

Biosys Capital Partners, LP

October __, 2014

Gates Ventures, LLC
2365 Carillon Point
Kirkland, WA 98033

Re: Biosys Capital Partners, LP

Ladies and Gentlemen:

Reference is hereby made to the Agreement of Limited Partnership of Biosys Capital Partners, LP, a Delaware limited partnership (the "Partnership"), dated as of [date] (as amended from time to time, the "Partnership Agreement"), by and among Biosys Capital Management, LLC, a Delaware limited liability company, as the general partner (the "General Partner") and the Limited Partners party thereto, including, without limitation, Gates Ventures, LLC (the "Investor"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Partnership Agreement. In consideration of the investment by the Investor in the Partnership, the General Partner and the Investor agree, upon the admission of the Investor to the Partnership as a Limited Partner, to the provisions set forth herein:

1. Most Favored Nations. Neither the Partnership, any Parallel Fund, ~~or any Feeder Fund~~ ~~or other related entity~~ (each, a "Parallel Vehicle"), the General Partner nor any of their respective Affiliates has entered into, or will enter into, any side letter or similar agreement (each, a "Side Letter") with any existing or future investor in connection with the admission of such investor to the Partnership as a Limited Partner or a Parallel Vehicle as a limited partner (or other comparable role) before, on or after the date hereof that has the effect of establishing rights or otherwise benefiting such investor in any manner more favorable in any material respect to such investor than the rights and benefits established in favor of the Investor by the Partnership Agreement or pursuant to this letter agreement unless, in any such case and except as provided below, within 30 days of entering into such Side Letter, the General Partner shall offer to the Investor in writing the opportunity to receive the same rights and benefits granted under such Side Letters. The Investor shall notify the Partnership in writing, within thirty (30) days after the date it has been offered the opportunity to receive such rights and benefits, of its election to receive any such rights or benefits so offered. Notwithstanding the foregoing, duplicative Side Letter provisions are not required to be re-circulated to the Investor pursuant to this Section 1. The Investor acknowledges that it will not, solely by reason of this Section 1, (i) receive any rights or benefits established in favor of another Limited Partner or any limited partner or other investor in a Parallel Vehicle (each a "Subject Party") by reason of the fact that such Subject Party is subject to any laws, rules or regulations to which the Investor is not also subject; (ii) receive any rights or benefits

Commented [HN1]: Please go ahead and add F&F exception language but with a cap that (exclusive of GP interests) no more than 5% of committed capital will be in a reduced or zero fee class.
Hayes Nuss
2014-10-10 18:40:00

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~~which are personal to such Subject Party based solely on the place of organization or headquarters, organizational form of, or other particular restrictions applicable to, such Subject Party; (iii) receive any rights or benefits established in favor of a Subject Party with respect to such Subject Party's right to appoint one or more persons to the Advisory Committee (or similar body with regard to any Parallel Vehicle); or (iv) receive any rights or benefits granted to the General Partner, the Advisor, any general partner or similar functionary with regard to a Parallel Vehicle or their respective Affiliates, partners, members, stockholders, owners or employees.~~

~~2. Use of Name. Notwithstanding Section 13.15 of the Partnership Agreement, subject to the further provisions hereof, neither the Partnership, the General Partner, the Manager, any of their respective partners, employees, agents, representatives or any Affiliates thereof shall use or disclose the Investor's name (or the name of any affiliate of Investor) without the prior written consent of the Investor. Notwithstanding the foregoing, this paragraph shall not prohibit the General Partner from making any disclosure regarding the Investors' participation in the Partnership to the extent required by law, or legal process, nor restrict the General Partner from making any disclosure regarding the Investor's participation in the Partnership using the language already agreed as agreed upon by the Investor and the General Partner and set forth to in the Private Placement Memorandum.~~

3. Further Information. Notwithstanding anything to the contrary in the Partnership Agreement or the Investor's Subscription ~~agreement~~ Agreement, the General Partner agrees that the Investor will not be required to provide (i) any personal or financial information regarding its members, managers, settlors, trustees, agents, employees, other representatives or beneficial owners, or (ii) any of the information or documentation set forth in Section 6.2(b) of the Partnership Agreement, other than information that has previously been provided in the Investor's Subscription ~~agreement~~ Agreement.

4. Advisory Committee Materials; Observer Rights. The General Partner shall, as soon as reasonably practicable, forward to the Investor all materials provided to the members of the Advisory Committee if also offered to all limited partners.

~~4. The Investor shall, upon request, have the right to designate a representative to attend and observe each meeting of the Advisory Committee; provided that such representative shall not participate in any vote of the Advisory Committee or any committee thereof.~~

5. Alternative Investment Vehicles; Parallel Vehicles. The General Partner agrees that the Investor shall not be required to participate in any investment through any ~~A~~ alternative investment vehicle ~~Vehicle~~ (each, an "AIV") or Parallel Vehicle without the Investor's prior written consent (such consent not to be unreasonably withheld). If the General Partner intends to form an ~~AIV~~ Alternative Investment Vehicle in which the General Partner will request that the Investor participate, the General Partner will provide the Investor with drafts of the governing documents of such Alternative

Investment VehicleAIV as soon as reasonably practicable and in advance of the date that the Investor would become a participant in such Alternative Investment VehicleAIV.

