction**” under Section 4975 of the Internal Revenue Code or Section 406 of ERISA. Any participants in an Alternative Investment Vehicle will be provided with the same “partnership,” tax and limited liability opinions, to the extent applicable, as given to the Limited Partners on the Initial Closing Date. The General Partner shall not be permitted to require a Limited Partner to make an Investment through a structure pursuant to this Section 5.10 if (A) such structure would result in material adverse legal, economic or regulatory consequences to such Limited Partner or with respect to such Limited Partner’s interest in such Investment or (B) such structure would require the Limited Partner to make additional income tax filings in any foreign jurisdiction in excess of the filings that would otherwise be necessary in the event that such Investment were made directly by the Partnership rather than such Alternative Investment Vehicle. Furthermore, distributions of cash and other property and the allocations of income, gain, loss, deduction, expense and credit from such Alternative Investment Vehicle, the determination of allocations and distributions pursuant to Article IV and any requirement of the General Partner to return distributions under Section 9.3 shall be determined as if each such Investment made by such vehicle were made by the Partnership. The General Partner shall not receive any additional fees or compensation solely by reason of the use of an Alternative Investment Vehicle. If the General Partner forms an Alternative Investment Vehicle in a jurisdiction outside of the United States that will receive U.S. source payments that would potentially be subject to U.S. withholding tax under Sections 1471-1473 of the Code (“**FATCA**”), the General Partner shall use reasonable efforts to comply with FATCA so as to avoid such Alternative Investment Vehicle being subject to U.S. withholding tax pursuant to FATCA; provided, that if the General Partner does not fulfill the foregoing obligations and any amounts are withheld from payments made to such Alternative Investment Vehicle pursuant to FATCA, then the General Partner shall allocate or apportion such withheld taxes to the maximum extent possible to the Limited Partner to which such withheld taxes are attributable due to any failure by such Limited Partner to provide information to such Alternative Investment Vehicle necessary for such entity to avoid such withheld taxes (each a “**Failing Limited Partner**”). Additionally, the underlying formation documents of any such Alternative Investment Vehicle may include provisions that authorize the general partner, manager or other controlling person of such Alternative Investment Vehicle to require the withdrawal of any Failing Limited Partner (subject to any applicable notice and cure periods set forth therein).

**Section 5.11. Notice of Departure of Key Persons.** The General Partner shall provide the Limited Partners with prompt written notice in the event that any member of the Investment Committee or any Principal ceases to be affiliated with the Partnership, the General Partner, or the Advisor for any reason.

## ARTICLE VI

### LIMITED PARTNERS

**Section 6.1. *Rights of Limited Partners.*** Each Limited Partner shall have the right to:

(a) at all reasonable times upon at least five (5) Business Days' notice to the General Partner, for any proper purpose, at the Limited Partner's expense and subject to Section 7.4, examine and copy the records required to be maintained by the Partnership under the Act and (subject to any confidentiality obligations to which the General Partner may be subject) such other information in the General Partner's possession regarding the business, affairs and financial condition of the Partnership as may be reasonably requested by such Limited Partner; (b) receive, upon written request to the General Partner, a copy of this Agreement and all amendments thereto; (c) receive a copy of the Partnership's Federal, state and local income tax returns for each fiscal year of the Partnership; (d) apply for dissolution and winding up of the Partnership by decree of court as provided for in the Act; (e) exercise all rights of a limited partner under the Act (except to the extent otherwise provided herein); and (f) vote on and consent to matters as provided for herein.

**Section 6.2. *Limitations on Limited Partners.*** Each Limited Partner understands and agrees that:

(a) it shall not (i) be permitted to take part in the business or control of the business or affairs of the Partnership; (ii) have any voice in the management or operation of any Partnership property; or (iii) have the authority or power to act as agent for or on behalf of the Partnership or any other Partner, to do any act which would be binding on the Partnership or any other Partner, or to incur any expenditures on behalf of or with respect to the Partnership;

(b) in connection with any Subscription Facility and for the benefit of any third-party lender thereunder, (i) to the extent publicly available, the General Partner may from time to time request the delivery, within ninety (90) days after the end of that Limited Partner's fiscal year, of a copy of the Limited Partner's annual report, if available, or that Limited Partner's balance sheet as of the end of that fiscal year and the related statements of operations for that fiscal year prepared or reviewed by independent public accountants in connection with that Limited Partner's annual reporting requirements, (ii) the General Partner may from time to time request a certificate confirming (A) the remaining amount of that Limited Partner's Unfunded Capital Commitment, (B) that the Limited Partner has not and will not pledge, collateralize, assign, encumber or otherwise grant a security interest in its limited partnership interest in the Partnership, (C) that the Limited Partner's obligation to fund its Unfunded Capital Commitment is without defense, counterclaim or offset of any kind (provided that, this clause (C) shall not limit any of the Limited Partners' remedies otherwise available to be asserted by them against the General Partner), and (D) that any claims that a Limited Partner may have against the Partnership shall be subordinate to all payments due to the third-party lender under the Subscription Facility, (iii) the General Partner may require the Limited Partners to make such other representations and deliver such documents as the General Partner and the third-party lender may reasonably request, including an acknowledgement agreement incorporating the affirmations along with other standard provisions that the third-party lender may require, and (iv) in connection with the extension of credit under the Subscription Facility, the third-party lender may rely on the agreement and acknowledgements of the Limited

Partners with respect to the provisions of this Section 6.2. Each Limited Partner agrees to comply with those requests.

**Section 6.3. *Liability of Limited Partners.***

(a) The Limited Partners shall not be liable for the debts, liabilities, contracts or other obligations of the Partnership except (i) to the extent that Capital Contributions of the Limited Partners' are utilized for the purpose of discharging any such debts, liabilities, contracts or other obligations of the Partnership, (ii) to the extent of the Limited Partners' share of the assets (including undistributed revenues) of the Partnership, and (iii) as otherwise provided in this Agreement or in the Act. The Partnership shall indemnify and hold harmless any Limited Partner in the event any Limited Partner becomes liable for any debt, liability, contract or other obligation of the Partnership except to the extent expressly provided in the preceding sentence.

(b) (i) Except as required by the Act, other applicable law or as otherwise expressly set forth herein, no Limited Partner shall be required to repay to the Partnership, any Partner or any creditor of the Partnership all or any part of the distributions made to such Limited Partner pursuant hereto; provided, however, that, subject to the limitations set forth in Section 6.3(c) hereof, the General Partner may require a Partner to return distributions made to such Partner for the purpose of meeting such Partner's *pro rata* share of Partnership obligations or liabilities (to the extent not otherwise prohibited by the terms of this Agreement), including any indemnity obligations in accordance with Section 5.7 hereof, as determined by the General Partner in its discretion (based on distributions received by each Partner from the Partnership relative to all distributions received by all Partners, in each case, with such amount to be funded first, from the amounts distributed pursuant to Section 4.3(b)(ii) hereof and any correlative distributions made to the Affiliated Partners pursuant to Section 4.3(b) hereof, *pro rata* and to the extent thereof; and thereafter, from the amounts distributed pursuant to Section 4.3(b)(i) hereof and any correlative distributions made to the Affiliated Partners pursuant to Section 4.3(b) hereof, *pro rata* and to the extent thereof; provided, further, that if such requirement to return distributions pursuant to this Section 6.3(b) occurs after the Clawback Determination Date, the amount of distributions such Limited Partner shall be required to return pursuant to this Section 6.3(b) to meet its *pro rata* share of such obligations shall be reduced by the amount that such Limited Partner would have received as a result of the operation of Section 9.3 hereof if the Clawback Determination Date occurred immediately after such return of distributions pursuant to this Section 6.3(b) (determined without regard to this proviso).

(ii) If, notwithstanding anything to the contrary contained herein, it is determined under applicable law that any Partner has received a distribution which is required to be returned to or for the account of the Partnership or Partnership creditors, then the obligation under applicable law of any Partner to return all or any part of a distribution made to such Partner shall be the obligation of such Partner and not of any other Partner.

(iii) Any amount returned by a Partner pursuant to this Section 6.3(b) shall be treated as a contribution of capital to the Partnership (but not as a Capital Contribution for purposes hereof) and shall be treated as if such returned amount was not previously distributed to such Partner.

(iv) For the avoidance of doubt, the General Partner shall be required to return at the same time as the Limited Partners its *pro rata* portion (based on distributions received by the General Partner from the Partnership) of any amounts required to be returned by the Limited Partners under this Section 6.3(b).

(c) To the fullest extent permitted by law, the obligation of a Limited Partner to return distributions pursuant to Section 6.3(b) shall survive the termination of the Partnership and this Agreement and be subject to the following limitations:

(i) no Limited Partner shall be required to return a distribution after the third anniversary of the date of such distribution; provided, however, that if at such third anniversary, there are any legal actions, suits or proceedings by or before any court, arbitrator, governmental body or other agency (a “**Proceeding**”) then pending or any other liability (whether contingent or otherwise) or claim then outstanding, the General Partner shall so notify each Limited Partner at such time (which notice shall include a brief description of each such Proceeding (and of the liabilities asserted in such Proceeding) or of such liabilities and claims) and the obligation of each Limited Partner to return any distribution for the purpose of meeting the Partnership obligations or liabilities, including indemnity obligations under Section 5.7 hereof, shall survive with respect to each such Proceeding, liability and claim set forth in such notice (or any related Proceeding, liability or claim based upon the same or a similar claim) until the date that such Proceeding, liability or claim is ultimately resolved and satisfied; and

(ii) the aggregate amount of distributions which a Limited Partner may be required to return hereunder shall not exceed an amount equal to 30% of such Limited Partner’s Capital Commitment.