6. Application to Alternative Investment VehicleAIVs and Parallel Vehicles. Notwithstanding anything to the contrary in the Partnership Agreement, the General Partner hereby agrees that the provisions of this letter agreement shall apply, to the extent relevant, to any investment holding company, Parallel Vehicle and/or Alternative Investment VehicleAIV used by the General Partner or the Partnership in relation to the Partnership and/or any iInvestments in connection therewithmade by the Partnership.

7. Opinion of the Investor's In-House Counsel. The General Partner agrees that, in connection with any opinion of the Investor's counsel, in-house counsel shall be deemed by the General Partner to be reasonably acceptable counsel for the Investor.

8. Transfers. Notwithstanding anything in the Partnership Agreement to the contrary, the General Partner hereby agrees that it shall not withhold itsrequest consent to the transfer of all or any portion of Investor's interest in the Partnership to any charitable organization designated by Investor; *provided* that such Transfer otherwise complies with the requirements of the Partnership Agreement and applicable law. Consent will not be unreasonably withheld.

9. ~~Representations, Warranties and Covenants. The General Partner, on behalf of itself and the Partnership, represents, warrants and covenants to the Investor on the date hereof and at the time the Partnership makes any investment that:~~

~~(a) There is no litigation, investigation or other proceeding pending against the Partnership, the General Partner or any of their Affiliates which, if adversely determined, would materially adversely affect the business or financial condition of the Partnership or the General Partner or the ability of either to perform its respective obligations under the Partnership Agreement or this letter agreement, and the General Partner is not aware of any basis for such litigation, investigation or proceeding;~~

~~(b) Assuming the Investor's due authorization, execution and delivery of the subscription agreement (i) the interest to be acquired by the Investor represents a duly and validly issued interest in the Partnership and (ii) the Investor is a Limited Partner under the Partnership Agreement and the laws of the State of Delaware;~~

~~(c) There are no liabilities of the Partnership other than as described as Partnership expenses or Management Fees in the Partnership Agreement; and~~

~~(d) The execution, delivery and performance of the Partnership Agreement by the General Partner does not violate or constitute a default or breach of any contract, indenture, agreement, commitment or mortgage applicable to the General Partner or the Partnership.~~

Commented [HN2]: Can we find a way to add these to the LPA? I created another Article XIV for reps and warranties in the attached LPA.
Hayes Nuss
2014-10-11 11:53:00

10. ~~Compliance with Laws. The~~ General Partner will use reasonable efforts to cause the Partnership to comply in all material respects with all laws applicable to the conduct of the business of the Partnership.

Commented [HN3]: Added to LPA section 13.17
Hayes Nuss
2014-10-11 11:50:00

9. Representations, Warranties and Covenants.

(a) The General Partner, on behalf of itself and the Partnership, represents, warrants and covenants to the Investor on the date hereof and at the time the Investor makes a Capital Contribution to the Partnership that:

there is no litigation, investigation or other proceeding pending against the Partnership, the General Partner or any of their Affiliates which, if adversely determined, would materially adversely affect the business or financial condition of the Partnership or the General Partner or the ability of either to perform its respective obligations under the Partnership Agreement or this letter agreement, and the General Partner is not aware of any basis for such litigation, investigation or proceeding; and

(i) The execution, delivery and performance of the Partnership Agreement by the General Partner does not violate or constitute a default or breach of any contract, indenture, agreement, commitment or mortgage applicable to the General Partner or the Partnership.

(b) The General Partner, on behalf of itself and the Partnership, represents, warrants and covenants to the Investor on the date hereof and on the date that the Investor makes its first Capital Contribution to the Partnership that:

(i) Assuming the Investor's due authorization, execution and delivery of the Subscription Agreement (i) the interest to be acquired by the Investor represents a duly and validly issued interest in the Partnership and (ii) the Investor is a Limited Partner under the Partnership Agreement and the laws of the State of Delaware; and

(ii) There are no debts of the Partnership other than with regard to expenses described as Partnership Expenses, Organizational Expenses or Management Fees in the Partnership Agreement.

~~11. Non-U.S. Taxation. The Partnership shall not make an investment in a portfolio company organized under the laws of, or having its principal place of business in, any jurisdiction other than the United States unless the General Partner has received the advice of reputable local tax advisors that such investment will not cause the Investor, solely as a result of being a limited partner in the Partnership, to be required either (i) to file any tax return or report in such jurisdiction or (ii) to pay tax in such jurisdiction, in~~

Commented [HN4]: This is already in Section 8.5(b) of LPA. Now 8.6(b).

Rodi if fine to not use "Local"
Hayes Nuss
2014-10-13 14:46:00

each case, with respect to income not derived from the Partnership. If, notwithstanding the foregoing, the General Partner becomes aware that the Investor is required to pay such tax or to file such a tax return or report, the General Partner shall promptly notify the Investor thereof.

12. ~~Tax Structuring.~~ **Tax Structuring.** The General Partner shall use reasonable best efforts to structure investments in a manner that will minimize anticipated withholding and other taxes imposed directly or indirectly on the Investor with respect to income or distributions from the Partnership.

Commented [HN5]: Added to LPA Section 8.2
Hayes Nuss
2014-10-15 11:54:00

13. ~~Withholding Taxes.~~ **Withholding Taxes.** If the General Partner becomes aware of any withholding or other taxes imposed directly or indirectly on the Investor with respect to income or distributions from the Partnership, it shall promptly notify the Investor thereof.

Commented [HN6]: Added to the end of 4.3(h)
Hayes Nuss
2014-10-15 11:59:00

14. ~~Controlled Foreign Corporations.~~ **Controlled Foreign Corporations.** Prior to the Partnership acquiring an interest, directly or indirectly, in any non-U.S. entity taxable as a corporation for U.S. federal income tax purposes or the General Partner causing the Investor to hold an interest in a non-U.S. AIV or Parallel Vehicle that is so taxable, the General Partner shall use reasonable best efforts to determine whether such entity (or AIV or Parallel Vehicle) is or is reasonably likely to constitute a "controlled foreign corporation" within the meaning of Section 957 of the Code (a "CFC") of which the Investor is a "United States shareholder" within the meaning of Section 951(b) of the Code and, if the General Partner so determines, or if the General Partner subsequently determines that any such entity (or AIV or Parallel Vehicle) is a CFC of which the Investor is a "United States shareholder," the General Partner shall (a) promptly notify the Investor thereof; (b) use commercially reasonable efforts to minimize income of such CFC that is subject to inclusion in income of U.S. shareholders of such CFC pursuant to Section 951 of the Code; and (c) use reasonable best efforts to timely provide to the Investor all information necessary for the Investor to file an IRS Form 5471 with respect to such entity.

Commented [HN7]: Added to LPA in Section 8.10
Hayes Nuss
2014-10-15 12:21:00

15. ~~Passive Foreign Investment Companies~~ **Passive Foreign Investment Companies** The General Partner shall (a) use reasonable best efforts to determine as soon as practicable following the end of each fiscal year of the Partnership, any Parallel Vehicle or any AIV in which the Investor has an interest, and in any event within 180 days of the end of such fiscal year, whether (i) any non-U.S. entity held, directly or indirectly, by the Partnership or Parallel Vehicle or (ii) any such AIV constituted a "passive foreign investment company" (a "PFIC") within the meaning of Section 1297 of the Code for such fiscal year; (b)

Commented [HN8]: Added to LPA in Section 8.11
Hayes Nuss
2014-10-15 12:21:00

~~promptly notify the Investor if any such entity (or AIV) is determined to be a PFIC; and (c) commencing with the first fiscal year for which any such entity (or AIV) is determined to be a PFIC, use reasonable best efforts to timely provide to the Investor all information necessary for the Investor to make and maintain a "qualified electing fund" election with respect to such PFIC pursuant to Section 1295 of the Code.~~

~~16. — Listed Transactions. The General Partner shall use reasonable best efforts to cause the Partnership not to enter into a transaction, directly or indirectly, that is a "listed transaction" within the meaning of Treasury Regulation § 1.6011-4(b)(2).~~

~~17. — Tax Information. If the General Partner has not furnished an IRS Schedule K-1 (or if the Partnership is not required to file a U.S. federal income tax return; the equivalent thereof) within 90 days after the end of a fiscal year of the Partnership, the General Partner shall within such 90 day period provide to the Investor a good faith estimate of the Investor's total U.S. federal taxable income from the Partnership for such fiscal year, which shall include an estimate of each major component of such taxable income, including ordinary income, long term capital gains and losses, short term capital gains and losses, qualified dividends, and deductions. The General Partner shall provide to the Investor promptly upon request such other information reasonably requested by the Investor in order to file tax returns and reports or to obtain any available exemption from, reduction in, or refund of withholding or other taxes, or to claim any tax credit with respect thereto.~~

~~18. — FATCA. If a material amount of withholding taxes is reasonably expected to be withheld pursuant to sections 1471 to 1474 of the Code ("FATCA") from payments received by the Partnership, any Parallel Vehicle, any non-U.S. entity controlled by the Partnership or any Parallel Vehicle or any non-U.S. AIV in which the Investor holds an interest, the General Partner shall use reasonable best efforts to cause the Partnership, such Parallel Vehicle, such entity or such AIV, or an affiliate thereof, as applicable, to (a) enter into and comply with an agreement described in section 1471(b)(1) of the Code; (b) comply with applicable foreign law enacted in connection with an intergovernmental agreement implementing FATCA or (c) otherwise take such other actions as shall be necessary to avoid such withholding taxes.~~