**Section 6.4. Other Activities of Limited Partners.** Without prejudice to the provisions of Section 7.4 relating to Confidential Information, each Limited Partner may engage or invest, directly or indirectly, in any business activity or venture of any nature or description, including those that may be the same as or similar to the Partnership’s business and in direct competition therewith, and such Limited Partner shall have no obligation to offer any such business activity or venture to the Partnership. Neither the Partnership nor any other Partner shall have any right, by virtue of this Agreement or the partnership relationship created hereby, in such investments or such other activities or ventures, and such investments, activities or ventures, even if the same as, or directly competitive with, the business of the Partnership, shall not be deemed wrongful or improper or in violation of this Agreement.

**Section 6.5. Advisory Committee.**

(a) The General Partner shall select, from among volunteers, an advisory committee (the “**Advisory Committee**”), which shall consist of at least three (3) members (except for temporary vacancies following resignation or removal of a member) but not more than seven (7) members. The members of the Advisory Committee shall be representatives of the Limited Partners; provided, that no member of the Advisory Committee shall be an Affiliated Partner, member of the Investment Committee, Principal, or an Affiliate of the General Partner or the Advisor. The Advisory Committee shall not have any power to manage the Partnership or any of

the Investments, and the General Partner will retain ultimate responsibility for all decisions relating to the operation and management of the Partnership, including, but not limited to, decisions regarding Investments.

(b) The function of the Advisory Committee shall be to (i) review and approve all valuation decisions of the General Partner for which Advisory Committee approval is required by Section 4.4; (ii) resolve any questions that are presented to the Advisory Committee by the General Partner relating to a conflict of interest between the General Partner, the Advisor or any of their Affiliates, on one hand, and the Partnership, the Limited Partners, any Parallel Fund or any investors in any Parallel Fund, on the other hand, including any purchase by the Partnership of a direct or indirect interest in an entity or property in which a member of the Management Group owns an interest, or any purchase by the Partnership of any Security from a member of the Management Group, or any sale by the Partnership of any Security to a member of the Management Group or any purchase by a member of the Management Group (whether directly or through a wholly owned entity) of an interest in a Portfolio Company in which the Partnership owns an interest or any election to cause the Partnership to pursue the acquisition of any investment opportunity offered to the Partnership by the Principals, the General Partner or their Affiliates pursuant to Section 5.3 or Section 5.5 hereof; (iii) approve the General Partner's selection of the Partnership's auditor if such auditor is not one of the "**Big 4 accounting firms**" (i.e. KPMG, Deloitte Touche, PricewaterhouseCoopers or Ernst & Young, or their respective successors and assigns); (iv) approve activities relating to Subsequent Funds as set forth in Section 5.4, (v) approve Investments which are subject to the diversification requirement set forth in Section 5.2(a), (vi) approve such other matters and perform such other functions as are provided for in this Agreement and/or in any agreement governing a Parallel Fund; and (vii) advise the General Partner on other issues that are presented to the Advisory Committee by the General Partner.

(c) The Advisory Committee, with the consent of Limited Partners whose aggregate LP Voting Percentages exceed 50%, may retain counsel, consultants or other service providers, to assist in carrying out the functions of the Advisory Committee; provided, that such consent shall include approval of the scope of the relevant engagement and the maximum cost or expense that may be incurred by the Advisory Committee in connection therewith. Any cost or expense relating to the retention of such counsel, consultants or other service providers shall be a Partnership Expense.

(d) The Advisory Committee shall act by a majority of its members. Any determination made by the Advisory Committee hereunder shall be binding on the Limited Partners.

(e) The Advisory Committee shall meet at the request of the General Partner on not less than five Business Days' notice, which notice shall contain a reasonably detailed written report of each requested Advisory Committee approval. Notice of an Advisory Committee meeting may be waived by any member in writing before or after such meeting, and any member who attends an Advisory Committee meeting and does not at the commencement of such meeting object to the calling and convening of such meeting shall be deemed to have waived notice of such meeting. Members of the Advisory Committee may participate in a meeting by means of conference telephone or other telecommunications device which permits all persons participating in the meeting to hear each other and be heard. Any action or vote of the Advisory Committee that would

otherwise be taken at a meeting of the Advisory Committee may be taken by written consent of a majority of the members of the Advisory Committee. The Advisory Committee shall conduct its business by such other procedures as a majority of its members considers appropriate. Unless otherwise determined by the Advisory Committee, the Advisory Committee shall meet four times per calendar year, with such meetings being conducted in person, by videoconference, or by conference telephone.

(f) Members of the Advisory Committee shall serve without compensation. The Partnership, however, shall reimburse all reasonable out-of-pocket expenses incurred by members of the Advisory Committee in attending meetings and otherwise as a result of their service on the Advisory Committee. Such reimbursement shall constitute a Partnership Expense.

(g) Any member of the Advisory Committee may resign upon delivery of written notice from such member to the General Partner. Any member of the Advisory Committee may be removed at any time, with or without cause, by written consent signed by more than 50% in interest of the Limited Partners and the investors in each Parallel Fund as a single group (based on the amounts of their respective commitments to the Partnership or a Parallel Fund and excluding any vote by the General Partner and any of its Affiliates, any Non-Voting Interest of any BHC Partner and any Defaulting Partners). A member of the Advisory Committee shall be removed from the Advisory Committee if (i) the General Partner considers that the member no longer represents a Limited Partner (for example, because the General Partner is made aware of a change in employment status of such member, or the Limited Partner represented by such member Transfers its Partnership Interest to another person pursuant to Section 10.1); or (ii) the Limited Partner that the member represents either requests such removal in writing to the General Partner or defaults on the payment of a Capital Contribution when due. Any vacancy in the Advisory Committee, whether created by such a resignation or removal or by the death of any member, shall promptly be filled as provided in Section 6.5(a).

(h) Each member of the Advisory Committee (including any Limited Partner designating a member of the Advisory Committee) shall be entitled to indemnification to the extent set forth in Section 5.7. No member of the Advisory Committee shall be liable to any other Partner, the Partnership or any Parallel Fund for any reason (other than bad faith on the part of such member) including for any mistake in judgment, any action or inaction taken or omitted to be taken, or for any loss due to any mistake, action or inaction. The participation by any Limited Partner who is a member of the Advisory Committee in the activities of the Advisory Committee shall not be construed to constitute participation by such Limited Partner in the control or management of the business of the Partnership or any Parallel Fund so as to make such Limited Partner liable as a general partner for the debts and obligations of the Partnership or any Parallel Fund for purposes of the Act. No Limited Partner who is a member of the Advisory Committee shall be deemed to be an Affiliate of the Partnership or the General Partner solely by reason of such membership. At any time that there is no standing Advisory Committee, any action, consent, approval or other matter required of the Advisory Committee hereunder may be undertaken or granted by Limited Partners and investors in any Parallel Funds constituting more than 50% in interest of the Limited Partners and the investors in each such Parallel Fund as a single group (based on the amounts of their respective commitments to the Partnership or Parallel Fund and excluding any vote by the General Partner and any of its Affiliates, any Non-Voting Interest of any BHC Partner and any Defaulting Partners).

(i) Notwithstanding any provision of this Agreement to the contrary, (i) the Advisory Committee shall review and either approve or reject any proposed agreements and transactions by and between the Partnership on the one hand and the General Partner, the Advisor or their respective Affiliates on the other hand (collectively, “**Affiliate Agreements/Transactions**”) that provide for aggregate payments to be made or received (in cash or in-kind) that exceed \$100,000 and that are not otherwise expressly permitted by this Agreement (collectively, “**Material Affiliate Agreements/Transactions**”), (ii) the Advisory Committee shall review and either approve or reject any decisions for and on behalf of the Partnership pursuant to Section 5.3 hereof that present an actual or potential conflict of interest between the Partnership on the one hand and the General Partner, the Principals, or their Affiliates on the other hand, (iii) the Partnership shall not invest in any portfolio company of an affiliated investment fund that is managed by the Advisor (or its Affiliate) unless it shall first obtain the approval of the Advisory Committee, and (iv) the Partnership shall not acquire any Securities from an affiliated investment fund or separate account that is managed by the Advisor (or its Affiliate) unless it shall first obtain the approval of the Advisory Committee.

(j) On a quarterly basis the General Partner shall disclose to the Advisory Committee any Affiliate Agreements/Transactions (including any Material Affiliate Agreements/Transactions approved by the Advisory Committee hereunder) that are not expressly permitted by this Agreement and that were entered into or effectuated during the immediately preceding calendar quarter.

## ARTICLE VII

### ACCOUNTING, REPORTING AND BANKING MATTERS, CONFIDENTIALITY

#### **Section 7.1. Books of Account; Capital Accounts.**

(a) The General Partner shall keep (or cause the Advisor to keep) books of account for the Partnership (and shall prepare or cause to be prepared the Partnership’s annual and quarterly financial statements) in accordance with generally accepted accounting principles in the United States consistently applied and in accordance with the terms of this Agreement. Such books shall be maintained, for the duration of the Partnership and for a period of no less than four years thereafter, at the principal United States office of the Partnership or at such other place or places in the United States as the General Partner may determine. The calendar year shall be selected as the accounting and fiscal year of the Partnership.