~~19.10. Percentage Ownership Interest. As of the date of this letter agreement, the Investor has made a Capital Commitment to the Partnership in the sum of \$20,000,000. To the extent that the Investor's aggregate Capital Commitment the General Partner represents and covenants that (a) the Investor's aggregate commitment to the Partnership, any Parallel Vehicle and or any Alternative Investment Vehicle AIV (each a "Vehicle") represents represents more than ___% 25% or less of the total commitments to any such vVehicles at the time that the Investor would be required to make its first capital contribution to any such Vehicle then the Investor may elect by delivery of written notice to the General Partner to reduce its aggregate Capital Commitment to the Vehicle to a sum equal to 25% of the total commitments to such Vehicle. In the event that the Investor makes such election, thenand shall in no event at any time exceed 25___%, (b)~~

Commented [HN9]: This is addressed in Section 8.5(a)
Hayes Nuss
2014-10-13 14:44:00

Commented [HN10]: We can provide estimated K1s in ninety days. This was added to LPA in 7.2(a)(ii)
Hayes Nuss
2014-10-13 15:04:00

Commented [HN11]: FATCA is mentioned in 5.10b for AIV investments.

Can we take the language out of 5.10(b) and do a single section? I think we can do a consolidated section in 8.12
Hayes Nuss
2014-10-13 15:23:00

Commented [HN12]: We feel we can safely make this representation
Hayes Nuss
2014-10-13 15:23:00

~~the Investor's commitment to the Partnership, any Parallel Vehicle or any AIV shall not at any time exceed ___% 25% of the aggregate commitments toof any such single v Vehicle and (c) the Investor's Capital Commitment to the Partnership represents ___% 25% or less of aggregate Capital Commitments to the Partnership and shall in no event at any time exceed 25 ___%. Promptly following written request of the Investor the General Partner shall provide the Investor with a written certificate executed by the General Partner pursuant to which it shall certify the aggregate commitments then made to any Vehicle to which the Investor has made a commitment. [Biosys: Cascade will need to analyze its regulatory/aggregation concerns and how to complete the thresholds in this paragraph when we have more information about what Cascade's percentage ownership of the Partnership will be and we will suggest percentages to include in this paragraph at that time.]~~

20.11. Material Regulatory Burden; Excuse.

(a) The Investor shall not be required to participate in any investment by the Partnership that would result in a Material Regulatory Burden for the Investor or any of its trustees, members, managers, agents, officers or affiliates (the "Investor Principals").

(b) For purposes of this provision, the term "Material Regulatory Burden" means, for any of the Investor Principals, the occurrence of any of the following with respect to receipt of securities to be distributed from the Partnership or participation in any investment, any of which would not otherwise have occurred: (i) any requirement to make regulatory filings (or obtain regulatory approval), (ii) any violation of applicable law or regulation (including without limitation any violation of by-laws, rules or published policies of any securities regulator, stock exchange or professional standards body having jurisdiction), (iii) any tax penalty, or (iv) any requirement by a securities regulator, stock exchange, professional standards body, governmental regulatory agency or other authority, including without limitation pursuant to the rules and regulations thereof to (A) provide confidential personal data (including without limitation driver's license numbers, social security numbers and fingerprints, but excluding the Investor's EIN), (B) personally appear before such securities regulator, stock exchange, professional standards body, governmental regulatory agency or other authority, (C) consent to any background check or material inquiry by such securities regulator, stock exchange, professional standards body, governmental regulatory agency or other authority or (D) be personally named on any license, permit or application (other than any disclosure of the name of the Investor itself) or to personally execute any application, questionnaire, consent or other similar document or (v) as provided in Paragraph 21 hereof.

(c) Upon the request of the Investor, tThe General Partner agrees to use commercially reasonable efforts to determine, and promptly inform the Investor of such determination, if any prospective investment by the Fund has

Commented [HN13]: This one they seemed set on but not sure how it can be relevant for their investment in Biosys.
Hayes Nuss
2014-10-13 15:22:00

any material connection with any private foundation designated by the Investor in writing.

~~21. Hart-Scott Rodino. The General Partner acknowledges that the Investor's direct or indirect "control" (as that term is defined in the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Rules")) of the Partnership or any Parallel Vehicle, or of any AIV in which the Investor participates, could create a Material Regulatory Burden for the Investor. The General Partner agrees that, unless the Investor otherwise agrees in writing, (a) in no event will the Partnership, or any Parallel Vehicle or any AIV through which the Investor participates in any investments of the Partnership, be structured as a corporation; (b) the Investor's Interest in the Partnership or any Parallel Vehicle shall in no event convey to Investor the right to 50% or more of the profits, or the right to 50% or more of the assets in the event of dissolution, of the Partnership or such Parallel Vehicle; and (c) the Investor's interest in any AIV in which the Investor participates shall in no event convey to Investor the right to 50% or more of the profits, or the right to 50% or more of the assets in the event of dissolution, of the AIV.~~

Commented [HN14]: This won't be necessary if they are less than 25%
Hayes Nuss
2014-10-13 15:08:00

12. CFTC Regulations; Commodity Interests. The General Partner acknowledges that the Investor may invest in derivatives subject to regulation under the U.S. Commodity Exchange Act ("CEA"), including futures, options on futures and swaps (including commodity options) (collectively, "Commodity Interests"). The General Partner further acknowledges that (a) the Investor is subject to large trader reporting, position limits and position aggregation requirements with respect to certain Commodity Interests, and may be with respect to other Commodity Interests in the future, under the CEA and under the rules of the Commodity Futures Trading Commission ("CFTC") thereunder and the rules of the futures exchanges or other markets, as the foregoing may be amended from time to time (collectively, "Position Limit Requirements") and (b) positions in Commodity Interests attributed to the Partnership, to an Alternative Investment Vehicle~~AIV~~, to any Parallel Vehicle, or to any entity in which the Partnership or an Alternative Investment Vehicle~~AIV~~ or any Parallel Vehicle directly or indirectly invests (for purposes of this letter, a "Portfolio Company") could, depending upon the circumstances, be attributed to the Investor for purposes of the Investor's compliance with Position Limit Requirements. In light of the foregoing, and in furtherance of the Investor's objective that, for purposes of complying with the Position Limit Requirements, no positions in Commodity Interests which are subject to position limits be attributed to the Investor as a result of its investment in the Partnership, the General Partner agrees as follows:

Commented [HN15]: We will delete the language where they are more than 25%.
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~~22. —~~

~~(a) — The terms of this paragraph 22(a) shall apply with respect to the Partnership or a particular AIV or Parallel Vehicle during any period in which the Investor's aggregate Capital Commitment to the Partnership or to such AIV or Parallel Vehicle represents less than twenty-five percent (25%) of the total aggregate Capital Commitments of all Partners of the Partnership or such AIV or Parallel Vehicle.~~

~~(i) — The General Partner agrees that it shall take such action as is necessary, in a manner consistent with applicable law, to ensure that no Commodity Interest positions established, held or controlled by the Partnership, any Alternative Investment Vehicle AIV, any Parallel Vehicle or any Portfolio Company will be attributed to the Investor under the Position Limit Requirements (as in effect from time to time) for purposes of the Investor's compliance with position limits; and.~~

~~(a) The General Partner agrees to take such other actions as may be commercially reasonable to ensure compliance with the Position Limit Requirements, including, without limitation, the execution or filing of documents or certifications (including with applicable regulatory authorities) and the provision of information, in each case that may be required by law (including in the event that there are changes to any applicable law, rule or regulation following the date hereof). In addition, upon the Investor's request, the General Partner will use its reasonable best efforts to promptly provide information to the Investor with respect to any Portfolio Company that enters into any positions in Commodity Interests regarding (A) the type of such Commodity Interests, (B) the size of the position in such Commodity Interest, including by expiration month if applicable, (C) whether such Commodity Interests were acquired for hedging or for investment and (D) any related information reasonably requested by Investor.~~

~~(ii)(b) The General Partner agrees to take such other actions as may be commercially reasonable to ensure compliance with the Position Limit Requirements, including, without limitation, the execution or filing of documents or certifications (including with applicable regulatory authorities) and the provision of information, in each case that may be required by law (including in the event that there are changes to any applicable law, rule or regulation following the date hereof). In addition, upon the Investor's request, the General Partner will use its reasonable best efforts to promptly provide information to the Investor with respect to any Portfolio Company that enters into any positions in Commodity Interests regarding (A) the type of such Commodity Interests, (B) the size of the position in such Commodity Interest, including by expiration month if applicable, (C) whether such Commodity Interests were acquired for hedging or for investment and (D) any related information reasonably requested by Investor.~~

~~(b) — The terms of this paragraph 22(b) shall apply with respect to the Partnership or a particular AIV or Parallel Vehicle during any period in which the Investor's aggregate Capital Commitment to the Partnership or such AIV or Parallel Vehicle represents twenty-five percent (25%) or more of the total aggregate Capital Commitments of all Partners of the Partnership or such AIV or Parallel Vehicle.~~

~~(i) — The General Partner shall cause the Partnership, AIV or Parallel Vehicle, as applicable, not to directly establish, hold, own or control positions in any Commodity Interests, provided that the~~

Partnership, AIV or Parallel Vehicle may directly establish, hold, own or control positions in Commodity Interests which are not the subject of any position limits under Position Limit Requirements, including based on current law, currency swaps and currency forwards (as defined by the CFTC) or other currency-based swaps such as non-deliverable forwards that are executed on a bi-lateral basis (*i.e.*, not on or subject to the rules of a multilateral trading platform such as an exchange or swap execution facility). The General Partner will provide the Investor, upon request, with such information as the Investor may need to comply with any applicable large trader reporting obligations applicable to it.