(b) An individual capital account (a “**Capital Account**”) shall be maintained by the Partnership for each Partner as provided below:

(i) the Capital Account of each Partner shall, except as otherwise provided herein, be (A) credited with the amount of cash, the value of Securities (determined pursuant to Section 4.4) and the Fair Market Value of any other property contributed to the Partnership by such Partner (net of liabilities secured by such contributed property that the Partnership is considered to assume or take subject to under Section 752 of the Internal Revenue Code), (B) credited with the Net Profit and the amount of any item of income or gain specially allocated to such Partner pursuant to this Agreement, (C) debited by the Net

Loss and the amount of any item of deduction or loss specially allocated to such Partner pursuant to this Agreement, and (D) debited by the amount of cash, the value of Securities (determined pursuant to Section 4.4) or the Fair Market Value of any other property distributed to such Partner (net of liabilities secured by such distributed property that such Partner is considered to assume or take subject to under Section 752 of the Internal Revenue Code). Immediately prior to any distribution of property by the Partnership, the Partners' Capital Accounts shall be adjusted as required by Treasury Regulations Section 1.704-1(b)(2)(iv)(e);

(ii) any adjustments of basis of Partnership property provided for under Sections 734 and 743 of the Internal Revenue Code and comparable provisions of state law (resulting from an election under Section 754 of the Internal Revenue Code or comparable provisions of state law) shall not affect the Capital Accounts of the Partners except to the extent required by Treasury Regulations Section 1.704-1(b)(2)(iv)(m), and the Partners' Capital Accounts shall be debited or credited pursuant to the terms of this Section 7.1(b) as if no such election had been made;

(iii) the General Partner shall increase or decrease the Partners' Capital Accounts to reflect a revaluation of Partnership property on the books of the Partnership made in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f). In the case of property valued for Capital Account purposes at an amount other than its adjusted tax basis in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f), the Partners' Capital Accounts shall be debited and credited for items of depreciation, cost recovery, amortization and gain or loss with respect to such property computed in the same manner as such items would be computed if the adjusted tax basis of such property were equal to its Fair Market Value (or, in the case of Securities, the value thereof determined pursuant to Section 4.4) on the date that such property is revalued, in lieu of the Capital Account adjustments provided above for such items, all in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g);

(iv) it is the intention of the parties that the Capital Accounts of the Partners be kept in the manner required under Treasury Regulations Section 1.704-1(b)(2)(iv). To the extent any additional adjustment to the Capital Accounts is required by such Regulation, the General Partner is hereby authorized to make such adjustment after notice to the Partners; and

(v) Capital Accounts shall, to the extent the General Partner deems appropriate, be adjusted, in a manner consistent with this Section 7.1(b), to reflect any adjustments in items of Partnership income, gain, loss or deduction that result from amended returns filed by the Partnership or pursuant to an agreement by the Partnership with the U.S. Internal Revenue Service or a final court decision.

## **Section 7.2. Reports; Other Information.**

(a) The General Partner shall furnish to the Limited Partners the following reports and other information at the respective times indicated:

(i) within one hundred twenty (120) days after the end of each fiscal year of the Partnership, financial statements for the Partnership as of the end of and for such year, including a balance sheet and statements of income, Partners' equity, and cash flow, which financial statements shall be audited by such firm of independent certified public accountants of national recognition and standing selected by the General Partner, together with a statement of the relevant Partner's Capital Account and a valuation of the Partnership's Investments;

(ii) within one hundred twenty (120) days after the end of each fiscal year of the Partnership, Schedules K-1 for U.S. federal income tax purposes;

(iii) within ninety (90) days after the end of the relevant fiscal quarter of the Partnership, semi-annual unaudited financial statements for the Partnership;

(iv) such information, including a statement of estimated taxes, as shall be necessary to enable the Limited Partners to file their respective tax returns; and

(v) such other reports and information as the General Partner may determine from time to time.

The Limited Partners understand that the General Partner shall frequently depend on persons that are not under the General Partner's control to provide timely and accurate information in connection with the preparation of financial, tax and other reports or information concerning the Partnership, and that (as a result of matters outside its control) the General Partner may be unable to deliver reports and information within the respective time periods required by this Section 7.2(a). In these circumstances, the General Partner shall use commercially reasonable efforts to provide the required reports or information as soon as reasonably practicable after the specified period, but shall not be deemed to have breached this Agreement as a result of such delivery delays.

(b) With reasonable promptness, the General Partner shall deliver such other information reasonably available to the General Partner, including financial statements and computations, relating to the Partnership or any Investment as any Limited Partner may from time to time reasonably request in writing.

**Section 7.3. Bank Accounts.** The General Partner shall cause one or more accounts to be opened and maintained for the Partnership with a bank or banks or other financial institution as determined by the General Partner, which accounts shall be used for the payment of the expenditures incurred by the Partnership in connection with the business of the Partnership, and in which shall be deposited any and all receipts of the Partnership.

**Section 7.4. Review of Information; Confidentiality.**

(a) Except to the extent prohibited by applicable law, each Limited Partner agrees that it shall keep confidential all information furnished to it by the General Partner with respect to the Partnership or any Portfolio Company and shall not disclose any such information to any person whatsoever (other than to such Limited Partner's officers, directors, trustees, employees, beneficial owners, attorneys, accountants or advisors (provided each of such persons is informed of, and

acknowledges, the confidential nature of such information) or to the General Partner or another Limited Partner); provided, however, that the foregoing covenant of each Limited Partner shall not apply to any information that (i) the General Partner specifically designates as not confidential, (ii) was or becomes generally available to the public other than as a result of disclosure by the Limited Partner, (iii) becomes available to the Limited Partner from a source other than the General Partner or an Affiliate thereof; provided, that such source is not (to the knowledge of the Limited Partner after due inquiry) bound by a confidentiality agreement with the General Partner or such Affiliate, or (iv) the Limited Partner can establish that such information was within the Limited Partner's possession prior to it being furnished to the Limited Partner by or on behalf of the General Partner or an Affiliate thereof; provided, that the source of such information was not (to the knowledge of the Limited Partner after due inquiry) bound by a confidentiality agreement with the General Partner or any of its Affiliates in respect thereof (the information described above that each Limited Partner is required to maintain as confidential hereunder being called in this Section 7.4 "**Confidential Information**"). If any Limited Partner reasonably believes that it is required by law to disclose any Confidential Information, such Limited Partner shall use its reasonable efforts to give prompt notice of such fact to the General Partner so that the General Partner may, if it so desires and at the Partnership's expense, seek a protective order or other governmental or judicial relief to prevent disclosure of such Confidential Information. The parties hereto agree that irreparable damage would occur if the provisions of this Section 7.4 were breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Section 7.4 and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, in addition to any other remedy to which they are entitled at law or in equity.

(b) Notwithstanding the restrictions on the disclosure of Confidential Information contained in Section 7.4(a), a Limited Partner that is organized as a "**fund of funds**" or a Feeder Fund may release the following Confidential Information to its prospective investors (provided, each of such persons is informed of, and acknowledges, the confidential nature of such information): (i) the identity and logo of the Partnership and the name and address of the General Partner and the Advisor, (ii) a summary description of the investment strategy and objectives of the Partnership and the vintage year of the Partnership, (iii) the names and summary descriptions of the investment strategies and objectives of any previous investment funds formed by the General Partner and its Affiliates, and (iv) the amount of such Limited Partner's Capital Commitment and the date that such Limited Partner subscribed for its Capital Commitment. Notwithstanding anything in this Agreement or each Subscription Agreement to the contrary (collectively, the "**Transaction Documents**"), such Transaction Documents do not prevent any Partner (and each employee, representative or other agent of such Partner) from disclosing to any and all persons, without limitation of any kind, the Federal income tax treatment and tax structure (as those terms are defined in the applicable Treasury Regulations) of the Partnership and all materials of any kind (including opinions or other tax analyses) that have been or shall be provided to such Partners relating to such tax treatment and tax structure. In interpreting the immediately preceding sentence, it is the intent of the Partners that the Partners have been and are expressly authorized to disclose whatever information is necessary and/or required such that neither the Partnership nor the General Partner shall be considered to participate in a "**confidential transaction**" within the meaning of either Treasury Regulations Section 1.6011-4(b)(3) or Treasury Regulations Section 301.6111-2(c), as such regulations may be amended, modified or clarified. For these purposes, "**tax**

**structure**” is limited to facts relevant to the Federal income tax treatment of the Partnership and does not include information relating to the identity of the Partners or their Affiliates.

(c) If (i) a Limited Partner is prohibited by applicable law from keeping Confidential Information confidential in accordance with the provisions of Section 7.4(a); or (ii) a Limited Partner breaches any of its obligations relating to Confidential Information hereunder, then the General Partner shall be entitled to cease providing to such Limited Partner any information that the General Partner considers constitutes, or would or might following disclosure constitute, Confidential Information. For the avoidance of doubt, the right of the General Partner described in this Section 7.4(c) shall be in addition to any other remedy available to the General Partner or the Partnership in the event of any breach by a Limited Partner of this Agreement.