(ii) — The General Partner shall cause the Partnership, AIV or Parallel Vehicle, as applicable, to limit its aggregate direct and/or indirect equity interest in each Portfolio Company (and its interest in any Portfolio Company's account(s) for trading of Commodity Interests) to less than 10%, and the General Partner shall not, and shall cause the Partnership, AIV or Parallel Vehicle, as applicable, not to, control the trading of Commodity Interests by any Portfolio Company, whether by power-of-attorney or otherwise, provided, however, that the foregoing restrictions shall not apply with respect to a Portfolio Company that does not enter into any Commodity Interests.

(c) — The General Partner represents that the Partnership, any AIV, any Parallel Vehicle and any Portfolio Company in which the Partnership or an AIV or Parallel Vehicle directly invests will comply with Position Limit Requirements with respect to their trading, if any, in Commodity Interests.

(d) — In the event of any change to the Position Limit Requirements that would result in attribution of positions in Commodity Interests of the Partnership, any AIV, any Portfolio Company or any of the Parallel Vehicles to the Investor notwithstanding compliance with the restrictions described in this Paragraph 22, the parties hereto agree to work together in good faith to resolve the issue in a manner mutually acceptable to Investor and the General Partner.

(e) — In the event of any change to Position Limit Requirements that may provide greater flexibility to the General Partner, consistent with the Investor's objective that no positions in Commodity Interests be attributed to Investor as a result of its investment in the Partnership, including increasing the level of the Partnership's direct or indirect equity investment in any entity, the parties agree in good faith to negotiate revisions to this letter agreement to benefit from such change.

(f) — In the event of any adoption of, or subsequent change to, position limit rules with respect to security-based swaps (as that term is defined in the U.S. federal securities laws) that would result in attribution of positions of security-based swaps of the Partnership, any AIV, any Parallel Vehicle or any Portfolio Company to the Investor for purposes of the Investor's compliance with

such rules, the parties hereto agree to work together in good faith to resolve the issue in a manner mutually acceptable to the Investor and the General Partner.

23. Media Company Investments.

(a) For so long as, and only during periods from time to time in which, the Partnership shall directly or indirectly hold (or otherwise be attributed with) an ownership or other interest in a Media Company, no provision of this letter agreement shall be construed to permit the Investor, or any person that is a director, officer, partner, manager, member, employee, or five percent (5%) or greater shareholder or other owner of the Investor, to do any of the following:

(i) act as an employee of the Partnership if his or her functions, directly or indirectly, relate to any Media Company (it being understood that the Partnership does not contemplate engaging in any media enterprise other than through its interests in any Media Company);

(ii) serve, in any material capacity, as an independent contractor or agent with respect to the media enterprises of any Media Company;

(iii) communicate on matters pertaining to the day-to-day media activities of any Media Company with (A) any officer, director, partner, manager, member, agent, representative or employee of such Media Company, or (B) the General Partner;

(iv) perform any services for the Partnership materially relating to the media activities of any Media Company, except that the Investor may make loans to, or act as a surety for, the Partnership or any Media Company;

(v) become actively involved in the management or operation of the media activities of any Media Company;

(vi) vote to approve the withdrawal of the General Partner, unless the General Partner is (A) subject to bankruptcy proceedings, as described in Sections 17-402(a)(4) or (5) of the Delaware Revised Uniform Limited Partnership Act, (B) adjudicated incompetent by a court of competent jurisdiction (provided that this clause (B) shall apply only to a general partner that is a natural person) or (C) removed by an independent third party for "cause," as that term has been used by the FCC in the context of the removal authority of limited partners, for purposes of the insulation of limited partner interests from attribution of Media Companies; or

Commented [HN16]: We will put in restrictions to LPA for Media and Utility companies. I put this in Section 1.
Hayes Nuss
2014-10-13 15:18:00

~~(vii) — vote to admit any additional general partner to the Partnership unless such admission is subject to the veto of the General Partner.~~

~~(b) — The General Partner shall cause the Partnership to not acquire an ownership or other interest in any Media Company until the General Partner has delivered to the Investor an opinion of counsel to the effect that the interest of the Partnership in such Media Company shall not give the Investor an Attributable Interest in such Media Company.~~

~~(c) — The General Partner shall give ten (10) business days' written notice to the Investor prior to the distribution in kind of securities of any Media Company. Upon receipt of such notice, and, notwithstanding anything to the contrary contained herein, the Investor may elect, by notice in writing to the General Partner, to decline the receipt of distributions in kind of securities of any Media Company in which event the General Partner shall cause the property which would otherwise have been distributed to the Investor to be disposed of and the proceeds of such disposition to be distributed to the Investor, or make other arrangements for the disposition of such property approved by the Investor.~~

~~(d) — The Investor may, upon five (5) business days' prior written notice to the General Partner, elect to be excluded from the limitations set forth in this Paragraph 23 *provided*, however, that the Investor shall cooperate in providing to the General Partner such relevant non-confidential information as the General Partner deems necessary and reasonably requests for the purpose of determining or ensuring the Partnership's compliance with the Ownership Rules.~~

~~(e) — The following definitions apply for purposes of this section:~~

~~“Attributable Interest” means a direct or indirect equity or voting interest in, control over, or nexus to a Media Company that, under the FCC Rules, is sufficient to apply the Ownership Rules to the entity holding the equity or voting interest in, control over, or commercial nexus to the Media Company.~~

~~“FCC Rules” means the Communications Act of 1934, Title 47 of the Code of Federal Regulations, and any other regulations or written policies of the FCC, as amended or supplemented from time to time.~~

~~“Media Company” shall mean any entity in which the Partnership has made an equity or debt investment that is subject to ownership restrictions, including but not limited to multiple ownership, cross-ownership, horizontal ownership and foreign ownership restrictions, under the FCC Rules.~~

"Ownership Rules" means the FCC Rules governing multiple ownership, cross-ownership, horizontal ownership, and foreign ownership of Media Companies.

~~24. Investments in Utilities and Related Entities.—The General Partner acknowledges the Investor's status as a utility holding company pursuant to the Public Utility Holding Company Act of 2005 (42 U.S.C. § 16451, et seq.), as amended from time to time ("PUHCA"), including for purposes of any investments by the Partnership in utilities and other entities subject to regulation under the Federal Power Act (16 U.S.C. 791, et seq.) (the "FPA"), as amended from time to time, or similar state energy utility laws or regulations (collectively, "Energy Utility Requirements"). In furtherance of the foregoing the General Partner, on behalf of itself and the Partnership, agrees as follows:~~

~~(a) The General Partner shall cause the Partnership to make all required filings and obtain all required approvals prior to acquiring any interest in a utility, utility holding company or other entity or asset subject to Energy Utility Requirements, including without limitation those pursuant to Section 203 of the FPA, and otherwise will take all action necessary for the Partnership to comply with Energy Utility Requirements.~~

~~(b) The General Partner shall cause the Partnership to, as soon as practicable and in any event no later than ten (10) business days before the date of the applicable capital call notice, notify the Investor, in writing, of any proposed acquisition of any interest in: (i) a utility or a utility holding company that would result in the Partnership becoming a utility holding company or otherwise would result in the Partnership directly or indirectly owning, controlling or holding with the power to vote 10% or more of the outstanding voting securities of, or otherwise holding indicia of control in, a utility or utility holding company or (ii) any other asset or entity that would require the Investor to make any filing under, obtain any pre-approval with respect to or otherwise comply with any Energy Utility Requirements.~~

~~(c) The General Partner shall cause the Partnership to use commercially reasonable efforts to consult, cooperate and coordinate with the Investor with respect to any filings and approvals required in respect of the Investor under Energy Utility Requirements.~~

~~(d) Subject to applicable law and any applicable confidentiality restrictions, the General Partner shall cause the Partnership to inform the Investor about the content of any communication in respect of the Investor with FERC or any State Commission about the Partnership's ownership of or investment in utilities, utility holding companies, or other similarly regulated entities or assets and will provide the Investor copies of any such written communications or filings.~~

25. ~~Certification.~~ Within 90 ~~120~~ days of the Partnership's fiscal year-end, the General Partner's chief financial officer (or comparable officer) shall provide the Investor with a certification that, to his or her knowledge, (a) the annual audited financial statements fairly present in all material respects the financial condition of the Partnership as of such date, (b) there has been no material breach of the Partnership Agreement and (c) all distributions to the Investor have been made in accordance with the Partnership Agreement.

Commented [HN17]: We could also put this in the LPA. If we are doing it for one it is just as easy to do it for all unless you feel the default risk is too high.
Hayes Nuss
2014-10-13 15:30:00

26. ~~Quarterly Reporting.~~ [Biosys: We have requested a copy of the Fund's standard reporting package and schedule. Once we are able to review that, we can then determine whether we will need to request any additional specific reporting in Cascade's side letter.]

Commented [HN18]: We will add minimum reporting requirements to the LPA. So this can be deleted.
Hayes Nuss
2014-10-13 15:19:00

27. ~~Annual Reporting.~~ If within 90 days of the Partnership's fiscal year-end, a Schedule K-1 has not been delivered to the Investor, the General Partner shall, within such 90-day period, provide a good faith estimate of the Investor's total federal taxable income from the Partnership for such fiscal year (including a breakdown of ordinary income, long-term capital gains and losses, short-term capital gains and losses, qualified dividends, and portfolio deductions).