(d) Notwithstanding any other provision of this Agreement, each Limited Partner acknowledges and agrees that the General Partner, to the fullest extent authorized by applicable law, shall have the right not to provide a Limited Partner, for such period of time as the General Partner deems reasonable, with any information relating to the Partnership or any Portfolio Company (other than the tax information and financial statements required by Section 7.2(a) to be provided to such Limited Partner) that such Limited Partner would otherwise be entitled to receive or to have access to pursuant to this Agreement if (i) the General Partner considers that providing such information to such Limited Partner would or might be prohibited by the terms of any agreement to which the Partnership, the General Partner or an Affiliate thereof is subject or (ii) the General Partner determines in good faith that the disclosure of certain information is not in the best interest of the Partnership, which may include a determination by the General Partner that such Limited Partner is or may become subject to a legal obligation to disclose such Partnership information and that the potential of such disclosure by such Limited Partner is not in the best interest of the Partnership or could damage the Partnership or its business.

## ARTICLE VIII

### TAX AND REGULATORY MATTERS

**Section 8.1. Tax Status.** The Partners agree to classify the Partnership as a partnership for Federal income tax purposes. Neither the Partnership, the General Partner, nor any Limited Partner shall file an election to classify the Partnership as an association taxable as a corporation for Federal income tax purposes.

**Section 8.2. Tax Elections.** The General Partner shall make the following elections on behalf of the Partnership:

(a) unless another taxable year is required, to elect the calendar year as the Partnership’s taxable year;

(b) to elect the accrual method of accounting;

(c) to elect to deduct, to the maximum extent allowed, up to \$5,000 of start-up expenditures and \$5,000 of organizational expenses in the year in which the Partnership begins business and to deduct the remaining amount of such expenses over a 180-month period as provided in Sections 195 and 709 of the Internal Revenue Code; and

(d) subject to Section 8.1, to elect with respect to such other Federal, state and local tax matters as the General Partner shall deem to be in the best interests of the Partnership. In addition, the General Partner may elect to have the safe harbor described in IRS Notice 2005-43, as finalized in any revenue procedure issued subsequent to such IRS Notice, apply irrevocably with respect to all Partnership Interests transferred in connection with the performance of services while such election remains in effect. If the General Partner desires to make such safe harbor election, (i) the General Partner is hereby authorized and directed to make the safe harbor election on behalf of the Partnership and each of the Partners; (ii) the Partnership and each of its Partners (including any person to which a Partnership Interest is transferred in connection with the performance of services) agrees to comply with all requirements of the safe harbor with respect to all Partnership Interests transferred in connection with the performance of services while the election remains effective; and (iii) any forfeiture allocations required to be made to enable the Partnership to qualify for the safe harbor are hereby authorized.

**Section 8.3. Tax Returns.** The General Partner shall prepare or cause to be prepared and timely file all Federal, state and local income and other tax returns and reports as may be required as a result of the business of the Partnership.

**Section 8.4. Tax Matters Partner.** The General Partner shall be designated the tax matters partner under Section 6231 of the Internal Revenue Code. The General Partner is authorized to take such actions and to execute and file all statements and forms on behalf of the Partnership which may be permitted or required by the applicable provisions of the Internal Revenue Code or Treasury Regulations issued thereunder. The General Partner shall have full and exclusive power and authority on behalf of the Partnership to represent the Partnership (at the Partnership's expense) in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Such power and authority shall include, without limitation, the power and authority to extend the statute of limitations, file a request for administrative adjustment, file suit concerning any Partnership tax matter, and to enter into a settlement agreement relating to any Partnership tax matter. Each Limited Partner shall be designated a notice partner under Section 6231 of the Internal Revenue Code and shall have all the rights of a notice partner granted pursuant to Section 6221 through Section 6233 of the Internal Revenue Code.

**Section 8.5. Certain Transactions.**

(a) The General Partner shall use its commercially reasonable efforts to ensure that the Partnership does not engage in any transaction that in the determination of counsel to the Partnership is a prohibited tax shelter transaction or subsequently listed transaction within the meaning of Section 4965(e) of the Internal Revenue Code. In the event that the Partnership does enter into a transaction described in the immediately preceding sentence, the General Partner shall promptly notify the Limited Partners of the existence of such transaction and provide any information reasonably requested by any Limited Partner to satisfy such Limited Partner's tax filing obligations with respect to such transaction.

(b) The General Partner shall use commercially reasonable best efforts to structure Investments in jurisdictions outside of the United States or Canada in such a manner so that the

Limited Partners shall not be required to file tax returns solely as a result of such Investment. For the avoidance of doubt, holding any such Investments through blocker corporations shall in all cases be one means that the General Partner may utilize that is deemed to be commercially reasonable. In this regard, the Partnership shall not make an investment (directly or indirectly), or establish an office in, any non-U.S. jurisdiction unless the Partnership has received advice of counsel to the effect that (A) the non-U.S. jurisdiction will respect the limited liability of the Limited Partners, (B) such activity will not subject any Limited Partner to any tax based on net income in the non-U.S. jurisdiction (other than taxes imposed on the Partnership, any Portfolio Company or any subsidiaries thereof) and (C) no Limited Partner will be required to file tax returns in such jurisdiction solely as a result of their investment in the Partnership. If the General Partner determines that any Limited Partner would be required to file a tax return in a jurisdiction outside of the United States or Canada as a result of an Investment made by the Partnership, then the General Partner shall notify the Limited Partners as soon as reasonably practicable and shall provide them with all of the information available to the General Partner that would be necessary in connection with filing such tax return.

#### **Section 8.6. ERISA Matters.**

(a) For so long as there is any Limited Partner that is an ERISA Partner, the General Partner shall use commercially reasonable efforts at all times to ensure that one of the following statements is and shall be true with respect to the Partnership: (x) the Partnership is a VCOC; or (y) the equity participation in the Partnership by “benefit plan investors” is not “significant” as such terms are defined in Section 2510.3-101(f)(2) and Section 2510.3-10 1(f)(1), respectively, of the Plan Asset Regulations.

(b) The Partnership shall, no later than the sixtieth (60th) day after each Annual Valuation Period of the Partnership, provide a certificate to each of the ERISA Partners stating whether or not the Partnership satisfies one of the statements set forth in clauses (x) and (y) above and including a reasonable level of detail regarding the basis for the conclusion set forth therein; provided, that no person shall have any liability to any Limited Partner with respect to the delivery of such certificate if such certificate was prepared and delivered in good faith and on a reasonable basis. The General Partner’s obligation to deliver a certificate with respect to clause (x) above shall terminate upon the commencement of the “**distribution period**” provided in Section 2510.3-101(d)(2)(ii) of the Plan Asset Regulations; provided, that such obligation shall be reinstated if the Partnership’s distribution period terminates.

(c) If any ERISA Partner shall deliver to the General Partner an opinion of counsel (which opinion and counsel shall be reasonably satisfactory to the General Partner) to the effect that, as a result of the manner in which the activities of the Partnership are conducted or the terms upon which any Investment or Investments are made or continued, the assets of the Partnership are reasonably likely to constitute “**plan assets**” for purposes of ERISA or Section 4975 of the Internal Revenue Code (which opinion shall be provided by the General Partner to all other ERISA Partners), the General Partner shall then as promptly as practicable use commercially 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 General Partner may: (i) renegotiate the non-financial terms of any Investment or otherwise modify the manner in which the Partnership conducts its affairs; (ii)

permit the Transfer, in accordance with Section 10.1, of all or a portion of the Interests of any of the ERISA Partners; (iii) terminate the right and obligation of ERISA Partners to make Capital Contributions to fund Investments in accordance with Section 3.2; (iv) require, by notice to such ERISA Partners, such ERISA Partners to withdraw completely or partially from the Partnership in accordance with the provisions of Section 11.1; or (v) apply for administrative relief from the U.S. Department of Labor.

(d) If, within sixty (60) days after receipt of the opinion referred to in Section 8.6(c) above, the General Partner has not delivered to each ERISA Partner an opinion of counsel (which counsel and opinion shall be reasonably satisfactory to such ERISA Partner), or such other evidence as may be reasonably satisfactory to such ERISA Partner, that the assets of the Partnership do not constitute “**plan assets**” under ERISA or Section 4975 of the Internal Revenue Code, such ERISA Partner shall have the option to withdraw completely or partially from the Partnership, by notice to the General Partner, in accordance with the provisions of Section 11.1. Any distribution made to the withdrawing ERISA Partner pursuant to Section 11.1 shall be payable in cash, cash equivalents or Securities (subject to Section 4.3(f)), with such Securities being distributed on a *pro rata* basis (based upon the Capital Account of such withdrawing ERISA Partner and the amount of all Securities held by the Partnership) to the extent practicable, unless otherwise required by law or contract; provided, however, that if the General Partner determines that it would be in the best interests of the Partnership, the Partnership shall be permitted to issue to the withdrawing ERISA Partner a subordinated note evidencing the Partnership’s obligation to the ERISA Partner set forth above, which subordinated note shall (i) bear interest at the same rate as received by the Partnership on Short Term Investments, (ii) have a maturity equal to the term of the Partnership, (iii) be prepayable to the extent a return of capital occurs on a disposition of an Investment and (iv) be subordinated to other debts of the Partnership, but not to Limited Partner equity.

(e) If the assets of the Partnership at any time are “**plan assets**” for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code with respect to any ERISA Partner, subject to either such provision, then (i) the General Partner shall provide each ERISA Partner with prompt written notice thereof, and (ii) each ERISA Partner shall, at the request of the General Partner, use its reasonable best efforts to identify to the General Partner which of the persons on a list furnished by the General Partner of persons with whom the Partnership may have had non-exempt dealings are parties in interest or disqualified persons (as defined in Section 3 of ERISA and Section 4975 of the Internal Revenue Code, respectively) with respect to such ERISA Partner.

### **Section 8.7. Bank Holding Company Partners.**

(a) Any Limited Partner that is a bank holding company, as defined in Section 2(a) of the U.S. Bank Holding Company Act of 1956, as amended (“**BHC Act**”), or a foreign banking organization, as defined in Regulation K of the Board of Governors of the Federal Reserve System (12 C.F.R. Section 211.23) or any successor regulation (“**Regulation K**”), or a non-bank subsidiary (as defined in the BHC Act and regulations thereunder) of such bank holding company or foreign banking organization (each, a “**BHC Partner**”), may, upon notice to the General Partner, elect to hold all or any fraction of its LP Voting Percentage as a non-voting interest (a “**Non-Voting Interest**”), in which case such BHC Partner shall not be entitled to participate in any vote or consent of the Limited Partners with respect to the portion of its Partnership Interest

that is held as a Non-Voting Interest (and such Non-Voting Interest shall not be counted in determining the giving or withholding of any such vote or consent). Except as provided in this Section 8.7, a Partnership Interest held as a Non-Voting Interest shall be identical in all regards to all other Partnership Interests held by Limited Partners. Any such election shall be irrevocable and shall bind the assignees of such BHC Partner's Partnership Interest.

(b) The portion of the LP Voting Percentage of a BHC Partner that is determined initially at the time of admission of such BHC Partner or the withdrawal of another Limited Partner to be in excess of four and ninety-nine-hundredths percent (4.99%) of the LP Voting Percentages, excluding for purposes of calculating this percentage portions or all of any other Non-Voting Interests pursuant to this Section 8.7 and as otherwise provided herein, shall be a Non-Voting Interest (regardless of any subsequent Transfer in whole or in part to any other person except as provided below) and shall not be included in determining whether the requisite LP Voting Percentage has voted for, consented to, approved, adopted or taken any action hereunder. Each BHC Partner hereby irrevocably waives its corresponding right to vote its Non-Voting Interest in respect of a successor general partner under the Act, which waiver shall be binding upon such BHC Partner or any entity which succeeds to its Partnership Interest.

(c) Upon the Admission Date of any Additional Limited Partner pursuant to Section 3.5, a withdrawal of a Limited Partner or any other event that causes a change in the LP Voting Percentages, a recalculation of the LP Voting Percentages held by all BHC Partners shall be made, and only that portion of the total LP Voting Percentages held by each BHC Partner that is determined as of the date of admission of such Additional Limited Partners or the date of such withdrawal or other event, as applicable, to be in excess of four and ninety-nine-hundredths percent (4.99%) of the respective LP Voting Percentages, excluding for purposes of this calculation any Partnership Interest that a Limited Partner has irrevocably elected to hold as a Non-Voting Interest pursuant to Section 8.7(a), shall be a Non-Voting Interest.

(d) Notwithstanding the foregoing, any BHC Partner may elect not to be governed by this Section 8.7 by providing a written opinion of counsel to the General Partner (which opinion and counsel shall be reasonably acceptable to the General Partner) stating that, as a result of a change in law or regulation applicable to such BHC Partner, such BHC Partner is no longer prohibited from acquiring or controlling more than four and ninety-nine-hundredths percent (4.99%) of the LP Voting Percentages, in which case only the amount of the LP Voting Percentage held by such electing BHC Partner specified in such notice to be subject to this Section 8.7(d) shall continue to be Non-Voting Interests. A change in law or regulation applicable to such BHC Partner may include such BHC Partner's becoming either a (i) "financial holding company" within the meaning of the Gramm-Leach-Bliley Act of 1999, as amended, and/or (ii) "qualifying foreign banking organization" within the meaning of Regulation K. Any such election pursuant to this clause (d) by a BHC Partner may be rescinded at any time by written notice to the General Partner.

(e) For purposes of calculating Non-Voting Interests pursuant to this Section 8.7, the Partnership Interest of any BHC Partner shall be aggregated with the Partnership Interests of any of its subsidiaries (as defined in the BHC Act and regulations thereunder) that are themselves BHC Partners ("**BHC Affiliates**"). In the event that the Partnership Interests of a BHC Partner and any of its BHC Affiliates are determined to include voting and Non-Voting Interests, the voting Partnership Interests shall be allocated among the BHC Partner and such BHC Affiliates *pro rata*

in accordance with their respective Partnership Interests unless such BHC Partner and such BHC Affiliates notify the General Partner in writing of a different allocation. In the event that a BHC Partner holding voting and Non-Voting Interests Transfers a portion of its Partnership Interest, the voting Partnership Interests, up to the amount of the transferred Partnership Interest, shall be treated as having been transferred, and the remaining transferred Partnership Interests, if any, shall be Non-Voting Interests, unless the transferring BHC Partner and such transferee notify the General Partner in writing of a different allocation.

**Section 8.8. *Foundation Limited Partners.*** In the event that the Investment Percentage of any Foundation Limited Partner shall at any time exceed 20% or the maximum percentage permitted by applicable laws and regulations, and such Foundation Limited Partner shall have obtained an opinion of counsel in form and substance acceptable to the General Partner to the effect that, in order to comply with the applicable provisions of the Internal Revenue Code, the Investment Percentage of such Foundation Limited Partner may not exceed such maximum, or that such Foundation Limited Partner must divest itself entirely of such Limited Partner's Partnership Interest, as the case may be, such Foundation Limited Partner may elect to sell that portion of its economic interest in the Partnership to the extent that it exceeds 20% or such maximum or sell its entire economic interest in the Partnership, as the case may be. In either such event, provided that the Assignee is reasonably acceptable to the General Partner, the General Partner shall consent in writing to the assignment of all or such portion of its economic interest in the Partnership by such Foundation Limited Partner. In addition, should it be necessary for such Foundation Limited Partner to sell all or part of its Partnership Interest, such Foundation Limited Partner shall have the right to do so, subject to Section 10.1(a).

## ARTICLE IX

### DISSOLUTION, LIQUIDATION AND TERMINATION

**Section 9.1. *Dissolution.*** The Partnership shall be dissolved upon the occurrence of any of the following in relation to the Partnership:

(a) after the close of business on the tenth anniversary of the Initial Closing Date, unless the Partnership is dissolved sooner pursuant to this Agreement; provided, that such date may be extended for up to two consecutive one-year periods at the election of the General Partner with the approval of Limited Partners whose aggregate LP Voting Percentages exceed 50%. Any election made under this Section 9.1(a) must be made by the General Partner prior to the expiration of the Partnership's then expiring term;

(b) the determination to dissolve the Partnership by Limited Partners whose aggregate LP Voting Percentages equal or exceed 80%;

(c) after the end of the Investment Period, the disposition of all Investments;

(d) the decision of the General Partner because it has reasonably determined that changes in or compliance with any applicable law or regulation would be materially burdensome to the Partnership;

(e) the decision of the General Partner pursuant to Section 3.2(c)(v);

(f) following the occurrence of a Removal Date and a determination by such Limited Partners not to designate a substitute general partner in accordance with Section 11.3(c), the determination to dissolve the Partnership by Limited Partners whose aggregate LP Voting Percentages equal or exceed 75%; and

(g) any other event under the Act that causes the dissolution of a limited partnership.

**Section 9.2. Liquidation and Termination.** Upon dissolution of the Partnership, the General Partner shall act as liquidator or shall appoint one or more liquidators who shall have full authority to wind up the affairs of the Partnership and make the final distributions of the Partnership's assets as provided herein; provided, that if the General Partner is removed pursuant to Section 11.3 or has otherwise ceased to be a general partner of the Partnership, then the Limited Partners whose aggregate LP Voting Percentages exceed 50% shall appoint the liquidator. The liquidator shall continue to operate the Partnership with all of the power and authority of the General Partner. The steps to be accomplished by the liquidator are as follows:

(a) as promptly as possible after dissolution and again after final liquidation, the liquidator, if requested by any Partner, shall cause a proper accounting to be made by the Partnership's independent accountants of the Partnership's assets, liabilities and operations through the last day of the month in which the dissolution occurs or the final liquidation is completed, as appropriate;

(b) the liquidator shall arrange for the payment of all of the debts and liabilities of the Partnership (including all expenses incurred in liquidation) or shall otherwise make adequate provision in the proceeds of liquidation therefor (including without limitation the establishment of a cash escrow fund for contingent, conditional or unmatured liabilities in such amount and for such term as the liquidator may reasonably determine). Without limiting the foregoing, the liquidator shall use its reasonable best efforts to sell or otherwise dispose of any non-cash assets or other properties of the Partnership. After making payment or provision for all debts and liabilities of the Partnership, and after making all adjustments to the Partners' Capital Accounts for gains and losses from sales or other dispositions of assets made under the preceding sentence, the Partners' Capital Accounts shall then be adjusted further by (i) assuming the sale of any remaining assets of the Partnership for cash at their respective Fair Market Values (subject, in the case of Securities, to the provisions of Section 4.4) as of the date of dissolution of the Partnership, and (ii) debiting or crediting each Partner's Capital Account with its respective share of the hypothetical gains or losses resulting from such assumed sales in the same manner as such Capital Account would be debited or credited for gains or losses on actual sales of such assets. The liquidator shall then distribute all remaining cash and property to the Partners in the manner provided in Section 4.3. Any distribution to the Partners in liquidation of the Partnership shall be made by the later of either the end of the taxable year in which the liquidation occurs or 90 days after the date of such liquidation. For purposes of the preceding sentence, the term "**liquidation**" shall have the same meaning as set forth in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2) as in effect at such time. Each Partner shall have the right to designate another person to receive any property which otherwise would be distributed in kind to that Partner pursuant to any provision of this Agreement;

(c) except as expressly provided herein, the liquidator shall comply with any applicable requirements of the Act and all other applicable laws pertaining to the winding up of the affairs of

the Partnership and the final distribution of its assets. In addition, to the extent that the Partnership and any co-investors (including any Parallel Fund) have jointly participated in any Investments, the liquidator shall attempt to coordinate the liquidation of such Partnership assets with such co-investors. The liquidator shall proceed to liquidate the Partnership and windup its affairs as soon as reasonably practicable following the dissolution of the Partnership; provided, that the liquidator shall use its commercially reasonable efforts to dispose of all Partnership assets and make distributions to the Partners (other than distributions of amounts necessary to satisfy any contingent liabilities) within one year of the dissolution of the Partnership; and

(d) notwithstanding any provision in this Agreement to the contrary, no Partner shall be obligated to restore a deficit balance in its Capital Account at any time. The distribution of cash and/or property to the Partners in accordance with the provisions of this Section 9.2 shall constitute a complete return to the Partners of their Capital Contributions and a complete distribution to the Partners of their interest in the Partnership and all Partnership property.

### **Section 9.3. Return of Excess Distributions.**

(a) If, as of the Clawback Determination Date, the General Partner has received distributions pursuant to clause (ii) of Section 4.3(b) (including any distributions made in accordance with such clauses pursuant to Section 9.2) in excess of the cumulative distributions that the General Partner would have received pursuant to clause (ii) of Section 4.3(b) (including any distributions made in accordance with such clause pursuant to Section 9.2) assuming all distributions were made simultaneously (the “**Excess Distributions**”), then the General Partner shall contribute to the capital of the Partnership an amount equal to the lesser of (A) the Excess Distributions, and (B) the cumulative amounts distributed to the General Partner with respect to its Carried Interest minus the cumulative amount of income taxes payable with respect thereto utilizing the Assumed Income Tax Rate applicable to each such distribution under this clause (B) (net of any such amounts previously returned to the Partnership by the General Partner). Any such required contribution shall be made by the General Partner to the Partnership promptly following the Clawback Determination Date and shall be used by the Partnership to fund a distribution to the Partners other than Affiliated Partners *pro rata* in proportion to their Capital Contributions. For purposes of this Section 9.3, any Securities distributed to the Partners shall be valued in the same manner as such Securities were valued at the time of their distribution to the Partners. Notwithstanding the foregoing, no Affiliated Partner shall receive distributions of the amount contributed by the General Partner to the capital of the Partnership pursuant to this Section 9.3.

(b) The General Partner’s organizational documents shall provide that: (i) in the event that the General Partner is obligated under this Section 9.3 to contribute any amount to the Partnership, each member of the General Partner shall be severally obligated to contribute its *pro rata* share of such amount to the General Partner (based on each such member’s share of the distributions that the General Partner has received on account of the Carried Interest) to the extent that the General Partner has insufficient funds to meet its obligations under this Section 9.3, and (ii) each member of the General Partner (and, with regard to any member that is an entity, such entity’s owner(s)) shall execute and deliver for the benefit of the Limited Partners a guaranty pursuant to which such member (or, as applicable, its owner(s)) guaranty the payment of their share of the sum that the General Partner is obligated to contribute, as described in the foregoing clause (i), regardless of whether such member subsequently transfers its membership interest in

the General Partner or a portion thereof to any other person. The payment of such amount to the Partnership shall constitute full satisfaction by the General Partner of its obligation under this Section 9.3, and such amount shall be distributed to the Limited Partners other than Affiliated Partners *pro rata* in proportion to their Capital Contributions.

## ARTICLE X

### ASSIGNMENTS OF INTERESTS

#### **Section 10.1. Assignment by Limited Partners.**

(a) Subject to the provisions of Section 8.6, a Limited Partner may not sell, assign, dispose of or otherwise transfer (including by means of a pledge, grant of a security interest, mortgage, hypothecation or other encumbrance, and collectively “**Transfer**”) its Partnership Interest in whole or in part to any person (an “**Assignee**”), nor may a Limited Partner withdraw from the Partnership or withdraw any amount from the Partnership, without the prior written consent of the General Partner, which consent may be given or withheld in the sole discretion of the General Partner. In addition, the General Partner may require any documentation or other legal opinions, at the expense of the transferor Limited Partner or the proposed Assignee, that it deems necessary or advisable in connection with any Transfer of all or part of a Partnership Interest. Each transferor Limited Partner agrees that it shall pay all costs and expenses (the “**Transfer Costs**”), including legal, accounting and valuation fees and expenses, incurred by the Partnership in connection with a Transfer (and any related admission of the Assignee as a Limited Partner) of all or part of a Partnership Interest by such Limited Partner, except to the extent that the Assignee thereof agrees to bear such expenses.

(b) Notwithstanding anything to the contrary herein, no Assignee shall have the right to become a substitute Limited Partner unless (i) the General Partner shall have consented thereto, which consent may be granted or withheld in the sole discretion of the General Partner, (ii) the Assignee shall have executed such documentation as the General Partner may require to acknowledge the obligation of the Assignee to contribute the Unfunded Capital Commitment of the transferor Limited Partner and all other instruments as shall be required by the General Partner to signify such Assignee’s agreement to be bound by all provisions of this Agreement and all other documents reasonably required by the General Partner to effect the admission of the Assignee as a Limited Partner and (iii) the Assignee or transferor Limited Partner shall have paid to the Partnership the estimated Transfer Costs (with any excess of the actual Transfer Costs over the estimated Transfer Costs to be reimbursed to the Partnership on demand). An Assignee shall be deemed admitted as a substitute Limited Partner with respect to the Partnership Interest that was the subject of the Transfer upon its execution and delivery of a counterpart of this Agreement.

(c) An Assignee of the Partnership Interest of a Limited Partner, or any portion thereof, that is not admitted as a substitute Limited Partner shall be entitled only to allocations and distributions with respect to such Partnership Interest and shall have no rights to vote such Partnership Interest or to any information or accounting of the affairs of the Partnership and shall not have any of the other rights of a Partner pursuant to this Agreement.

(d) Upon the admission of an Assignee as a substitute Limited Partner, the books and records of the Partnership shall be amended accordingly to reflect the name and address and Capital Commitment of such Assignee as a substitute Limited Partner and the Unfunded Capital Commitment, if any, of such substitute Limited Partner.

(e) To the fullest extent permitted by law, any attempted assignment or substitution not made in accordance with this Section 10.1 shall be null and void *ab initio*. The Partnership and the General Partner shall be entitled to treat the record owner of any Partnership Interest as the absolute owner thereof in all respects and shall incur no liability for distributions of cash or other property made to such owner until such time as a valid Transfer in compliance with this Section 10.1 has occurred and all required documentation and legal opinions have been received by the General Partner.

**Section 10.2. Assignment by General Partner.** The interest of the General Partner in the Partnership shall not be sold, transferred, assigned or otherwise disposed of, or mortgaged, subjected to a security interest or otherwise encumbered, in whole or in part, without the prior written consent of Limited Partners whose aggregate LP Voting Percentages equal or exceed 75%, and, to the fullest extent permitted by law, any purported assignment without such consent shall be void *ab initio*; provided, however, that the General Partner may, at its expense, without the consent of any Limited Partner, (a) be reconstituted as or converted into a corporation, limited liability company or other form of entity (any such reconstituted or converted entity being deemed to be the General Partner for all purposes hereof) by merger, consolidation, conversion or otherwise or (b) Transfer its interest in the Partnership to one (1) or more of its Affiliates so long as such other entity shall be qualified to act as the sole general partner of a limited partnership and shall have assumed in writing the obligations of the General Partner under this Agreement, the Subscription Agreements and any other related agreements of the General Partner. In the event of an assignment or other Transfer by the General Partner of all of its interest as a general partner of the Partnership in accordance with this Section 10.2, the General Partner's Assignee or transferee shall be substituted in its place and admitted to the Partnership as general partner of the Partnership upon its execution of an instrument, together with the General Partner (as attorney for each of the other Partners) agreeing to be bound by the terms of this Agreement, as a general partner, and immediately thereafter, the General Partner shall cease to be a general partner of the Partnership, and such substituted general partner is hereby authorized to, and shall, continue the business of the Partnership without dissolution.

## ARTICLE XI

### PARTNER WITHDRAWAL

#### **Section 11.1. Withdrawal by Limited Partners.**

(a) Except to the extent that the General Partner shall otherwise consent, which consent may be given in the General Partner's sole and absolute discretion, no Limited Partner, other than as set forth in Section 8.6 or Section 8.8 (each a "**Permissible Withdrawal**"), shall be entitled to (i) withdraw from the Partnership except upon the assignment by it of all of its Partnership Interest and the substitution of such Limited Partner's assignee as a Limited Partner of the Partnership in accordance with Section 10.1, or (ii) demand or require the return of its Capital Contributions

except to the extent, if any, that distributions made pursuant to the express terms of this Agreement may be considered as such by law or by unanimous agreement of the Partners, or upon dissolution and liquidation of the Partnership, and then only to the extent expressly provided for in this Agreement and as permitted by law.

(b) Upon the Permissible Withdrawal of a Limited Partner, the General Partner may, in its discretion, liquidate such Limited Partner's Partnership Interest by employing either of the following means:

(i) causing the Partnership to distribute to the withdrawing Limited Partner in complete redemption of such Partnership Interest (or part thereof), in cash or in kind, or by means of a promissory note, a redemption amount equal to the withdrawing Limited Partner's Capital Account balance; or

(ii) purchasing for itself or offering for sale to a designee of the General Partner or any Partner such Partnership Interest (or part thereof) available as a result of the withdrawal of a Limited Partner pursuant to this Section 11.1 at a price equal to the Fair Market Value of such Partnership Interest (or part thereof, as the case may be) and remitting the proceeds of such sale to the withdrawing Limited Partner.

(c) Amounts payable in kind to a withdrawing Limited Partner pursuant to Section 11.1(b)(i) generally will be paid ratably in proportion to the value of each Security held by the Partnership and may be paid by designating restricted Securities to be distributed on a delayed basis.

**Section 11.2. *Withdrawal by General Partner.*** The General Partner shall not voluntarily withdraw from the Partnership without the prior written consent of Limited Partners whose aggregate LP Voting Percentages equal or exceed 75%.

**Section 11.3. *Removal of the General Partner.***

(a) Limited Partners (other than any Limited Partners that are Affiliates of the General Partner) whose aggregate LP Voting Percentages equal or exceed 66<sup>2</sup>/<sub>3</sub>% of the LP Voting Percentages held by such Limited Partners shall have the right to remove the General Partner and terminate the Investment Period (provided, however, that such termination shall not affect the Partnership's obligation to fund amounts that it or any Affiliate was contractually obligated to fund prior to such termination) in the event and only in the event that (i) the General Partner breaches its obligation to make a required Capital Contribution or fund expenses as and when due pursuant to the terms hereof and that such breach remains uncured for more than ten (10) Business Days following delivery of written notice by the Advisory Committee to the General Partner, (ii) the General Partner has committed a material violation of applicable securities laws (as established by a court or regulatory authority of competent jurisdiction in a final determination) which has a material adverse effect on the business of the Partnership or the ability of the General Partner to perform its duties under the terms of the Partnership Agreement, or (iii) the General Partner or any Principal commits an act constituting fraud, bad faith or willful misconduct in connection with the performance of his/its duties under the terms of the Partnership Agreement as established by a court of competent jurisdiction in a final judgment or upon an admission by the General Partner

or Principal, as applicable, in a settlement of any lawsuit (the occurrence of an event described in clauses (i) – (iii), each constituting “Cause”); provided, however, that with respect to those events constituting Cause further described in clauses (i) and (ii) of this Section 11.3(a), the General Partner shall have thirty (30) days following receipt of written notice from the Limited Partners during which to cure such event constituting Cause hereunder; and, provided further, that the General Partner shall be deemed to have cured any event constituting Cause if (x) the employment of the person whose conduct gave rise to such event constituting Cause is terminated, (y) the Partnership is indemnified and made whole for any liabilities, losses or expenses caused by such conduct, and (z) the event constituting Cause is otherwise cured to the reasonable satisfaction of the Advisory Committee.

(b) Limited Partners (other than any Limited Partners that are Affiliates of the General Partner) whose aggregate LP Voting Percentages equal or exceed 80% of the LP Voting Percentages held by such Limited Partners shall have the right to remove the General Partner at any time without Cause (the date of any removal pursuant to Sections 11.3(a) or 11.3(b), after the expiration of any applicable cure period, being the “**Removal Date**”).

(c) Any removal pursuant to Section 11.3(a) shall be effective at such time as Limited Partners whose aggregate LP Voting Percentages equal or exceed 66<sup>2</sup>/<sub>3</sub>% shall have designated a substitute general partner. Any removal pursuant to Section 11.3(b) shall be effective at such time as Limited Partners whose aggregate LP Voting Percentages equal or exceed 80% shall have designated a substitute general partner. Upon the replacement of the General Partner by a substitute general partner, the removed General Partner shall cease to be the general partner hereunder but shall automatically and without further action become a Limited Partner in the Partnership for all purposes. If a removal occurs pursuant to Section 11.3(a), then the removed General Partner’s right to receive allocations or distributions with respect to the Carried Interest on Investments made prior to such Removal Date shall not be affected by such removal and the removed General Partner shall have no right to receive allocations or distributions with respect to the Carried Interest on Investments made after such Removal Date. If a removal occurs pursuant to Section 11.3(b), then the removed General Partner’s right to receive allocations or distributions with respect to the Carried Interest on Investments made prior to, as of, and after such Removal Date shall not be affected by such removal.

(d) Upon the conversion of the removed General Partner’s interest into a Limited Partner interest pursuant to this Section 11.3(d), the removed General Partner shall cease to be personally liable with respect to any debts or liabilities that the Partnership incurs subsequent to the date of such conversion. From and after the date of the removed General Partner’s conversion to a Limited Partner, the removed General Partner (i) shall cease to be a general partner of the Partnership, and (ii) shall not be obligated to provide management or advisory services to the Partnership. In addition, from and after the date of the removed General Partner’s conversion to a Limited Partner, the removed General Partner, and each of its stockholders, partners, members, officers, directors, employees and agents, and any Affiliates of such persons, shall continue to have all rights under Section 5.7 (with references therein to “**General Partner**” being interpreted to include the removed General Partner), and shall be indemnified and held harmless by the Partnership, on demand, with respect to any indebtedness or other obligations of the Partnership (including any expenses suffered or incurred by any such Indemnified Person with respect to any such indebtedness or obligations) unless the Partnership shall have obtained full releases of each

such person for, or fully paid, such indebtedness or obligations. No amendment to this Section 11.3 shall be valid without the removed General Partner's prior approval. The provisions of this Section 11.3 shall survive the dissolution of the Partnership and the termination of this Agreement.

## ARTICLE XII

### AMENDMENTS; MEETINGS OF PARTNERS; MERGERS

#### Section 12.1. *Amendments.*

(a) Subject to subsections (b), (c), (d) and (e) below, any amendment to this Agreement shall be adopted only upon (and at the time of receipt of) the affirmative vote or written consent of both the General Partner and Limited Partners (other than any Affiliated Partners, Principals, members of the Investment Committee, and any Affiliates of any of them) whose aggregate LP Voting Percentages exceed 50% of the aggregate LP Voting Percentages held by such Limited Partners.

(b) Notwithstanding subsection (a) above, amendments to this Agreement that do not adversely affect any Limited Partner and (i) are of an inconsequential nature or are necessary to correct an error or omission, or are necessary to comply with any applicable law or governmental regulation, or are necessary in the opinion of counsel to the Partnership to ensure that the Partnership shall not be treated as an association taxable as a corporation for Federal income tax purposes, or are required or contemplated by this Agreement, or (ii) are made in connection with the admission of any Additional Limited Partner pursuant to Section 3.5, may be made by the General Partner without the consent of any Limited Partner. The General Partner shall provide each Limited Partner with a copy of any amendment made by the General Partner pursuant to this subsection (b).

(c) Notwithstanding subsection (a) and subsection (b) above, in the case of any amendment to this Agreement that (i) reduces or eliminates any right provided to any Partner to receive any distributions or income, gains or losses of the Partnership, (ii) reduces (other than as a result of the admission of any Additional Limited Partner pursuant to Section 3.5) any Limited Partner's Investment Percentage, (iii) increases the Capital Commitment or the obligation of any Limited Partner to make Capital Contributions or other payments of any kind (including any increase in any material respect of the percentage of the Management Fee that such Limited Partner is required to bear pursuant to the terms hereof), (iv) amends this Section 12.1, or (v) materially and adversely affects the rights or obligations of a Limited Partner, such amendment shall require the approval of such affected Limited Partner.

(d) Notwithstanding subsections (a), (b) and (c) above, (i) any amendment to Section 8.5 shall also require the approval of Limited Partners that are tax-exempt entities whose aggregate LP Voting Percentages exceed 50% of the LP Voting Percentages of all Limited Partners that are tax-exempt entities, (ii) any amendment to Section 8.6 shall also require the approval of those ERISA Partners whose aggregate LP Voting Percentages exceed 50% of the LP Voting Percentages of all ERISA Partners, (iii) any amendment to Section 8.7 shall also require the approval of those BHC Partners whose aggregate LP Voting Percentages exceed 50% of all BHC Partners, and (iv) any amendment to Section 8.8 shall also require the approval of those Foundation

Limited Partners whose aggregate LP Voting Percentages exceed 50% of the LP Voting Percentages of all Foundation Limited Partners.

(e) Notwithstanding subsections (a), (b), (c) and (d) above, no amendment to this Agreement shall be made that alters in a materially adverse manner any provision hereof that requires the approval or consent of Limited Partners having a specified amount of LP Voting Percentages (including the LP Voting Percentage itself) without the approval or consent of Limited Partners holding at least such specified amount of LP Voting Percentages.

**Section 12.2. Meetings of the Partners.** The Partnership shall hold a meeting of the Partners at least once every year, at the principal office of the Partnership or such other meeting place as the General Partner shall reasonably determine, on such date and at such time as shall be determined by the General Partner, upon no less than fifteen (15) nor more than sixty (60) days following notice to the Limited Partners; provided, that no annual meeting of the Partnership shall be held in any given year if the Advisory Committee shall agree not to hold a meeting during such year. All expenses of meetings of Partners shall be borne by the Partnership. At each such meeting, the General Partner shall discuss with the Limited Partners the operations, business and affairs of the Partnership.

**Section 12.3. Mergers and Consolidations.**

(a) The Partnership may merge or consolidate with or into one or more limited partnerships formed under the Act or other business entities pursuant to an agreement of merger or consolidation that has been approved by Limited Partners whose aggregate LP Voting Percentages equal or exceed 75% and otherwise in the manner contemplated by Section 17-211(b) of the Act.

(b) Notwithstanding anything to the contrary contained elsewhere in this Agreement, an agreement of merger or consolidation approved in accordance with Section 17-211(b) of the Act, to the extent permitted by Section 17-211(g) of the Act and to the extent that such agreement of merger or consolidation does not increase any Limited Partner's obligation to make capital contributions to the surviving entity without the consent of such Limited Partner, may (i) effect any amendment to this Agreement, (ii) effect the adoption of a new partnership agreement for the Partnership if it is the surviving or resulting limited partnership in the merger or consolidation, or (iii) provide that the partnership agreement of any other constituent partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating the merger or consolidation) is the partnership agreement of the surviving or resulting limited partnership.

**ARTICLE XIII**

**MISCELLANEOUS**

**Section 13.1. Notices.** All notices, demands, requests or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be given either (a) by hand delivery, (b) by United States mail, postage prepaid, (c) by electronic facsimile or other electronic transmission or (d) by overnight courier service (charges prepaid) with proof of delivery. Each Limited Partner's address for notices and other communications hereunder shall be that

specified by such Limited Partner in its Subscription Agreement. Each Limited Partner may change its address for notices and communications by giving notice in writing, stating its new address for notices, to the General Partner in accordance with this Section 13.1, and the General Partner or the Partnership may change its address for notice and communication by giving such notice to the Limited Partners in accordance with this Section 13.1. Notices sent by hand delivery shall be deemed to have been given when received; notices mailed in accordance with the foregoing shall be deemed to have been given four Business Days following the date mailed; notice sent by electronic facsimile or other electronic transmission shall be deemed given on the first Business Day after electronically confirmed; and notices sent by overnight courier service shall be deemed to have been given on the next Business Day following the date so sent.

**Section 13.2. *Partition.*** Each of the Partners hereby irrevocably waives for the term of the Partnership any right that such Partner may have to maintain any action for partition with respect to the Partnership property.

**Section 13.3. *Entire Agreement.*** This Agreement, each Subscription Agreement and any side letters constitute the full and complete agreement of the parties hereto with respect to the subject matter hereof and supersede any prior agreement or understanding among or between them with respect to such subject matter. This Agreement, each Subscription Agreement and any side letters constitute the full and complete agreement of the parties hereto with respect to the subject matter hereof and supersede any prior agreement or understanding among or between them with respect to such subject matter. Notwithstanding any other provision of this Agreement or any Subscription Agreement, in addition to this Agreement and the Subscription Agreements, the Limited Partners hereby acknowledge and agree that the General Partner, on its own behalf or on behalf of the Partnership, may enter into side letters or other written agreements to or with any Limited Partner without the consent of any person, including any other Limited Partner, that has the effect of establishing rights under, or altering or supplementing the terms hereof and of any Subscription Agreement. The Limited Partners hereby further agree that the terms of any such side letter or other agreement to or with a Limited Partner shall govern with respect to such Limited Partner notwithstanding the provisions of this Agreement or any of the Subscription Agreements.

**Section 13.4. *Severability.*** If any provision of this Agreement is held to be unenforceable, this Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects this Agreement shall remain in full force and effect; provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

**Section 13.5. *No Waiver.*** The failure of any Partner to insist upon strict performance of a covenant hereunder or of any obligation hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such Partner's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation hereunder.

**Section 13.6. *Applicable Law.*** This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted, construed and enforced in accordance with

the laws of the State of Delaware.

**Section 13.7. *Successors and Assigns.*** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns; provided, however, that no Partner may sell, assign, transfer or otherwise dispose of all or any part of its Partnership Interest except in accordance with Article X or Article XI.

**Section 13.8. *Attorneys' Fees.*** Subject to Section 5.8(a), each Partner agrees to pay any attorneys' fees or expenses incurred by it in connection with the negotiation, execution and delivery of this Agreement.

**Section 13.9. *No Third Party Beneficiaries.*** Except as expressly and specifically provided in Section 5.6, Section 5.7 and Section 9.3(b) and, with respect to a lender under a Subscription Facility, as expressly and specifically provided in Section 5.1(e) and Article III, nothing in this Agreement, either express or implied, is intended to or shall confer upon any person other than the parties hereto, and their respective successors and permitted assigns, any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

**Section 13.10. *Representations and Warranties; Survival.*** All representations, warranties and covenants made by the Partners in this Agreement, the Subscription Agreements or any other document contemplated hereby shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement, or such other document, regardless of any investigation made by or on behalf of any such party.

**Section 13.11. *Submission to Jurisdiction and Venue; Waiver of Jury Trial.*** **THE PARTIES HERETO HEREBY IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY FEDERAL COURT SITTING IN THE DISTRICT OF COLUMBIA FOR THE PURPOSES OF ANY JUDICIAL SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT. THE PARTIES HEREBY AGREE AND CONSENT THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL COURT SITTING IN THE DISTRICT OF COLUMBIA MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, AND SERVICE SHALL BE COMPLETE ON THE DELIVERY OR ATTEMPTED DELIVERY AS EVIDENCED BY THE RETURN RECEIPT. EACH PARTY IRREVOCABLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF THIS AGREEMENT IN ANY FEDERAL COURT SITTING IN THE DISTRICT OF COLUMBIA AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.** This provision may be filed with any court as written evidence of the knowing and voluntary irrevocable agreement among the parties to waive any objections to jurisdiction, to venue or to convenience of forum.

**Section 13.12. *Legal Counsel.*** Counsel to the Partnership may also be counsel to the General Partner, the Advisor and their respective Affiliates. The General Partner may execute on

behalf of the Partnership and the Partners any consent to the representation of the Partnership that counsel may request pursuant to the Texas Disciplinary Rules of Professional Conduct or similar rules in any other jurisdiction (“**Rules**”). The General Partner has retained Locke Lord LLP (“**Partnership Counsel**”) in connection with the formation of the Partnership and in connection with the operation of the Partnership, including making, holding and disposing of the Partnership’s Investments. Each Limited Partner acknowledges and agrees that Partnership Counsel does not represent any Limited Partner (in its capacity as such) in the absence of a clear and explicit written agreement to such effect between such Limited Partner and Partnership Counsel (and then only to the extent specifically set forth in such agreement), and that in the absence of any such agreement, Partnership Counsel shall owe no duties to any Limited Partner (in such capacity), whether or not Partnership Counsel has in the past represented or is currently representing such Limited Partner with respect to other matters. In the event any dispute or controversy arises between any Limited Partner and the Partnership, or between any Limited Partner or the Partnership, on the one hand, and the General Partner (or any Affiliate thereof) that Partnership Counsel represents, on the other hand, then each Limited Partner agrees that Partnership Counsel may represent either the Partnership or the General Partner (or its Affiliates), or both, in any such dispute or controversy to the extent permitted by the Rules, and each Limited Partner hereby consents to such representation. Each Limited Partner further acknowledges that, whether or not Partnership Counsel has in the past represented such Limited Partner with respect to other matters, Partnership Counsel has not represented the interests of any Limited Partner in the preparation and negotiation of this Agreement.

**Section 13.13. Approvals and Deemed Approval.** Subject to the next sentence, whenever a Partner is required or permitted by this Agreement to make any determination, vote or approval, such Partner shall have the right to give or withhold such determination, vote or approval in its sole discretion, unless otherwise specified. The General Partner may require that a Limited Partner respond within a specified period of time (which shall in no case be less than five (5) Business Days) to the General Partner’s request for consent to or approval of an amendment to the Partnership Agreement, or an election, waiver or similar action hereunder, and a Limited Partner which fails to respond with an affirmative objection within such specified period of time shall be deemed to have granted such consent or approval.

**Section 13.14. Anti-Money Laundering and Anti-Terrorism.** Notwithstanding anything to the contrary contained in this Agreement, the General Partner, in its own name and on behalf of the Partnership, shall be authorized without the consent of any person, including any other Partner, to take such action as it determines in its sole discretion to be necessary or advisable to comply with any anti-money laundering or anti-terrorist laws, rules, regulations, directives or special measures, including the actions contemplated in any Subscription Agreement.

**Section 13.15. Limitation on Use of Names of Limited Partners.** Except as otherwise provided by law, neither the Partnership, the General Partner, nor any of their Affiliates shall use the name of any Limited Partner (other than the name of any Limited Partner that is also an Affiliate of the General Partner) in any offering or marketing documents for any purpose whatsoever without the prior consent of such Limited Partner. The preceding sentence shall not be deemed to prevent the General Partner from furnishing the identity of a Limited Partner to any other Limited Partner or any prospective Limited Partner.

**Section 13.16. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute but one and the same document.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

**GENERAL PARTNER:**

BIOSYS CAPITAL MANAGEMENT, LLC  
a Delaware limited liability company

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

**LIMITED PARTNERS:**

Each Limited Partner admitted to the Partnership, as reflected on the books and records of the Partnership, pursuant to a power of attorney executed in favor of, and delivered to, the General Partner.

By: \_\_\_\_\_,  
as Attorney-in-Fact

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