Commented [HN19]: This is the same as "Tax Information" Section.
Hayes Nuss
2014-10-13 15:20:00

~~28.13. Closing Documents.~~ Promptly following the Investor's admission to the Partnership and at each subsequent closing, the General Partner shall provide the Investor with copies of all closing documents, including (a) an executed copy of the Partnership Agreement with schedules and exhibits, (b) an executed copy of the Investor's ~~Subscription agreement~~ Agreement, (c) ~~copies of any side letters relating to the Partnership and any Parallel Vehicle (provided that the General Partner may redact from such copies of side letters any identifying information relating to any investors as required to comply with any confidentiality provisions or agreements to which the Partnership or the General Partner are parties or by which either or both of them are bound) and (d) a list of the identities and contact information for each Limited Partner (and limited partner of any Parallel Vehicle) (collectively, "Investor Information") who have not expressly forbidden the disclosure of names and contact information.~~ Notwithstanding the foregoing, the Investor agrees and acknowledges that the General Partner shall not be required to disclose any Investor Information hereunder that would result in a breach of any confidentiality provision or agreement to which the Partnership or the General Partner is a party or by which either or both of them are bound (provided that, to the extent that the General Partner fails to disclose any Investor Information with regard to a particular Limited Partner or investor based on this clause then at the request of the Investor the General Partner will deliver information to any such investor on the Investor's behalf) ~~Should the Investor wish to communicate with other Limited Partners who have not authorized to share their contact information the General Partner (or General Partner's counsel?) can.~~ Promptly following any amendment to the Partnership Agreement, the General Partner shall forward to the Investor a copy thereof.

Commented [HN20]: We can provide copies of their documents. Contact information of all other LPs?
Hayes Nuss
2014-10-13 15:25:00

~~29.14. Consulting Expense Disclosure.~~ As part of or in connection with the Partnership's annual report delivered to the Investor, the General Partner shall provide,

with respect to each fiscal year, notice to the Investor of the amount of any fees and expenses for consulting services provided by consultants (i.e. persons who provide expert advice professionally other than any accountants or attorneys retained by the General Partner or the Partnership to provide accounting or legal services, respectively) retained by the Partnership or the General Partner and whose fees are charged to the Partnership (or any Parallel Vehicle) as Partnership Expenses and general information with respect to the recipients of such fees and expenses; provided, however, that such disclosure shall only be required in the event that such fees and expenses, in the aggregate with respect to the Partnership and each Parallel Vehicle, equal or exceed ~~[\$-----]~~ \$250,000 for such fiscal year. ~~[Biosys: Please suggest an appropriate minimum amount based on expectations regarding consulting expenses.]~~

~~30.15. Ownership of the General Partner.~~ The General Partner hereby represents and warrants that (i) the Principals will beneficially own (directly or indirectly through one or more entities), in the aggregate, no less than 80.75% of the economic interests in the General Partner, and (ii) ~~[TBD]~~. ~~[Biosys: Once we receive information regarding the allocation of carry among the Principals, we will suggest additional language regarding restrictions on transfers of such ownership, etc.]~~

~~34.16. Enforceability.~~ Notwithstanding any contrary provisions in the Partnership Agreement, this letter agreement is binding on and enforceable against the General Partner, and in the event of a conflict between the provisions of this letter agreement, the Investor's Subscription Agreement and/or Partnership Agreement, the provisions of this letter agreement will control. If case any one or more of the provisions contained in this letter agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and other application thereof shall not in any way be affected or impaired thereby.

~~32.17. Modifications.~~ No provision contained in this letter agreement shall be amended, modified, supplemented or waived without the written consent of the Investor.

~~33.18. Choice of Law.~~ This letter agreement will be governed by and construed in accordance with the internal laws of the State of Delaware, without giving effect to any principles of conflict of laws (whether of Delaware or any other jurisdiction) that would result in the application of the law of any other jurisdiction.

~~34.19. Counterparts.~~ This letter agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

Commented [HN21]: Do we need a definition of what a consulting service is?
Hayes Nuss
2014-10-15 15:39:00

Commented [HN22]: We can agree to the 80% limit. There is nothing more to discuss.
Hayes Nuss
2014-10-13 15:26:00

Commented [HN23]: The following sections are not required in the LPA.
Hayes Nuss
2014-10-13 15:28:00

If you are in agreement with the foregoing, please indicate your agreement by signing as indicated below.

Sincerely,

BIOSYS CAPITAL MANAGEMENT, LLC

By: _____

Name:

Title:

Acknowledged and agreed as of
The date first above written:

GATES VENTURES, LLC

By: _____

Name:

Title: