



## **The ILPA Model Limited Partnership Agreement (Whole-of-Fund Waterfall)**

**[July 2020]**

**This Model Limited Partnership Agreement is the work product of an international group of counsel working under the direction of the Institutional Limited Partners Association (ILPA). This document is intended to serve as a starting point for forming a private equity buyout fund and should be tailored to meet your specific requirements. This document should not be construed as legal advice for any particular facts or circumstances.**

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**AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF**

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**(a Delaware limited partnership)**

**DATED [ ] , 20[ ]**

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THE LIMITED PARTNERSHIP INTERESTS (“**INTERESTS**”) OF [ ] HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “**U.S. SECURITIES ACT**”), THE SECURITIES LAWS OF ANY STATE OR ANY OTHER APPLICABLE U.S. OR NON-U.S. SECURITIES LAWS, IN EACH CASE IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT AND SUCH LAWS. THE INTERESTS MAY BE ACQUIRED FOR INVESTMENT ONLY, AND NEITHER THE INTERESTS NOR ANY PART THEREOF MAY BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH: (I) THE U.S. SECURITIES ACT, ANY APPLICABLE STATE SECURITIES LAWS AND ANY OTHER APPLICABLE SECURITIES LAWS AND (II) THE TERMS AND CONDITIONS OF THIS AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP. THE INTERESTS WILL NOT BE TRANSFERRED OF RECORD EXCEPT IN COMPLIANCE WITH SUCH LAWS AND THIS AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP. THEREFORE, PURCHASERS OF THE INTERESTS WILL BE REQUIRED TO BEAR THE RISK OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

TO NON-U.S. INVESTORS: IN ADDITION TO THE FOREGOING, BE ADVISED THAT THE INTERESTS HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT AND MAY NOT BE OFFERED OR SOLD IN THE UNITED STATES OR TO U.S. PERSONS (OTHER THAN DISTRIBUTORS) UNLESS THE INTERESTS ARE REGISTERED UNDER THE U.S. SECURITIES ACT, OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT IS AVAILABLE. HEDGING TRANSACTIONS (WITHIN THE MEANING OF REGULATION S UNDER THE U.S. SECURITIES ACT) INVOLVING THE INTERESTS MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE U.S. SECURITIES ACT.

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SCHEDULE 1: PARTNER COMMITMENTS

SCHEDULE 2: INVESTMENT POLICY

**THIS AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP** of **[name of Fund]** (the “Fund”) is made on [ ], 20[ ] between and among<sup>1</sup> **[name of general partner]**, incorporated as a **[Delaware limited liability company]**, (the “General Partner”); **[name of fund manager]**, incorporated as a **[Delaware limited liability company]**, (the “Fund Manager”); and the **Initial Limited Partner** (as such term is hereinafter defined).

#### RECITALS:

WHEREAS, the Fund was formed pursuant to an Agreement of Limited Partnership of **[name of Fund]**, dated [ ] by and between the General Partner and the Initial Limited Partner (the “Initial Agreement”), and the filing of the Certificate of Limited Partnership of the Fund executed by the General Partner and filed in the office of the Secretary of State of the State of Delaware on [ ] (the “Certificate”);

WHEREAS, the parties hereto desire to amend and restate the Initial Agreement to reflect the withdrawal of the Initial Limited Partner, to admit additional Limited Partners and to make the modifications hereinafter set forth; and

WHEREAS, each Limited Partner (as hereafter defined) has executed a Subscription Agreement providing for, among other things, the commitment of capital by such party to the Fund;

NOW, THEREFORE, in consideration of the mutual promises and agreements herein made and intending to be legally bound hereby, the parties hereto agree to amend and restate the Initial Agreement in its entirety to read as follows:

### 1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** In this Agreement (including its recitals and the schedules):

“**AC Covered Person**” means each Person serving, or who has served, as a member of the Advisory Committee (and, with respect to Damages arising out of or relating to such service only, the Limited Partner that such Advisory Committee member represents or has represented, as well as the directors, trustees, officers and employees of such Limited Partner).

“**Acquisition Cost**” means, with respect to a Portfolio Investment, the aggregate amount of Capital Contributions that have been used to fund such Portfolio Investment and any expenses reasonably and properly attributed thereto.

“**Act**” means the Delaware Revised Uniform Limited Partnership Act.

“**Additional Payment**” has the meaning set forth in Section 5.1.4.2.

“**Adjusted Capital Account Deficit**” means, with respect to any Partner, the deficit balance, if any, in such Partner’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

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<sup>1</sup> This will vary depending on the structure of the Fund. In certain structures, there may be a separate carry partner and an adviser as well as a manager.

(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 obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) debit to such Capital Account the items described in Regulations 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).

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

“**Advisers Act**” means the U.S. Investment Advisers Act of 1940 and the rules and regulations promulgated thereunder.

“**Advisory Committee**” has the meaning set forth in Section 13.1.1.

“**Affiliate**” means, with respect to any specified Person, a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified, provided that (i) Portfolio Companies, Fund Vehicles and Feeder Entities shall not be deemed to be “Affiliates” of the General Partner, the Fund Manager or the Fund, and (ii) each Key Person, the General Partner and the Fund Manager shall be deemed to be an Affiliate of the others. As used in this definition, “control” means the power to direct the management or policies of a Person, directly or indirectly, whether through the holding of Securities, by contract or otherwise<sup>2</sup>.

“**Affiliated Partner**” means any Partner that is an Interested Person.

“**Agreement**” means this Amended and Restated Agreement of Limited Partnership, including all schedules hereto, as amended, restated or supplemented from time to time in accordance with the terms hereof.

“**Alternative Vehicle**” has the meaning set forth in Section 2.9 (*Alternative Vehicles*).

“**Applicable Law**” means Title I of ERISA, Code § 4975 or any other comparable U.S. federal, state or local law that is substantially similar to Title I of ERISA or Code § 4975.

“**Auditor**” means [ ] or such other nationally or internationally recognized firm of auditors as may be approved by the Advisory Committee.

“**Benefit Plan Investor**” means (i) an “employee benefit plan” subject to Title I of ERISA, (ii) a “plan” subject to Code §4975 or (iii) an entity whose assets are deemed to include Plan Assets of any such “employee benefit plan” or other “plan.”

“**BHCA**” means the U.S. Bank Holding Company Act of 1956 (including any modifications made pursuant to the U.S. Gramm-Leach-Bliley Act), and other similar banking legislation, and the rules and regulations promulgated thereunder.

“**BHCA Interest**” means, as of the date of any determination, that portion of the Commitment or Capital Contributions of a BHCA Partner that exceeds 4.99% (or if modified by the BHCA without regard to Section 4(k) of the BHCA, such modified percentage) of total Commitments or Capital Contributions, respectively, of the Limited Partners (other than BHCA Interests and any other Limited Partner interests

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<sup>2</sup> Request structure chart covering all entities including operating partners to be provided by General Partner.

that are non-voting) that are not Defaulting Partners. Each BHCA Partner and any Affiliate of such BHCA Partner that itself is a BHCA Partner shall be considered a single BHCA Partner for purposes of determining “BHCA Interest.”

“**BHCA Partner**” means, as of the date of any determination, (i) each Limited Partner that (A) is subject to the BHCA and (B) has notified the General Partner in writing of such status at any time prior to such determination (other than a Limited Partner that is investing under Section 4(k) thereof and has delivered a written notice to the General Partner so stating prior to such determination) and (ii) any transferee of such Limited Partner but, with respect to such transferee, only to the extent that the portion of its Commitment or Capital Contribution acquired from such Limited Partner was a BHCA Interest at the time of such acquisition.

“**Book Item**” has the meaning set forth in Section 14.12.1.

“**Bridge Investment**” has the meaning set forth in Section 7.5 (*Bridge Investments*).

“**Business Day**” means any day (other than a Saturday or Sunday) on which banks are open for general business in *[insert jurisdiction of the fund]* *[and]* *[insert additional jurisdictions if required]*.

“**Capital Account**” has the meaning set forth in Section 14.8.1.

“**Capital Contribution**” means, with respect to each Partner and except as otherwise provided herein, any amount contributed to the Fund or the aggregate amount so contributed (as the context may require) pursuant to the terms of this Agreement.

“**Carried Interest**” means the aggregate distributions received by the General Partner pursuant to Sections 14.3.3 and 14.3.4 hereof and any distributions received by the General Partner with respect to such Sections pursuant to Section 14.5 (*Tax Distributions*).

“**Change of Control**” means any conduct that results directly or indirectly in (i) the Key Persons ceasing to control the General Partner and the Fund Manager, provided that the General Partner shall promptly notify the Limited Partners of any transfer by any of the Key Persons of their control of the General Partner or the Fund Manager, or (ii) the Key Persons together being legally and beneficially entitled to less than *[75]*% of the Carried Interest; provided that the General Partner shall promptly notify the Limited Partners of any transfers by any of the Key Persons of any portion of their entitlement to the Carried Interest, and “control” as used in this definition with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the conduct, management or policies of such Person, whether through the ownership of securities, by contract, agreement or otherwise.

“**Code**” means the U.S. Internal Revenue Code of 1986.

“**Commitment**” means, with respect to each Partner, the amount that such Partner has committed to contribute to the Fund, as set forth in the Subscription Agreement of such Partner and as accepted by or on behalf of the Fund or, in the case of the General Partner, the amount set out in Section 4.2 (*General Partner Commitment*), and in each case, the Commitment of each Partner shall be set out opposite its name in Schedule 1 (*Partner Commitments*), as such amount may be increased by such Partner pursuant to Section 5.1 (*Subsequent Closings*).

“**Commitment Period**” means the period commencing on the Initial Closing Date and ending on the earliest to occur of:

(a) the [fifth] anniversary of the Initial Closing Date, provided that this period may be extended by one (1) year by the General Partner with the prior consent of the Advisory Committee or a Majority in Interest;

(b) the first date on which [100]% of Commitments have been drawn down and used to fund the Acquisition Cost of Portfolio Investments, reserved for Follow-on Investments or used to create Reserves;

(c) the date of delivery to the General Partner of a written notice approved by [75]% in Interest to terminate the Commitment Period; and

(d) the date of any early termination of the Commitment Period pursuant to Article 11 (*Key Person Event; Suspension*).

“**Communications Act**” means the U.S. Communications Act of 1934 and the FCC’s rules and regulations promulgated thereunder.

“**Communications Portfolio Investment Period**” means the period during which the Fund directly or indirectly holds a cognizable or attributable interest in an FCC Regulated Entity. For purposes of this definition, the terms “cognizable and attributable” shall mean “determined to be ‘cognizable’ or ‘attributable’ under the Communications Act, the FCC Attribution Rules, or the FCC Ownership Rules as then in effect.”

“**Covered Person**” means each GP Covered Person and each AC Covered Person.

“**Credit Facility**” has the meaning set forth in Section 7.2.2.

“**Damages**” has the meaning set forth in Section 16.1 (*Exculpation of Covered Persons*).

“**Default**” has the meaning set forth in Section 6.6.1.

“**Defaulting Partner**” has the meaning set forth in Section 6.6.1.

“**Default Notice**” has the meaning set forth in Section 6.6.1.

“**Designated Individual**” has the meaning set forth in Section 15.3.3.1.

“**Distributable Proceeds**” means, as of any date, the excess of (i) the cash received by the Fund from any sale or other disposition of, or dividends, interest or other income from or with respect to, a Portfolio Investment or otherwise attributable to a Portfolio Investment, or otherwise received by the Fund from any source (other than payments made by the Partners to the Fund pursuant to this Agreement), over (ii) the sum of the amount of such items as is necessary for (A) for the payment of Fund Expenses and (B) the establishment of Reserves.

“**Drawdown**” means each Capital Contribution made or to be made to the Fund pursuant to Section 6.2 (*Terms and Conditions; Capital Contributions*) from time to time by the Partners pursuant to a Drawdown Notice.

“**Drawdown Notice**” has the meaning set forth in Section 6.2.1.

“**Due Date**” has the meaning set forth in Section 6.2.1.

“**ECI**” means (i) “income which is effectively connected with the conduct of a trade or business within the United States” for purposes of Section 864(c) of the Code (disregarding Section 897 of the Code) and (ii) gains which (A) are treated as income described in clause (i) of this definition under Section 897 of the Code and (B) resulted from dispositions of securities of Portfolio Companies which, at the time such securities were acquired by the Fund were securities that the General Partner either reasonably believed constituted “United States real property interests” as defined in Section 897(c) of the Code or reasonably expected to become United States real property interests during the period the Fund holds such securities; provided that the recognition of such income as a result of, or with respect to, (w) any activities of a Limited Partner unrelated to the activities of the Fund, (x) Fee Income, (y) guarantee fees received or deemed received by the Fund or (z) the Fund’s lending of money to a Portfolio Company in which the Fund holds a direct or indirect equity interest or an entity in which a Portfolio Company holds a direct or indirect equity interest, shall not constitute a violation of Section 8.5 (*UBTI; ECI*) or any other provision of this Agreement.

“**Equalization Payment**” has the meaning set forth in Section 5.1.4.1.

“**ERISA**” means the U.S. Employee Retirement Income Security Act of 1974 and the rules and regulations promulgated thereunder.

“**ERISA Partner**” means, with respect to any determination hereunder, (i) any Limited Partner that (A) is a Benefit Plan Investor and (B) has notified the General Partner in writing of such status at any time prior to such determination or (ii) any Limited Partner designated as an “ERISA Partner” by the General Partner with such Limited Partner’s consent (which designation may be for purposes of any or all provisions of this Agreement).

“**Escrow Account**” has the meaning set forth in Section 14.7.2.

“**Exculpation Exclusion Event**” means, with respect to the relevant GP Covered Person, any conduct or lack of conduct in relation to the activities of the Fund that constitutes any of the following:

- (a) fraud, bad faith or willful misconduct;
- (b) gross negligence or reckless disregard;
- (c) a breach of any of the terms of this Agreement, including a breach of Section 20.5 (*Standard of Care*), or any other Fund Document;
- (d) a violation of any laws, regulations, judgments, orders or other legally enforceable actions, domestic, foreign or multinational, or any other conduct described in clause (iv) or clause (v) of the definition of “Removal Conduct”; or
- (e) any and all matters based upon, arising out of or otherwise with respect to any Proceeding between or among GP Covered Persons or Interested Persons.

“**Excused Limited Partner**” has the meaning set forth in Section 6.7.3.

“**FATCA**” has the meaning set forth in Section 15.3.4.

“**FCC**” means the U.S. Federal Communications Commission.

“**FCC Attribution Rules**” means the ownership attribution rules of the FCC, including 47 C.F.R. §§ 24.720; 27.1202(b); 73.3555, Note 2(f); 76.501, Note 2(f); 76.503, Note 2; 76.504, Note 1; 76.505(g);

and any other ownership restriction under the Communications Act or any rule of the FCC, the application of which with respect to a limited partner of a limited partnership may be avoided or ameliorated under FCC rules or policies by the insulation of the limited partner from material involvement in the media or telecommunications business of the limited partnership.

“**FCC Ownership Rules**” means the multiple and cross-ownership rules of the FCC, including 47 C.F.R. §§ 24.709; 27.1202; 73.658; 73.3555; 76.501; 76.503; 76.504, 76.505, 76.1501, and any other regulations or written policies of the FCC which limit or restrict ownership in any entity.

“**FCC Regulated Entity**” means a Portfolio Company that, directly or indirectly, owns, controls, operates or has a cognizable or attributable interest under the FCC Attribution Rules, in a broadcast radio or television station licensed by the FCC, a U.S. cable television system, a broadband radio service or multipoint multichannel distribution system licensed by the FCC, a commercial mobile radio service licensed by the FCC or any other communications facility the ownership or operation of which is subject to regulation or other limits by the FCC under (i) the Communications Act; (ii) the FCC Attribution Rules; or (iii) the FCC Ownership Rules.

“**Feeder Entity**” means a Limited Partner that is managed and controlled by the General Partner for the benefit of one or more investors that are not Interested Persons.

“**Fee Income**” means all directors’, transaction, introduction, underwriting, investment banking, break-up, advisory, monitoring, due diligence, referral, commitment, arrangement, consulting, termination or other fees or compensation (excluding, for the avoidance of doubt, the Management Fee) received by the General Partner, the Fund Manager, any Key Person, any of their respective directors, officers, employees, members, shareholders or partners, or any Affiliates of any of the foregoing in relation to the activities of the Fund or of any actual or potential Portfolio Investment, including the Value of any Securities, awards, options, warrants and other non-cash compensation or benefit paid, granted or otherwise conveyed to any such Person with respect to the Fund or an actual or potential Portfolio Investment.

“**Final Closing Date**” means the date that is 12 months from the Initial Closing Date.

“**Fiscal Year**” has the meaning set forth in Section 2.3 (*Fiscal Year*).

“**Follow-on Investment**” means an investment by the Fund in the Securities of a Portfolio Company in which the Fund holds Securities at the time of investment and in which the General Partner determines that it is appropriate or necessary for the Fund to invest for the purpose of preserving or enhancing the Fund’s prior investment in such Portfolio Company.

“**Fund**” has the meaning set forth in the Recitals.

“**Fund Document**” means this Agreement, the Subscription Agreement, each Side Letter, the investment management agreement and any other agreements or understandings, written or otherwise, relating to or otherwise affecting the Fund.<sup>3</sup>

“**Fund Expenses**” has the meaning set forth in Section 2.5.1.

“**Fund Manager**” means [ ] or any replacement fund manager appointed in accordance with Article 10 (*Removal of the General Partner; Termination of the Fund*).

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<sup>3</sup> Investors may prefer to specify that Fund Documents do not include offering memoranda or otherwise exclude such materials from constituting part of the entire agreement pursuant to Section 20.6.1

“**Fund Parties**” means the Fund, the General Partner, the Fund Manager, and their respective successors and assigns.

“**Fund Vehicle**” means the Fund, each Parallel Vehicle and each Alternative Vehicle.

“**GAAP**” means U.S. generally accepted accounting principles, consistently applied.

“**General Meeting**” has the meaning set forth in Section 12.1 (*General Meeting of Partners*).

“**General Partner**” means [ ] or any replacement general partner appointed in accordance with Article 10 (*Removal of the General Partner; Termination of the Fund*).

“**General Partner Expenses**” has the meaning set forth in Section 2.6 (*General Partner Expenses*).

“**GP Covered Person**” means the General Partner, the Fund Manager, their respective Affiliates, partners, members, employees, directors and officers, including Key Persons.

“**Gross Asset Value**” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(a) the Gross Asset Value of any asset contributed by a Limited Partner to the Fund is the gross fair market value of such asset as determined at the time of contribution;

(b) the Gross Asset Value of all Fund assets shall be adjusted to equal their respective gross fair market values, as determined by the General Partner, as of the following times: (A) the acquisition of any additional interest in the Fund by any new or existing Limited Partner in exchange for more than a *de minimis* capital contribution; (B) the distribution by the Fund to a Limited Partner of more than a *de minimis* amount of property as consideration for an interest in the Fund; (C) the grant of an interest in the Fund (other than a *de minimis* interest) as consideration for the provision of services to or for the benefit of the Fund by an existing Limited Partner acting in a Limited Partner capacity, or by a new Limited Partner acting in a Limited Partner capacity or in anticipation of becoming a Limited Partner; (D) the liquidation of the Fund within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); and (E) such other times determined by the General Partner in its sole and absolute discretion; provided, that the adjustments pursuant to clauses (A), (B), (C) and (E) above shall be made only if the General Partner determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Limited Partners in the Fund; and

(c) the Gross Asset Value of any Fund asset distributed to any Limited Partner shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the General Partner.

“**ILPA Principles**” means the most recently issued version of the Institutional Limited Partners Association “Private Equity Principles.”

“**Indemnification Exclusion Event**” means, with respect to the relevant GP Covered Person:

(a) any Exculpation Exclusion Event; or

(b) such GP Covered Person’s insolvency, administration, dissolution, liquidation, involuntary reorganization, bankruptcy or suspension of payments (or equivalent under foreign law).

“**Initial Closing Date**” means the date of this Agreement, which shall be no earlier than the date on which the aggregate Commitments equal or exceed [redacted].

“**Initial Investment Date**” means the date on which the Fund acquires its first Portfolio Investment other than a Temporary Investment.

“**Initial Limited Partner**” means [redacted].

“**Interest**” means the interest of a Partner in the Fund at any time, including the right of such Partner to any and all benefits to which such Partner would be entitled as provided for in this Agreement.

“**Interested Person**” means each of the General Partner, the Fund Manager, any Key Person, any member of the General Partner’s or Fund Manager’s investment committee, any of their respective relatives, employees, directors, officers, members, shareholders and partners and any Affiliate of any of the foregoing.

“**Investment Company Act**” means the U.S. Investment Company Act of 1940 and the rules and regulations promulgated thereunder.

“**Investment Objectives**” has the meaning set forth in Section 2.2 (*Purposes*).

“**Investment Policy**” means the investment policy of the Fund attached hereto as Schedule 2 (*Investment Policy*).

“**Investor**” means a Limited Partner or equivalent investor in any Parallel Vehicle.

“**Key Person**” means each of [redacted] and any replacement for any of them approved by a Majority in Interest following a Key Person Event.

“**Key Person Event**” means at any time during the Commitment Period (i) [redacted]<sup>4</sup> ceases to devote time and attention for any reason, including death, disability or retirement, as required under Section 9.2 (*Time and Attention*) to the Fund[, the Prior Funds] and any Successor Fund permitted in accordance with this Agreement; or (ii) there is a Change of Control.

“**Liability**” means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“**Limited Partner**” means any Person that is admitted to the Fund as a limited partner and any Person that has been admitted to the Fund as a substitute or additional Limited Partner in accordance with this Agreement.

“**Limited Partner Regulatory Problem**” means that (i) with respect to any Limited Partner, such Limited Partner (or any employee benefit plan that is a constituent of such Limited Partner) would be in material violation of Applicable Law if such Limited Partner were to continue as a Limited Partner of the Fund, (ii) with respect to any Benefit Plan Investor, the Fund’s assets are deemed to include Plan Assets of such Limited Partner, or (iii) with respect to any Limited Partner, the General Partner otherwise agrees in

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<sup>4</sup> Formulation to be modified in accordance with the General Partner/Key Person structure.

writing, in its sole discretion and at the request of such Limited Partner, that the provisions of Section 6.7 shall apply to such Limited Partner in certain specified circumstances to the same extent as if such Limited Partner had a Limited Partner Regulatory Problem pursuant to clause (i) or (ii) above or that is reasonably likely to result in a “prohibited transaction” under ERISA.

“**Majority (or other specified percentage) in Interest**” means a written resolution of the Investors (other than any BHCA Partners, Affiliated Partners and Defaulting Partners or the equivalent in any other Fund Vehicle) that at the time in question have Commitments and commitments to any Parallel Vehicle aggregating in excess of 50% (or such other specified percentage) of the Commitments and commitments to any Parallel Vehicle of all Investors (other than the Commitments of any BHCA Partners, Affiliated Partners and Defaulting Partners or the equivalent in any other Fund Vehicle); provided, that the foregoing exclusion of BHCA Partners shall not apply to BHCA Interests of any BHCA Partner with respect to any consent, approval or vote concerning the issuance of additional amounts or classes of interests in the Fund senior to the BHCA Interests, the modification of the terms of the Interests that are directly adverse to the BHCA Partners or the dissolution of the Fund (in each case, unless such BHCA Partner has provided prior written notice to the General Partner that the regulations promulgated under the BHCA no longer classify limited partner interests permitted to vote on such matters as non-voting interests).

“**Management Fee**” has the meaning set forth in Section 8.3.1.

“**Marketable Securities**” means Securities that are admitted to a recognized U.S. or non-U.S. securities exchange[, reported through an established U.S. or non-U.S. over-the-counter trading system or otherwise traded over-the-counter] that are not subject to any legal or contractual restrictions on Transfer and that are readily saleable at their Value as determined in accordance with Section 14.4.3.

“**Material Adverse Effect**” means (i) a violation of a statute, rule or regulation applicable to a Partner that is reasonably likely to have a material adverse effect on a Portfolio Company or any Affiliate thereof or on any Fund Vehicle, the General Partner, the Fund Manager or any of their respective Affiliates or on any Partner or any Affiliate of any such Partner, (ii) an occurrence that is reasonably likely to subject a Portfolio Company or any Affiliate thereof or any Fund Vehicle, the General Partner, the Fund Manager or any of their respective Affiliates or any Partner or any Affiliate of any such Partner, to any material non-tax regulatory requirement to which it would not otherwise be subject, or that is reasonably likely to materially increase any such regulatory requirement beyond what it would otherwise have been, (iii) an occurrence that is reasonably likely to result in a Limited Partner Regulatory Problem, (iv) the application to the BHCA Partner or any of its Affiliates of Section 23A or 23B of the Federal Reserve Act with respect to its investment in the Fund or any Portfolio Company that was not applicable to such BHCA Partner at the time of its admission to the Fund, (v) an occurrence that is reasonably likely to result in a Regulatory Issue, or (vi) a violation of any written policy of a Limited Partner that the General Partner has agreed in writing on or prior to the date of such Limited Partner’s admission to the Fund is likely to have a material adverse effect on such Limited Partner and so should entitle such Limited Partner to be excused from the relevant Capital Contributions (provided that such policy remains in effect as of the date on which a determination of Material Adverse Effect is being made).<sup>5</sup>

“**Net Income**” and “**Net Loss**” means, for each Fiscal Year or other period, an amount equal to the Fund’s taxable income or loss for such Fiscal Year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss) with the following adjustments (without duplication):

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<sup>5</sup> Such a policy may include, for example, a policy relating to environmental, social, and governance factors.

(a) any income of the Fund that is exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss pursuant to this paragraph, shall be added to such income or loss;

(b) any expenditures of the Fund described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income or Net Loss pursuant to this paragraph, shall be subtracted from such taxable income or loss;

(c) if the Gross Asset Value of any Fund asset is adjusted pursuant to subdivisions (ii) or (iii) of the definition of “Gross Asset Value” herein, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Loss;

(d) gain or loss resulting from any disposition of Fund property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) in lieu of depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, such amounts shall instead be determined in accordance with the requirements of Regulations Section 1.704-1(b)(2)(iv)(g); and

(f) any items which are specially allocated pursuant to the provisions of Section 14.10 (*Loss Limitation*) or Section 14.11 (*Special Allocations*) shall not be taken into account in computing Net Income or Net Loss.

“**Non-Defaulting Partners**” has the meaning set forth in Section 6.6.3.

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

“**Nonrecourse Liability**” has the meaning set forth in Regulations Section 1.704-2(b)(3).

“**Non-U.S. Partner**” means, with respect to any determination hereunder, any Limited Partner that is not (or any Limited Partner that is a flow-through entity for federal income tax purposes that has a partner or member that is not) a “United States person” (as defined in Section 7701(a)(30) of the Code) and that has notified the General Partner in writing of such status at any time prior to such determination.

“**Organizational Expenses**” means all fees, costs and expenses reasonably and properly incurred by the General Partner or its Affiliates in connection with the formation of the Fund, including travel, meals and lodging/accommodation related thereto (but not including entertainment expenses or the costs of private air travel) and the costs of compliance with a “most favored nations” process, and excluding the fees or expenses of any placement agents.

“**Organizational Expenses Cap**” means an amount equal to the lesser of [ ]% of aggregate Commitments and [ ].

“**Parallel Vehicle**” has the meaning set forth in Section 2.8.1.

“**Partner**” means the General Partner and the Limited Partners.

**“Partnership Minimum Gain”** means the same as the term “partnership minimum gain” set forth in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

**“Partnership Representative”** has the meaning set forth in Section 15.3.3.1.

**“Partnership Tax Audit Rules”** means Sections 6221 through 6241 of the Code, as amended by Section 1101 of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74 and Section 411 of the Protecting Americans from Tax Hikes Act of 2015, Pub. L. 114-113, div. Q, together with any guidance issued thereunder or successor provisions and any similar provision of foreign, state or local tax laws.

**“Partner Nonrecourse Debt”** means the same as the term “partner nonrecourse debt” set forth in Regulations Section 1.704-2(b)(4).

**“Partner Nonrecourse Debt Minimum Gain”** means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if the Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

**“Partner Nonrecourse Deductions”** means the same as the term “partner nonrecourse deductions” in Regulations Section 1.704-2(i)(2).

**“Payment Date”** has the meaning set forth in Section 8.3.1.

**“Permanently Written Down”** means, with respect to any Portfolio Investment, such Portfolio Investment having been written down to below [50]% of its original Acquisition Cost.

**“Person”** means any individual or entity, including a corporation, partnership, association, limited liability company, limited liability partnership, unincorporated association, trust, government or governmental agency or authority.

**“Plan Asset Regulation”** means the U.S. Department of Labor regulation codified at 29 C.F.R. §2510.3-101, as modified by Section 3(42) of ERISA.

**“Plan Assets”** means “plan assets” of Benefit Plan Investors under the Plan Assets Regulation.

**“Portfolio Company”** means any Person in which a Portfolio Investment is made, whether directly or indirectly, and continues to be held, by the Fund.

**“Portfolio Investments”** means investments made by the Fund (including Temporary Investments, Follow-on Investments and Bridge Investments).

**“Preferred Return”** means, with respect to each Partner (other than an Affiliated Partner), as of any date of determination, such amount as is equal to an annual rate of return of [8]%, compounded annually and calculated daily on the Capital Contributions made by such Limited Partner, calculated from the date of receipt of each such Capital Contribution by the Fund<sup>6</sup> and accrual of the Preferred Return, and ceasing on the date of distribution or deemed distribution by the Fund to such Limited Partner.

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<sup>6</sup> If the Fund utilizes a subscription line of credit, the preferred return should be calculated from the date on which the subscription line of credit was drawn. Please refer to ILPA’s Subscription Lines of Credit and Alignment of Interest: Considerations and Best Practices for Limited and General Partners: <https://ilpa.org/wp-content/uploads/2017/06/ILPA-Subscription-Lines-of-Credit-and-Alignment-of-Interests-June-2017.pdf>

“**Prime Rate**” means the rate of interest publicly announced from time to time by [*The Wall Street Journal*].

[“**Prior Funds**” means [■].]

“**Prior Partners**” has the meaning set forth in Section 5.1.4.

“**Proceeding**” means any investigation, action, suit, arbitration, dispute, claim or other proceeding, whether civil or criminal, administrative or investigative.

“**Public Records Law**” means any statute or regulation of any jurisdiction which gives members of the public the right on request to view of obtain the records of any governmental body or agency or authority or related entity not otherwise made publicly available.

“**Register**” has the meaning set forth in Section 2.4 (*Register*).

“**Regulated Partner**” has the meaning set forth in Section 8.6.1.

“**Regulations**” means the temporary and final regulations promulgated by the U.S. Department of the Treasury under the Code.

“**Regulatory Issue**” has the meaning set forth in Section 8.6.1.

“**Remaining Commitment**” means, with respect to any Partner, determined at any date, the amount of such Partner’s Commitment decreased by the amount of such Partner’s Capital Contributions, and increased by the amount equal to all distributions from the Fund to such Partner to the extent:

- (a) that such distributions represent such Partner’s Capital Contributions returned:
  - (i) without being used by the Fund; or
  - (ii) in connection with the receipt of an Equalization Payment on the admission of a Subsequent Closing Partner to the Fund; or
- (b) provided for in Section 6.4 (*Reinvestment*), for the avoidance of doubt, solely for the purposes described therein.

“**Removal Conduct**” means any of the following circumstances:

- (a) with respect to the General Partner, Fund Manager, any of the Key Persons and any of their respective Affiliates, any conduct or lack of conduct that constitutes any of the following:
  - (i) fraud, bad faith or willful misconduct;
  - (ii) gross negligence or reckless disregard in relation to activities of the Fund;
  - (iii) either (A) a breach of Section 20.5 (*Standard of Care*), or (B) a material breach of any of the other terms of this Agreement or of any other Fund Document;
  - (iv) a material violation of securities, commodities, AML/OFAC or corrupt practice laws, rules or regulations, provided that, other than in the case of the Key Persons, such violations are limited to conduct or lack of conduct in relation to the activities of the Fund;

(v) criminal conduct; provided that, other than in the case of the Key Persons, such conduct is limited to crimes related and material to the duties to and with respect to the General Partner, the Fund Manager or any Fund Vehicle, and for which the maximum sentence is more than a fine; or

(vi) any order, judgment or decree of any court, arbitral tribunal or regulatory authority which prohibits, prevents or materially impairs such Person from carrying on its duties or performing its obligations with respect to the Fund; and

(b) with respect to the General Partner and the Fund Manager, insolvency, administration, dissolution, liquidation, involuntary reorganization, bankruptcy or suspension of payments (or equivalent under foreign law).

“**Removal Date**” has the meaning set forth in Section 10.2.1.

“**Removal For Cause Notice**” has the meaning set forth in Section 10.1.2.1.

“**Removal Without Cause Notice**” has the meaning set forth in Section 10.1.2.2.

“**Reserves**” means appropriate reserves for the payment of reasonably anticipated Fund Expenses [in any amount not to exceed [ ]% of Commitments].

“**Securities**” means shares, partnership interests, limited liability company interests, warrants, options, bonds, loans and loan notes, debentures and other equity and debt instruments of whatever kind of any Person, whether readily marketable or not.

“**Securities Act**” means the U.S. Securities Act of 1933 and the rules and regulations promulgated thereunder.

“**Sharing Percentage**” means, with respect to any Partner and any Portfolio Investment, a fraction, expressed as a percentage:

(a) the numerator of which is the aggregate amount of Capital Contributions made by such Partner and used to fund the cost of such Portfolio Investment; and

(b) the denominator of which is the aggregate amount of Capital Contributions made by all Partners and used to fund the cost of such Portfolio Investment.

“**Side Letter**” has the meaning set forth in Section 20.6.2.

“**Subscription Agreement**” means the subscription agreement entered into by each Partner and Subsequent Closing Partner in connection with its purchase, or the Transfer, of an Interest, and pursuant to which such Partner or Subsequent Closing Partner agrees to, and does, become a party to, and bound by, this Agreement with respect to the relevant Interest.

“**Subsequent Closing**” has the meaning set forth in Section 5.1.1.

“**Subsequent Closing Partner**” has the meaning set forth in Section 5.1.1.

“**Substitute Partner**” has the meaning set forth in Section 17.2.2.

“**Successor Fund**” has the meaning set forth in Section 9.1 (*Successor Fund*).

“**Tax Amount**” means, with respect to each Partner (without regard to whether or not a Partner is taxable or non-taxable), an amount equal to the actual taxes payable by such Partner with respect to the Distributable Proceeds cumulatively allocated to such Partner in accordance with this Agreement and not otherwise offset by allocations of Fund losses and other deductions allocated to the Fund.

“**Tax Liability**” has the meaning set forth in Section 14.6.1.

“**Target Region**” means **[list countries in Target Region]**.

“**Temporary Investment**” means any of the following: (i) cash; (ii) U.S. government and agency obligations maturing within three years; (iii) commercial paper rated not lower than A-1 by Standard & Poor’s Ratings Services or its successors or P-1 by Moody’s Investor Services, Inc. or its successors with maturities of not more than six months; (iv) interest-bearing deposits in internationally recognized banks having one of the ratings referred to in clause (iii), maturing within one year; (v) municipal bonds and other tax-exempt securities rated not lower than AA by Standard & Poor’s Ratings Services or its successors or Aa by Moody’s Investor Services, Inc. or its successors with maturities of not more than one year; and (vi) money market mutual funds that invest principally in investments described in one or more of the foregoing clauses (i), (ii), (iv) or (v).

“**Temporary Investment Income**” means (i) all income earned on Temporary Investments, including any gains and net of any losses realized upon the disposition of Temporary Investments and (ii) all income earned on Bridge Investments, including any gains and net of any losses realized upon the disposition of Bridge Investments.

“**Term**” has the meaning set forth in Section 18.1 (*Term*).

“**Transfer**” means a transfer in any form.

“**Transferee**” has the meaning set forth in Section 17.2.1.

“**Transferor**” has the meaning set forth in Section 17.2.1.

“**US\$**” means the lawful currency of the United States of America.

“**Value**” means (subject to Section 8.4.2 and Section 13.2.5.5) the value determined by the General Partner in accordance with **[FASB ASC 820 (Fair Value Measurement)]**<sup>7</sup>, provided that all such values shall be disclosed to the Advisory Committee at the next Advisory Committee meeting after the determination of such value.

“**VCOC**” means “venture capital operating company” as such term is defined in the Plan Asset Regulation.

## 1.2 Interpretation.

1.2.1 Unless a contrary indication appears, any reference in this Agreement including its recitals and schedules to:

1.2.1.1 a “**Section**” or “**schedule**” shall, subject to any contrary indication, be construed as a reference to a Section of or a schedule to this Agreement;

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<sup>7</sup> Depending on the Fund’s investments, a different valuation methodology may be appropriate (e.g., GASB, IPEV).

1.2.1.2 “**including**” shall not be construed restrictively but shall mean “including but without limitation or prejudice to the generality of the foregoing” and the word “**include**” and its derivatives will be construed accordingly;

1.2.1.3 a “**Party**” or any other “**Person**” shall be construed so as to include its successors in title, permitted assigns and permitted Transferees;

1.2.1.4 a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organization;

1.2.1.5 a provision of law or regulation is a reference to that provision as amended, supplemented or re-enacted from time to time;

1.2.1.6 the conjunction “**or**” is not exclusive and means “and” and “or”; and

1.2.1.7 references to “**writing**” include email or other electronic format.

1.2.2 The table of contents and the headings of the sections and subsections of this Agreement are inserted for convenience of reference only and shall not be deemed to constitute a part hereof or affect the interpretation hereof.

1.2.3 In this Agreement (including its recitals and schedules), words and expressions importing the singular shall, where the context permits or requires, include the plural and *vice versa* and words and expressions importing the masculine shall, where the context permits or requires, include the feminine and neuter and *vice versa*.

## 2. GENERAL PROVISIONS

### 2.1 Name; Registered Office.

2.1.1 The business of the Fund shall be conducted under the name [REDACTED].

2.1.2 The Fund is a Delaware Limited Partnership and is authorized to operate as such under the Act and the regulations made thereunder. The General Partner is a [Delaware [REDACTED]] and is authorized to operate as such under the [REDACTED]. The Fund Manager is a [Delaware [REDACTED]] and is authorized to operate as such under the [REDACTED].

2.1.3 The registered office of the Fund shall be at [REDACTED] or such other place or places in the State of Delaware as the General Partner may from time to time designate with prior written notice to all Limited Partners. The registered agent of the Fund at such office shall be [REDACTED].

### 2.2 Purposes. The purposes of the Fund are to:

2.2.1 [REDACTED]; and

2.2.2 engage in such other activities as are necessary, advisable, lawful and consistent with the foregoing, (the “**Investment Objectives**”), in all cases in accordance with the Investment Policy, Section 7.1 (*Investment Restrictions*) and the other provisions of this Agreement.

2.3 **Fiscal Year.** The fiscal year of the Fund for financial and accounting purposes shall be [the calendar year] (“Fiscal Year”).

2.4 **Register.** The General Partner shall cause the Fund to maintain a register which shall include the name, contact details and Commitment amount (if any) of each Investor (the “Register”). The Register shall not be part of this Agreement. The General Partner shall, from time to time, update the Register as necessary to be complete and accurate. Any reference in this Agreement to the Register shall be deemed to be a reference to the Register as in effect from time to time. No action of any Limited Partner shall be required to amend or update the Register. The General Partner shall provide any Limited Partner with a complete and accurate copy of the Register upon request and at the end of any quarter in which it has been updated.<sup>8</sup>

## 2.5 **Fund Expenses.**

2.5.1 The Fund shall pay all of the Fund’s pro rata share (calculated in accordance with Sections 2.8 (*Parallel Vehicles*) and 2.9 (*Alternative Vehicles*)) of the reasonable and properly incurred costs and expenses of the Fund other than General Partner Expenses (in each case, to the extent not reimbursed by a Portfolio Company), as follows (“Fund Expenses”):

2.5.1.1 liquidation expenses of the Fund;

2.5.1.2 sales, withholding, or other taxes, fees or similar government charges which may be assessed against the Fund;

2.5.1.3 commissions, brokerage fees or similar charges incurred in connection with the purchase or sale of securities;

2.5.1.4 costs and expenses of (i) hosting annual or special meetings of the Advisory Committee and any other expenses properly incurred by or on behalf of the Advisory Committee in accordance with Article 13 (*Advisory Committee*), and (ii) otherwise holding meetings or conferences with investors, expenses associated with meeting venue, meeting materials, meeting supplies (including any associated shipping costs), and any other out-of-pocket expense (except for the costs of entertainment, including speaker fees) incurred by the Fund, the General Partner or the Fund Manager in connection with such conferences or meetings or preparation thereof;

2.5.1.5 expenses associated with preparation of the Fund’s financial statements, tax returns and Internal Revenue Service Forms 1065, Schedule K-1s (or additional or similar tax-related schedules) and the Fund’s reports, including automated reports, to the Partners (including third party expenses incurred for specialized assistance in connection with preparing and delivering reports regarding the Fund to Limited Partners (individually or collectively) or responding to requests from any Limited Partner for additional information regarding the Fund); other tax accounting expenses of the Fund (including but not limited to fees for tax preparation and expenses incurred to prepare tax forms, file tax forms, and prepare tax liability calculations on behalf of the Fund and its Partners);

2.5.1.6 interest expense for Credit Facilities;

2.5.1.7 fees, costs and expenses incurred in connection with the investigation, evaluation, diligence (including the costs of background checks and consultants providing

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<sup>8</sup> If there are Parallel Vehicles, Limited Partners should have access to the register of any Parallel Vehicle.

specialized services not ordinarily provided by the General Partner or Fund Manager), acquisition, administration, holding, monitoring or disposition of Portfolio Investments or potential Portfolio Investments (including broken deal expenses to the extent not borne by potential co-investors), including travel, meals and lodging/accommodations related thereto (but not including entertainment expenses or the costs of private air travel);

2.5.1.8 all fees, costs and expenses (including attorneys' fees) relating to litigation and threatened litigation, investigation or other Proceeding involving the Fund or any Portfolio Investment, including indemnification expenses;

2.5.1.9 fees, costs and expenses attributable to normal and extraordinary banking, investment banking, commercial banking (including but not limited to bank account fees, wire fees, facility fees and foreign exchange fees charged by any bank), accounting, auditing, appraisal, valuation, administration, consulting, legal (including but not limited to all fees and disbursements incurred for regular maintenance or to amend this Agreement, except as otherwise provided, fees and expenses incurred in connection with the negotiation and maintenance of Credit Facilities for the Fund and fees incurred for the review of the legal documents of Portfolio Investments), custodial, depositary, registration and other professional services provided to the Fund;

2.5.1.10 reasonable premiums for liability insurance to protect the Fund and Covered Persons;

2.5.1.11 costs associated with Parallel Vehicles, Alternative Vehicles, and Feeder Entities;

2.5.1.12 expenses incurred or related to audits of the Fund conducted by regulatory bodies, including but not limited to the cost of completing tax authority audits and fees incurred for assistance in responding to such audits;

2.5.1.13 the Management Fee; and

2.5.1.14 Organizational Expenses to the extent provided in Section 2.5.3.

2.5.2 The expenses itemized in Section 2.5.1 shall be Fund Expenses notwithstanding that they may be specially treated or excluded from being characterized as an expense under GAAP.

2.5.3 The Fund shall pay or shall reimburse the General Partner and its Affiliates for their *pro rata* share (calculated in accordance with Section 2.8 (*Parallel Vehicles*) and 2.9 (*Alternative Vehicles*)) of Organizational Expenses incurred by any of them and notified to the Limited Partners pursuant to Section 2.5.4.1 in an aggregate amount not exceeding the Organizational Expenses Cap.

2.5.4 The General Partner shall:

2.5.4.1 as soon as reasonably practicable following the Final Closing Date, notify the Limited Partners of the aggregate amount, and provide a detailed break-down of, all Organizational Expenses incurred or that will be incurred, including with respect to legal fees and expenses; and

2.5.4.2 in each Drawdown Notice identify any amounts to be used to fund Organizational Expenses.

2.5.5 The General Partner confirms that it will not charge to the Fund any expenses incurred by the General Partner or the Fund Manager following the date hereof in connection with its own internal compliance matters under applicable securities rules, laws and regulations.

2.6 **General Partner Expenses.** The General Partner agrees to assume and pay, or to cause one or more of its Affiliates to assume and pay, all normal operating expenses attributable to the Fund's investment activities (the "**General Partner Expenses**") on the terms and conditions set forth in this Section 2.6. Such normal operating expenses include the following:

2.6.1 all routine, recurring expenses incident to the activities of the General Partner or the Fund Manager on behalf of the Fund, including industry conferences, cost of research and information services, computer software and subscriptions, travel, meals, lodging/accommodations, entertainment, and investment consultants (other than consultants providing specialized services not ordinarily provided by the General Partner or Fund Manager), as well as placement agent fees and expenses<sup>9</sup>;

2.6.2 compensation and benefits of the officers and employees of the General Partner, the Fund Manager and their respective Affiliates, including all internal investment personnel, legal counsel and accounting and finance professionals employed by the General Partner, the General Partner, the Fund Manager or their Affiliates;

2.6.3 clerical, legal, accounting and support services, in each case, performed by employees of the General Partner, the Fund Manager and or their Affiliates;

2.6.4 any and all expenses incurred in maintaining the General Partner's or the Fund Manager's registration as an investment adviser under the Advisers Act, and any compliance requirements related thereto (including costs and expenses related to preparation and filing of Form ADV and Form PF), and any registration with any regulatory authority or self-regulatory organization over time or otherwise related to such registration; and any taxes imposed by reason of the Management Fee paid to the Fund Manager;

2.6.5 fees and expenses of the Fund's and General Partner's registered agent in the [State of Delaware] and for maintaining the Fund's and General Partner's registered office in the [State of Delaware];

2.6.6 costs and expenses of entertainment, including speaker fees, incurred in connection with conferences or meetings;

2.6.7 office space, furniture, computers, telephones, facilities, utilities, and communications, including the cost of maintaining any web portal of the General Partner, Fund Manager or Fund, and

2.6.8 all costs of remedying an Exculpation Exclusion Event, Indemnification Exclusion Event or Removal Conduct, all costs of enforcing any undertaking of the partners of the General Partner pursuant to Section 14.7.3, and any taxes or other expenses incurred by the Fund or the General Partner or any of its Affiliates in respect of Carried Interest.

2.7 **Currency.** All contributions by and distributions to the Partners, all calculations pursuant to the terms of this Agreement and all accounts of the Partners or the Fund shall be made, prepared and maintained (as the case may be) in [US\$].

2.8 **Parallel Vehicles.**

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<sup>9</sup> Alternatively, placement fees (but not placement agent expenses) may be paid by the Fund but offset against the Management Fee.

2.8.1 On or prior to the Final Closing Date, the General Partner or an Affiliate thereof may, to accommodate legal, tax or regulatory considerations of certain investors, form one or more pooled investment vehicles to co-invest with the Fund (each, a “**Parallel Vehicle**”). Each Parallel Vehicle shall be controlled by the General Partner or an Affiliate thereof, shall be managed by the Fund Manager or an Affiliate thereof, and shall be governed by organizational documents containing provisions substantially the same in all material respects as those of the Fund (including this Agreement), with only such differences as may be required, or requested by the Investors therein, to accommodate the legal, tax or regulatory considerations referred to in the preceding sentence. The General Partner shall, subject to such legal, tax or regulatory considerations, cause each Parallel Vehicle to co-invest with the Fund in each Portfolio Company in proportion to the respective capital commitments of the Parallel Vehicles and the Fund. All references in this Section 2.8 (*Parallel Vehicles*) to the Investors of a Parallel Vehicle shall be deemed to include all Investors in a Parallel Vehicle formed as a vehicle other than a limited partnership.

2.8.2 Each investment by a Parallel Vehicle shall, subject to legal, tax or regulatory considerations, be on substantially the same terms as, and on economic terms that are no more than favorable to such Parallel Vehicle than, those received by the Fund. With respect to each investment in which a Parallel Vehicle participates (or proposes to participate) with the Fund, any expenses or indemnification or other obligations related to such investment shall be borne by, and any Fee Income shall be allocated among, the Fund and any such Parallel Vehicle in proportion to the capital committed or proposed to be committed by each to such investment, provided that each Parallel Vehicle shall bear its share of Organizational Expenses and Fund Expenses *pro rata* in proportion to the respective capital commitments of the Fund and the Parallel Vehicles, subject to such adjustment as the General Partner may reasonably and in good faith determine to be equitable to the Fund and the Parallel Vehicles. The General Partner shall, subject to legal, tax or regulatory considerations, cause the Fund and the Parallel Vehicles to sell or otherwise dispose or divest of their respective interests in a Portfolio Company at the same time and on the same terms, in proportion to their respective ownership interests therein.

## 2.9 **Alternative Vehicles.**

2.9.1 If at any time the General Partner determines that for legal, tax or regulatory reasons it would be in the best interests of the Limited Partners for certain or all of the Limited Partners to participate in a Portfolio Investment through one or more alternative investment structures, the General Partner may effect the making of all or any portion of such investment outside of the Fund by requiring certain or all Limited Partners to make capital contributions with respect to such potential portfolio investment to a limited partnership or other similar vehicle (each, an “**Alternative Vehicle**”) provided that, that no Limited Partner will be required to participate in any such investment through an Alternative Vehicle unless (i) all Limited Partners are participating in such investment through such Alternative Vehicle, or (ii) the General Partner obtains prior written consent from such Limited Partner.

2.9.2 Each Alternative Vehicle shall be controlled by the General Partner or an Affiliate thereof, shall be managed by the Fund Manager or an Affiliate thereof, and shall be governed by organizational documents containing provisions substantially the same in all material respects as those of the Fund (including this Agreement), with only such differences as may be required to accommodate the legal, tax or regulatory requirements referred to in Section 2.9.1.

2.9.3 The General Partner shall provide each of the Limited Partners with a copy of the organizational documents governing each Alternative Vehicle not less than ten (10) Business Days before the signing of such documents. All references in this Section 2.9 (*Alternative Vehicles*) to the limited partners of an Alternative Vehicle shall be deemed to include all investors in an Alternative Vehicle formed as a vehicle other than a limited partnership.

2.9.4 Each Limited Partner investing in an Alternative Vehicle shall be obligated to make contributions to such Alternative Vehicle in a manner consistent with that provided by Article 6 (*Capital Contributions*), and each such Limited Partner's Remaining Commitment shall be reduced by the amount of such contributions to the same extent as if such contributions were made to the Fund as Capital Contributions. With respect to each investment or proposed investment in which an Alternative Vehicle participates or proposes to participate with the Fund, any expenses or indemnification or other obligations related to such investment or proposed investment shall be borne by, and any Fee Income shall be allocated among, the Fund and such Alternative Vehicle in proportion to the capital committed by or proposed to be committed by each to such investment. Any management fee funded by a Limited Partner with respect to an Alternative Vehicle shall reduce such Limited Partner's share of the Management Fee required to be funded by such Limited Partner, and payable to the Fund Manager by the Fund by a corresponding amount. Distributions of cash and other property and the allocations of income, gain, loss, deduction, expense and credit from such Alternative Vehicle, and the determination of allocations and distributions pursuant to Article 14 (*Distributions; Allocations*) and of any Capital Contribution or other payment by a Limited Partner pursuant to Article 6 (*Capital Contributions*) or any other amount contributed to or distributed by any Alternative Vehicle, shall be determined as if each contribution to or distribution by such Alternative Vehicle were a contribution to or distribution by the Fund. The investment results of an Alternative Vehicle shall be aggregated with the investment results of the Fund for all purposes unless at the time the investment is made by the Alternative Vehicle the General Partner otherwise determines with the consent of the Advisory Committee and prior notice to the Limited Partners, that such aggregation increases the risk of any adverse tax consequences or imposes legal or regulatory constraints or creates other risks that would be undesirable for the Fund or the Limited Partners. If any Limited Partner defaults with respect to its obligations to an Alternative Vehicle, (i) such Limited Partner shall be deemed to be a Defaulting Partner under this Agreement to the same extent as if such default to the Alternative Vehicle had occurred under the terms of this Agreement and (ii) the remedies imposed by the General Partner against such Defaulting Partner shall be aggregated with the remedies imposed against such Person under the governing documents of the Alternative Vehicle so that, to the greatest extent practicable, such aggregated remedies would put the Fund and the Defaulting Partner in the same positions they each would have been in had such Defaulting Partner made its entire Commitment to the Fund rather than through both the Fund and the Alternative Vehicle.

2.9.5 In the event that the General Partner or an Affiliate thereof forms one or more Alternative Vehicles, the provisions of this Agreement, whether or not amended, shall be interpreted to give effect to the intent of the provisions of this Section 2.9 (*Alternative Vehicles*). Accordingly, if any such Alternative Vehicle is formed, all references in this Agreement to the Fund shall, where appropriate, be deemed to include such Alternative Vehicle. The limited partnership agreement and other organizational documents of any Alternative Vehicle shall be executed on behalf of the Limited Partners investing therein by the General Partner pursuant to the power of attorney granted by each of the Limited Partners pursuant to Section 19.5 (*Power of Attorney*).

## 2.10 **Adjustments between Vehicles.**

2.10.1 Notwithstanding anything to the contrary provided herein, the General Partner may (i) adjust the amount, timing and distribution of the payments under Section 5.1 (*Subsequent Closings*) to take into account a closing of any Fund Vehicle and any investments held by any Fund Vehicle at the time of any such closing and (ii) reallocate and transfer among the Fund Vehicles any investments or other assets held by such Fund Vehicles at the time of the closing at cost, including allocating and transferring to any Fund Vehicle all or any part of any Equalization Payment and Additional Payments and any cash transferred to the Fund from any Fund Vehicle and distributing it among the Partners, in each case to the extent determined in the reasonable and good faith judgment of the General Partner to be appropriate to give effect to the intent of this Section 2.10 (*Adjustments Between Vehicles*).

2.10.2 The General Partner shall, after the payments, distributions, reallocations and adjustments described in this Section 2.10 (*Adjustments Between Vehicles*) are taken into account, cause each Portfolio Investment, to the extent practicable and appropriate and subject to adjustments made by the General Partner with respect to any Portfolio Investment realized before the admission of a Subsequent Closing Partner (or equivalent in any Fund Vehicle), shall be held by the Fund Vehicles in such proportions as if all of the Fund Vehicles had a single closing on the Initial Closing Date at which all Limited Partners and limited partners or equivalent investors of all Fund Vehicles were admitted with a commitment equal to their commitment as of the Final Closing Date, and all Partners and investors in any other Fund Vehicle shall have received such amounts by way of distribution of Equalization Payment and Additional Payments (or the equivalent under the documentation relating to any other Fund Vehicle) as they would have received had they all invested in the Fund. Final determinations regarding such reallocations shall be made by the General Partner within [forty-five (45)] days after the Final Closing Date.

2.11 **Voting.** Unless otherwise specified, any election, vote, waiver or consent of the Limited Partners shall be calculated as a percentage of the respective Commitments of the Limited Partners entitled to make such election, vote, waiver or consent, provided that any Feeder Entity may designate a proportionate share of its Commitment, as directed by its interest holders, with respect to such election, vote, waiver or consent.

### **3. MANAGEMENT; LIMITED PARTNERS**

3.1 **General Partner.** The General Partner shall be responsible for the management and control of the Fund.

3.2 **Limited Partners.**

3.2.1 No Limited Partner shall take part in the management or control of the Fund's investment or other activities, transact any business in the Fund's name or have the power to sign documents for or otherwise bind the Fund (whether or not through a power of attorney on behalf of the Fund).

3.2.2 No Limited Partner shall be liable for the debts and obligations of the Fund; provided, however, that each Limited Partner shall be required to pay to the Fund amounts up to its Remaining Commitment pursuant to this Agreement.

3.2.3 To the fullest extent permitted by applicable law, the exercise by any Limited Partner of any right conferred herein shall not be construed to constitute participation by such Limited Partner in the control of the investment or other activities of the Fund.

### **4. COMMITMENTS**

4.1 **Maximum Fund Size.** The aggregate of the Commitments and the total commitments to the Fund and all Parallel Vehicles shall not exceed [ ].

4.2 **General Partner Commitment.** On the Initial Closing Date, the General Partner and its Affiliates shall make and maintain an aggregate Commitment by subscribing for an Interest equal to at least [ ]% of the aggregate Commitments of the Limited Partners. The Commitment of the General Partner and its Affiliates shall be increased at each Subsequent Closing in accordance with Section 5.1 (*Subsequent Closings*) so that at all times, it is equal to at least [ ]% of the aggregate Commitments of the Limited

Partners, provided that no Additional Payment shall be required to be made by the General Partner or such Affiliates in connection with such increase.<sup>10</sup>

#### 4.3 No Withdrawal of Capital.

4.3.1 No Limited Partner shall withdraw, cancel or revoke any part of its Commitment, except as provided in this Agreement or in the relevant Limited Partner's Side Letter.

4.3.2 If at any time the General Partner determines, after consultation with the affected Limited Partner and after receipt of an opinion of counsel, which counsel and opinion shall be reasonably satisfactory to such affected Limited Partner, that there is a reasonable likelihood that the continuing participation in the Fund by such Limited Partner would cause a Material Adverse Effect, such Limited Partner shall, 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 interest in the Fund (or such portion of its interest as the General Partner shall determine is sufficient to prevent or remedy such Material Adverse Effect) to one or more of the other Limited Partners or any other Person at a price reasonably acceptable to such Limited Partner, in a transaction that complies with Section 17 (*Transfers; Substitute Partners*) and the General Partner shall use its commercially reasonable efforts to work with such Limited Partner to facilitate such transaction. If a determination is made by the General Partner under this Section 4.3.2 that would affect more than one Limited Partner in substantially the same manner, the General Partner shall request that all of the affected Limited Partners take the actions set forth in the preceding sentence.

4.3.3 Notwithstanding anything to the contrary provided herein, the General Partner may on behalf of the Fund, without the consent of any Limited Partner, enter into any agreement with a Limited Partner that requires or enables such Limited Partner to withdraw from the Fund (*e.g.*, in the event such Limited Partner would be in violation of applicable law, regulation or a policy described in clause (vi) of the definition of Material Adverse Effect of such Limited Partner or subjected to materially burdensome tax or withholding with respect to a tax, law or regulation if such Limited Partner were to continue as a limited partner of the Fund).

### 5. CLOSINGS

#### 5.1 Subsequent Closings.

5.1.1 Subject to Section 4.1 (*Maximum Fund Size*), the General Partner shall have full power and authority to schedule one or more additional closings (each such closing, a "**Subsequent Closing**") on any date not later than the Final Closing Date to admit one or more additional Limited Partners and to allow any existing Limited Partner to increase its Commitment to the Fund (each such Person, a "**Subsequent Closing Partner**"). Each Subsequent Closing Partner shall be treated as if it has been admitted, or as if the increase has been included in its Commitment, at the Initial Closing Date.

5.1.2 Prior to admitting any Subsequent Closing Partner to the Fund, the General Partner shall determine that the following conditions are satisfied:

5.1.2.1 the Subsequent Closing Partner shall have executed and delivered such documents and shall have taken such actions as the General Partner shall deem necessary or desirable to effect such admission, including the execution of (i) a Subscription Agreement

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<sup>10</sup> Note, in some cases, the General Partner may make all or part of its commitment in a Parallel Vehicle or as a Limited Partner. If so, appropriate adjustments should be made.

containing representations and warranties by the Subsequent Closing Partner and (ii) a counterpart of this Agreement;

5.1.2.2 the admission of the Subsequent Closing Partner shall not have resulted in a violation of law or any term or condition of this Agreement; and

5.1.2.3 subject to Section 4.2 (*General Partner Commitment*), the Subsequent Closing Partner shall have contributed or, with the consent of the Fund, unconditionally agreed to contribute to the Fund the amounts specified in Section 5.1.4.

5.1.3 Each Subsequent Closing Partner shall be deemed admitted to the Fund or its increased Commitment deemed accepted at the time that the foregoing conditions are satisfied. The General Partner shall amend Schedule 1 (*Partner Commitments*) and books and records of the Fund to reflect the admission or increased Commitment of each Subsequent Closing Partner.

5.1.4 Each Subsequent Closing Partner shall participate in the Portfolio Investments made and Fund Expenses incurred before its admission to the Fund *pro rata* to their respective Commitments with the Partners admitted prior to the admission of such Subsequent Closing Partner (the “**Prior Partners**”) by:

5.1.4.1 contributing to the Fund, on or after the date of its admission or the acceptance of increased Commitment by the General Partner, the same proportion of its Capital Contribution as would have been drawn down from such Subsequent Closing Partner if it had been admitted, or if the increase had been included in its Commitment, at the Initial Closing Date (the “**Equalization Payment**”); plus

5.1.4.2 except as provided in Section 4.2 (*General Partner Commitment*), paying to the Fund an amount calculated as interest at a rate *per annum* equal to **8**% on such Equalization Payment other than any portion attributable to the Management Fee, computed from the Due Date specified in the Drawdown Notices relating to the corresponding Capital Contributions advanced by Prior Partners until the Due Date specified in the Drawdown Notice issued in connection with the Subsequent Closing Partner’s admission or acceptance of increased Commitment (the “**Additional Payment**”).

5.1.5 Any Equalization Payment, other than any portion attributable to the Management Fee, and Additional Payment received by the Fund shall be either (i) distributed to the Prior Partners *pro rata* to their Capital Contributions at such time or (ii) to the extent deemed appropriate or necessary by the General Partner to adjust the proportionate share of each Fund Vehicle in each Portfolio Investment to reflect changes in the relative capital commitments following the Initial Closing Date as a result of any Limited Partner’s admission or increase in its Commitment, paid or distributed to such Fund Vehicles in a manner comparable to the mechanics of this Section 5.1 (*Subsequent Closings*) as applied to the Fund Vehicles. Any portion of an Equalization Payment attributable to the Management Fee shall be paid to the Fund Manager.

5.1.6 The General Partner shall appropriately adjust the Partners’ Capital Contributions, Sharing Percentages and Remaining Commitments and any other relevant items to give effect to the intent of the foregoing. Additional Payments contributed by a Subsequent Closing Partner shall not be treated as Capital Contributions and shall not reduce such Subsequent Closing Partner’s Remaining Commitment. For the avoidance of doubt, with respect to any Subsequent Closing Partner, its Preferred Return shall be calculated from the date as if it had been admitted at the Initial Closing Date.

## 6. CAPITAL CONTRIBUTIONS

6.1 **Capital Contributions.** Each Partner shall contribute cash to the Fund as set forth herein, provided that no Limited Partner shall be required to make any Capital Contribution to the Fund at any time that exceeds its Remaining Commitment at such time.

6.2 **Terms and Conditions; Capital Contributions.** Except as otherwise provided in this Agreement, the Capital Contributions of the Limited Partners shall be paid in separate Drawdowns in amounts determined pursuant to the terms of this Section 6.2 (*Terms and Conditions; Capital Contributions*), subject to the following terms and conditions:

6.2.1 the General Partner shall provide each Limited Partner with a notice of any Drawdown (a “**Drawdown Notice**”), describing in reasonable detail the purposes of such Drawdown consistent with the requirements of the ILPA Capital Call and Distribution Notice Template (and including at least a description of any relevant Portfolio Investment and Portfolio Company and a breakdown of the amounts of such Drawdown to be used to pay the Acquisition Cost of any Portfolio Investment, Fund Expenses or Management Fees), to be delivered at least ten (10) Business Days prior to the date on which such Drawdown is due and payable (the “**Due Date**”);

6.2.2 each Limited Partner shall pay the Capital Contributions determined in accordance with the provisions of this Section 6.2 (*Terms and Conditions; Capital Contributions*) and specified in the relevant Drawdown Notice by wire transfer in immediately available funds to the account specified therein;

6.2.3 Drawdowns shall be paid no later than on the Due Date specified in a Drawdown Notice; and

6.2.4 the amount of Capital Contributions required to be advanced by each Limited Partner pursuant to a Drawdown Notice shall be determined in accordance with the following provisions, in each case up to an amount not exceeding such Limited Partner’s Remaining Commitment:

6.2.4.1 in the case of a Drawdown to be used to acquire a Portfolio Investment (other than a Follow-on Investment), with respect to each Limited Partner (other than an Excused Limited Partner), such Limited Partner’s *pro rata* share (based on the Remaining Commitments of all Limited Partners other than Excused Limited Partners) of the amount required to acquire such Portfolio Investment;

6.2.4.2 in the case of a Drawdown to be used to make a Follow-on Investment or to pay Fund Expenses attributable to a particular Portfolio Investment (which shall not, for the avoidance of doubt, include any Management Fee), with respect to each Limited Partner, such Limited Partner’s *pro rata* share (based on the Limited Partners’ Sharing Percentages for such Portfolio Investment) of the aggregate amount required to make such Follow-on Investment or to pay such Fund Expense;

6.2.4.3 in the case of a Drawdown to be used to pay Fund Expenses other than Fund Expenses described in Section 6.2.4.2 and the Organizational Expenses payable by the Fund, such Limited Partner’s *pro rata* share (based on the Commitments of all Limited Partners) of the amount required to pay such Fund Expenses; and

6.2.4.4 in the case of a Drawdown to be used to pay Management Fee, with respect to each Limited Partner, the amount calculated with respect to such Limited Partner in accordance with Section 8.3 (*Management Fee*).

6.2.5 For the avoidance of doubt, in connection with each Drawdown from the Limited Partners other than a Drawdown pursuant to Section 6.2.4.4, the General Partner shall make Capital Contributions of its pro rata share of the amount required from the Limited Partners determined as if the General Partner were a Limited Partner with an applicable Remaining Commitment.

6.2.6 If participation by Benefit Plan Investors is “significant” as determined under the Plan Asset Regulation or if the General Partner otherwise so determines, then (notwithstanding the other provisions of this Section 6.2 (*Terms and Conditions; Capital Contributions*)), no Capital Contribution shall be made to the Fund by a Benefit Plan Investor until the Fund makes a Portfolio Investment that qualifies the Fund as a VCOC. In such event, prior to the time when the Fund first qualifies as a VCOC, any Capital Contributions of Benefit Plan Investors (and, if determined by the General Partner, other Partners) required by any Drawdown shall be deferred or contributed to an escrow fund established by the General Partner, which escrow fund is intended to comply with Department of Labor Advisory Opinion 95 04A (and, upon the release of such Capital Contributions to consummate a Portfolio Investment, all Temporary Investment Income earned thereon shall be either returned to the Partners in the same proportion as the Partners made such Capital Contributions or paid to the Fund on behalf of the applicable Partners as Capital Contributions).

### 6.3 Return of Unused Capital Contributions.

6.3.1 If any proposed Portfolio Investment with respect to which there has been a Drawdown is not consummated or if the amount of funds drawn down for any reason exceeds the amount necessary, as the case may be, the General Partner shall return such Drawdown or such excess amount of funds, together, in each case, with any interest or gains thereon (net of any Fund Expenses in respect thereof), to the Limited Partners within [sixty (60)] days of such Drawdown, in the same proportions that such funds were contributed by the Limited Partners.

6.3.2 If at any time following the delivery of any Drawdown Notice it is intended to use any part of the relevant Drawdown for a purpose other than that specified in such Drawdown Notice then, at least ten (10) Business Days prior to such use, the General Partner shall provide to each Limited Partner a revised Drawdown Notice with the intention and the effect that each Limited Partner has the opportunity to exercise any right to be an Excused Limited Partner that it has with respect to such Drawdown pursuant to Section 6.7 (*Excused Limited Partners*).

6.4 **Reinvestment.** The Remaining Commitments of each Limited Partner that are available to be drawn down shall be increased by the aggregate amount of Distributable Proceeds that have been distributed to such Limited Partner that equals the aggregate amount of Capital Contributions of such Limited Partner used to fund (i) the Acquisition Cost of Portfolio Investments that were realized within [twelve (12)] months of the acquisition thereof, and (ii) Fund Expenses, Management Fees and Organizational Expenses, provided in each case that such increased Remaining Commitments may be used solely for the purpose of making Portfolio Investments.<sup>11</sup>

6.5 **Use of Distributable Proceeds to Fund Drawdowns.** The General Partner may determine to retain and use Distributable Proceeds that otherwise would be distributed to a Limited Partner pursuant to Section 14.3 (*Distribution of Distributable Proceeds*) to fund all or part of any Capital Contribution that would otherwise be required to be made by such Limited Partner within [sixty (60)] days of the receipt of such Distributable Proceeds. At least ten (10) Business Days prior to the acquisition of a Portfolio Investment out of retained Distributable Proceeds, the General Partner shall provide to each Limited Partner the information required to be provided in a Drawdown Notice issued pursuant to Section 6.2.1 with the

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<sup>11</sup> Note that some investors require a cap (e.g., 110% of commitments) on total investments that may be possible through recycling

intention and the effect that each Limited Partner has the opportunity to exercise any right to be an Excused Limited Partner that it would have had pursuant to Section 6.7 (*Excused Limited Partners*) if the Acquisition Cost of such Portfolio Investment had been entirely funded by Drawdowns.

## 6.6 Defaulting Partners.

6.6.1 Subject to Section 6.7 (*Excused Limited Partners*), if any Partner fails to make all or any portion of any Capital Contribution or any other amount required to be funded by such Limited Partner pursuant to the provisions of this Agreement or any corresponding agreement or with respect to any other Fund Vehicle (including, but not limited to, the obligation to return and contribute distributions to the Fund pursuant to Section 14.7 (*Clawback*) or Section 16.3 (*Limited Partner Giveback*)), the General Partner shall notify such Partner in writing of such failure (a “**Default Notice**”). If such failure continues for **[five (5)]** Business Days after receipt by such Limited Partner of the Default Notice, then such Partner shall be designated by the General Partner as in “**Default**” under this Agreement (a “**Defaulting Partner**”) and shall thereafter be subject to the provisions of this Section 6.6 (*Defaulting Partners*). The General Partner may, if it determines this to be in the best interests of the Fund and the Non-Defaulting Partners, choose not to designate any Partner as a Defaulting Partner and may agree to waive or permit the cure of any Default by a Partner, subject to such conditions as the General Partner and the Defaulting Partner may agree upon, provided that any such decision not to designate any Affiliated Partner as a Defaulting Partner or to waive or permit the cure of any Default by an Affiliated Partner shall be subject to the prior written consent of the Advisory Committee.

6.6.2 The General Partner shall inform the Limited Partners of the occurrence of any such Default and of any action taken by it with respect to any Defaulting Partner within **[thirty (30)]** days of the Defaulting Partner becoming a Defaulting Partner.

6.6.3 A Limited Partner that fails to make all or any portion of any Capital Contribution or other payment required pursuant to this Agreement on the relevant Due Date shall pay or reimburse the Fund for any Damages resulting therefrom. In addition, any amounts that are not duly paid on the relevant Due Date shall accrue interest at a rate of **[10]**% *per annum* from the Due Date as specified in the relevant Default Notice until the date the Limited Partner makes the Capital Contribution. Any proceeds received by the Fund pursuant to this Section 6.6.3 and Section 6.6.4, including any amounts that would otherwise have been distributed to such Defaulting Partner, shall (i) first be applied to reimburse the Fund Parties for any related costs and expenses incurred due to such Defaulting Partner’s Default as determined by the General Partner and notified to the Defaulting Partner by the General Partner, and (ii) thereafter be distributed to the Limited Partners who are not Defaulting Partners (the “**Non-Defaulting Partners**”) pursuant to Article 14 (*Distributions; Allocations*) if attributable to a Portfolio Investment and otherwise in proportion to their Commitments (provided that a Non-Defaulting Partner shall not receive a distribution with respect to a Portfolio Investment with respect to which such Limited Partner is an Excused Limited Partner).

6.6.4 Without prejudice to Section 6.6.3 above or Section 6.6.8 below, the General Partner in its sole discretion, on its own behalf or on behalf of the Fund, may (but shall not be obligated to) pursue and enforce any and all rights and remedies the Fund, the General Partner or the Fund Manager may have against such Defaulting Partner at law, in equity or pursuant to any other provision of this Agreement or otherwise with respect thereto, including taking any or all of the following actions in any order of priority (it being understood and agreed that the taking of one or more actions (including those set forth herein), or no action at all, by the General Partner with respect to a Defaulting Partner pursuant to this Section 6.6.4 shall in no way restrict or otherwise limit the General Partner’s ability to take one or more actions not prohibited by this Agreement, or no action at all, or in a different order of priority, with respect to any other Defaulting Partner pursuant to this Section 6.6.4):

6.6.4.1 determine that the Defaulting Partner shall not be entitled to receive any or a portion of the distributions from the Fund (which amounts shall be forfeited by such Defaulting Partner) that would otherwise be made to the Defaulting Partner pursuant to this Agreement and may apply such withheld distributions to offset any defaulted amount owing by the Defaulting Partner to the Fund or any Alternative Vehicle;

6.6.4.2 determine that the Defaulting Partner's Interest may be sold for a purchase price equal to [50]% of the lesser of (i) such Defaulting Partner's aggregate Capital Contributions, or (ii) the Value of such Defaulting Partner's Interest at the time of such Default, in each case net of any amounts payable to the Fund pursuant to Section 6.6.3, provided that any such offer may, to a Person that is an Interested Person, only be made with the prior written consent of the Advisory Committee, and provided, further that such Defaulting Partner shall remain subject to Section 16.3 (*Limited Partner Giveback*) and upon such Transfer the Defaulting Partner shall otherwise cease to be a Limited Partner;

6.6.4.3 determine that the Defaulting Partner must forfeit up to 100% of its Interest in the Fund without payment or other consideration therefor, in which case the Non-Defaulting Partners shall be entitled to acquire such forfeited portion of the Defaulting Partner's Interest in the Fund divided among such Non-Defaulting Partners *pro rata* according to their respective Remaining Commitments with any adjustment that the General Partner may determine to be equitable in order to reflect any excuse pursuant to Section 6.7 (*Excused Limited Partners*). The sole consideration to the Defaulting Partner for each portion of such Defaulting Partner's Interest reallocated to a Non-Defaulting Partner shall be the assumption by such Non-Defaulting Partner of the Defaulting Partner's obligation to make both defaulted and future Capital Contributions pursuant to its Commitment that are commensurate with the portion of the Defaulting Partner's Interest being reallocated to such Non-Defaulting Partner. The Defaulting Partner acknowledges that it shall not receive any payment for any Interest reallocated to Non-Defaulting Partners pursuant to this Section 6.6.4.3, including for any funded portion of its Commitment related thereto or such Defaulting Partner's share of any profits not yet distributed, even though the purchased Interest may actually have significant positive value at the time of such reallocation or purchase; and

6.6.4.4 determine to reduce any portion of such Defaulting Partner's Commitment (which has not been assumed by another Partner) to the amount of the Capital Contributions (which have not been acquired) made by such Defaulting Partner (net of distributions pursuant to Article 14 (*Distributions; Allocations*)), and the aggregate Commitments of the Fund shall be commensurately reduced and any such determination shall be binding on such Defaulting Partner.

6.6.5 Notwithstanding anything to the contrary provided herein, so long as a Defaulting Partner is a Partner in the Fund nothing contained in Section 6.6.4 shall affect the obligation of such Defaulting Partner to pay any such part of its Remaining Commitment to the Fund in accordance with the terms of this Agreement, and the Defaulting Partner shall remain fully liable for the fulfilment of its payment obligations hereunder, notwithstanding any other rights and remedies the Fund and the General Partner may have pursuant to applicable law.

6.6.6 With respect to any amount (other than the Management Fee) that is in Default, the General Partner may require additional Drawdowns from the Non-Defaulting Partners in proportion to their Remaining Commitments; provided that no Limited Partner shall be obligated as a result thereof to contribute an additional amount in excess of the lesser of such Limited Partner's Remaining Commitment and [50]% of the total Capital Contributions that such Limited Partner was originally required to make before the Drawdown of such additional amounts.

6.6.7 A Defaulting Partner shall cease to have any voting or consent rights as a Limited Partner or with regard to its representative in the Advisory Committee (if applicable for such Defaulting Partner), and all acts, consents and decisions with respect to the Fund to be made by the Limited Partners or the Advisory Committee shall be calculated and made by the other Limited Partners without regard for the Commitment or (if applicable) the Advisory Committee member of such Defaulting Partner.

6.6.8 The General Partner shall, in addition to the provisions of Section 6.6.4, have with respect to a Default by a Defaulting Partner the right to pursue all remedies at law (including claiming damages in addition to any forfeiture of Interest pursuant to Section 6.6.4) or in equity or by statute or otherwise. No course of dealing between the General Partner and any Defaulting Partner and no delay in exercising any right, power or remedy conferred in this Section 6.6.8 now or hereafter existing at law shall operate as a waiver or otherwise prejudice any such right, power or remedy. In addition to the foregoing, the General Partner may institute a lawsuit against any Defaulting Partner for specific performance of its obligations to make Capital Contributions and to collect any overdue amounts hereunder, with interest on such overdue amounts at the rate specified in Section 6.6.3.

6.6.9 [Notwithstanding anything to the contrary provided herein, and for the avoidance of doubt, if an Affiliated Partner becomes a Defaulting Partner, all determinations as to actions or waivers with respect to such Affiliated Partner shall constitute a conflict for the purposes of Section 9.5 (*Other Conflicts of Interest*) and accordingly be subject to the prior written consent of the Advisory Committee.]

## 6.7 Excused Limited Partners.

6.7.1 A Limited Partner shall not be required to make any Capital Contributions, or fund any amount from Distributable Proceeds retained pursuant to Section 6.4 (*Reinvestment*), if the following conditions are met:

6.7.1.1 such Limited Partner has delivered a notification to the General Partner accompanied by a certificate issued by an executive officer of such Limited Partner within five (5) Business Days after the date of the relevant Drawdown Notice, stating that such Limited Partner is entitled to be excused from making such Drawdown based upon such Limited Partner's reasonable determination that the making of all or a portion of the relevant investment is reasonably likely to have a Material Adverse Effect on such Limited Partner; or

6.7.1.2 the General Partner reasonably determines that (i) such Limited Partner's making a Capital Contribution with respect to all or a portion of the relevant Investment is reasonably likely to have a Material Adverse Effect, or (ii) the participation of such Limited Partner in all or a portion of the relevant Investment would (A) prevent the Fund from being able to consummate such Investment, (B) result in a material increase in the risk or difficulty to the Fund of consummating such Investment, (C) impose any material filing, tax, regulatory or other similar burden to which the Fund, a Portfolio Company or any Partner or its Affiliate would not otherwise be subject or (D) would otherwise cause the Fund to incur a material extraordinary expense.

6.7.2 In the case of a determination by the General Partner pursuant to Section 6.7.1.2, the General Partner shall advise such Limited Partner in writing, no later than five (5) Business Days after the date of the relevant Drawdown Notice, of its intention to invoke the provisions of this Section 6.7.1 and shall deliver to such Limited Partner an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to the Limited Partner, confirming that the participation by such Limited Partner in the relevant investment is reasonably likely to result in a Material Adverse Effect.

6.7.3 If any Limited Partner is excused and does not participate in all or a portion of any Investment pursuant to Section 6.7.1 then such Limited Partner shall be an “**Excused Limited Partner**” and the General Partner shall immediately inform each other Limited Partner and:

6.7.3.1 if the relevant Capital Contribution has been drawn down from the Excused Limited Partner, or if the relevant amount has been funded from Distributable Proceeds retained pursuant to Section 6.4 (*Reinvestment*), the Excused Limited Partner shall be repaid such amount within ten (10) Business Days and such amount shall be added to the Excused Limited Partner’s Remaining Commitment;

6.7.3.2 if the relevant Capital Contribution has not been drawn down from the Excused Limited Partner, the Excused Limited Partner shall not be required to advance such Capital Contribution and its Remaining Commitment shall not be reduced by such amount;

6.7.3.3 the Excused Limited Partner shall not be allocated any distributions, income, gain, loss or liability (including any liability to re-advance distributions pursuant to Section 16.3 (*Limited Partner Giveback*)) which is attributable to all or any portion of any Portfolio Investment in which it does not participate;

6.7.3.4 the Excused Limited Partner shall continue to be obligated to participate in, and contribute to the Fund with respect to, subsequent Portfolio Investments, Fund Expenses and Organizational Expenses, but not Follow-on Investments or Fund Expenses with respect to the original Investment or portion thereof in relation to which it is an Excused Limited Partner;

6.7.3.5 the General Partner may elect to cause the Fund to make such Portfolio Investment without the participation of such Excused Limited Partner or not to make such Portfolio Investment and if the General Partner elects to cause the Fund to make such Portfolio Investment, the General Partner may issue a revised Drawdown Notice to the other Limited Partners in order to increase the Capital Contributions with respect to such Portfolio Investment from such other Limited Partners in proportion to their Remaining Commitments to the extent necessary to fund the excused amount; provided that no Limited Partner shall be obligated as a result thereof to contribute an additional amount in excess of the lesser of such Limited Partner’s Remaining Commitment and [50]% of the total Capital Contributions that such Limited Partner was originally required to make before the Drawdown of such additional amounts; and

6.7.3.6 the General Partner shall be permitted to make such reasonable adjustments to the accounts of the Partners as are necessary to deal equitably among them in relation to an Excused Limited Partner.

6.7.4 For the avoidance of doubt, no Limited Partner shall be a Defaulting Partner with respect to any Capital Contribution with respect to which it is an Excused Limited Partner pursuant to this Section 6.7 (*Excused Limited Partners*).

## **7. INVESTMENTS**

### **7.1 Investment Restrictions.**

7.1.1 The Fund shall make Portfolio Investments only if they are consistent with the Investment Policy and Section 7.4 (*Investments after the Termination of the Commitment Period*).

7.1.2 The Fund shall make all Portfolio Investments in accordance with all applicable laws, including laws of the jurisdiction where the relevant Portfolio Company is organized or has its principal place of business.

7.1.3 The Fund shall receive an opinion of counsel qualified to practice in the jurisdiction where any Portfolio Company is organized or has its principal place of business substantially to the effect that (i) under the laws of such jurisdiction the limited liability of the Limited Partners will be recognized to the same extent in all material respects as is provided to the Limited Partners under the Act and this Agreement and (ii) no Limited Partner will have to file a tax return or other information return or pay taxes in a location outside of the jurisdiction in which such Limited Partner is resident solely as a result of such investment.

7.1.4 The Fund shall not, without the prior written consent of the Advisory Committee:

7.1.4.1 [invest more than [ ]% [or [ ]% including the aggregate of any Capital Contributions with respect to any Bridge Investments] of the aggregate Commitments directly or indirectly in any one industry sector];

7.1.4.2 [invest more than [ ]% (or [ ]% including the aggregate of any Capital Contributions with respect to any Bridge Investments) of the aggregate Commitments directly or indirectly in any one Portfolio Company;]

7.1.4.3 [invest more than [ ]% (or [ ]% including the aggregate of any Capital Contributions with respect to any Bridge Investments) of the aggregate Commitments directly or indirectly in any group of Portfolio Companies that are Affiliates;]

7.1.4.4 [invest any amounts directly or indirectly in Portfolio Companies that do not have their principal place of business operations in or derive a substantial majority of their revenue from the Target Region;]

7.1.4.5 [either (i) make any Follow-on Investment later than the date that is [eighteen (18)] months after the termination of the Commitment Period, or (ii) invest an aggregate amount in excess of [15]% of aggregate Commitments in Follow-on Investments after the termination of the Commitment Period;]

7.1.4.6 [invest in publicly listed securities (excluding in connection with the public offering of an existing Portfolio Company or securities acquired upon the sale or merger of an existing Portfolio Company), provided that an aggregate amount up to [10]% of aggregate Commitments may be invested in “private investments in public equity” transactions [whereby the Fund acquires private equity-type rights with respect to the relevant Portfolio Company, including a board seat and significant influence over the management of such Portfolio Company];

7.1.4.7 [engage in speculative investment activities such as commodities, commodity contracts and forward currency contracts, except for hedging transactions made in accordance with the Investment Policy and this Agreement;]

7.1.4.8 [be involved in hostile bids (hostile bids being defined as bids without the support of a majority of shareholders or board of directors (or equivalent) of the target);] or

7.1.4.9 [invest in any vehicle or Person that charges any fee or profit share];

provided that, for the avoidance of doubt, for purposes of this Section 7.1.4 any amounts invested by the Fund shall take into account both amounts financed by Capital Contributions and amounts drawn under the Credit Facility.

7.1.5 The Fund shall invest in accordance with the General Partner’s environmental, social and governance policy.

## 7.2 **Limitation on Indebtedness.**

7.2.1 The Fund may not borrow amounts, issue guarantees or otherwise incur indebtedness except on a short-term basis for periods of less than six months to finance investments pending receipt by the Fund of Drawdowns, provided (i) that any borrowing from the General Partner, the Fund Manager or their respective Affiliates shall (A) contain terms that are no less favorable to the Fund than could be obtained in arm’s-length negotiations with unrelated third Persons for similar borrowings and (B) require the prior written consent of the Advisory Committee, and (ii) that, at any time, the aggregate liability of the Fund with respect to all such borrowing, guarantees and indebtedness does not exceed the lesser of (A) [15]% of the total Commitments and (B) the aggregate amount of Remaining Commitments.

7.2.2 [Subject to Section 7.2.1, the Fund Manager or the General Partner may establish a credit facility for the Fund with one or more financial institutions, pursuant to which the Fund’s obligations are secured by a pledge or other grant of a security interest and the assignment by the General Partner to the relevant lender of the rights of the General Partner to deliver Drawdown Notices to the Limited Partners and to enforce all remedies against Limited Partners that fail to fund their respective Remaining Commitments in accordance with the terms hereof (a “**Credit Facility**”).<sup>12</sup>

7.3 **Temporary Investments.** The Fund shall invest cash held by the Fund pending investment in Portfolio Investments, distribution or payment of Management Fees, Organizational Expenses or other Fund Expenses only in Temporary Investments.

7.4 **Investments after the Termination of the Commitment Period.** The Fund shall not make Drawdowns after the termination of the Commitment Period other than to:

7.4.1 pay Fund Expenses;

7.4.2 subject to Section 7.1.4.5, make Follow-on Investments; and

7.4.3 complete Portfolio Investments with respect to which the Fund has, prior to the termination of the Commitment Period, entered into a legally binding commitment to invest and which are reasonably expected to close within [one hundred and twenty (120)] days following the termination of the Commitment Period, provided that the General Partner shall notify the Limited Partners of all such investments at least ten (10) Business Days prior to the termination of the Commitment Period.

7.5 **Bridge Investments.** The Fund may provide interim financing to, or make investments that are intended to be of a temporary nature in Securities of, any Portfolio Company or any subsidiary thereof in connection with or subsequent to a Portfolio Investment by the Fund in such Portfolio Company (each a “**Bridge Investment**”), subject to Section 7.1.4.2. If a Bridge Investment is not repaid, refinanced or otherwise disposed of prior to [twelve (12)] months from the date that such Bridge Investment was acquired, such Bridge Investment shall cease to be treated as a Bridge Investment on the lapse of such [twelve (12)]

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<sup>12</sup> To be tailored on a fund-by-fund basis. Some managers/lenders may require language in the Agreement detailing information to be provided by Limited Partners to lenders; in this case, no Limited Partner should be required, without its prior written consent, to disclose information that is not available in the public domain.

month period and shall be treated as a Portfolio Investment that is not a Bridge Investment beginning on the date of acquisition of such Bridge Investment.

## **8. MANAGEMENT**

### **8.1 Management of the Fund.**

8.1.1 The General Partner and the Fund Manager shall, and shall cause the Fund to, at all times comply with this Agreement, including the Investment Objectives, the Investment Policy and the investment restrictions set forth in Section 7.1 (*Investment Restrictions*) and the standard of care set forth in Section 20.5 (*Standard of Care*).

8.1.2 The organization, conduct, management, control and operation of the Fund and its investment and other activities shall be vested in the General Partner, which is hereby authorized and empowered on behalf and in the name of the Fund, subject to the provisions of this Agreement, to exercise and carry out any and all of the purposes of the Fund and to perform all acts and enter into and perform all contracts and other undertakings that may be necessary, advisable or incidental thereto without any further act, approval or vote of any Person, including any Limited Partner.

8.1.3 The General Partner shall, to the maximum extent permitted by the Act, delegate to the Fund Manager, all of the powers of the General Partner, provided that no such delegation shall reduce the responsibility of the General Partner for the conduct of the Fund and the General Partner shall be liable for the conduct of the Fund Manager as if such conduct were the conduct of the General Partner.

8.1.4 Notwithstanding anything to the contrary provided herein, neither the General Partner nor the Fund Manager may, or shall have any right, power or authority to, avoid its obligations under this Agreement by delegation of authority or responsibility.

**8.2 Powers of the General Partner.** The General Partner shall have all rights, powers and authority of a general partner under the Act and otherwise under applicable law and as provided for in this Agreement. Without limiting by implication the generality of the foregoing, but subject to the limitations and the restrictions set forth herein, the General Partner shall have all rights, power and authority to manage, control, and conduct the affairs of the Fund and to do any and all acts on behalf of the Fund that are necessary, advisable or convenient to the discharge of its duties under this Agreement and to the management of the affairs of the Fund, including:

8.2.1 to permit the withdrawal and admission of Limited Partners from, into and among the Fund Vehicles;

8.2.2 to acquire, hold, Transfer, manage, vote and own Securities and any other assets held by the Fund, in accordance with and subject to Article 7 (*Investments*);

8.2.3 to set aside funds for Reserves;

8.2.4 to take any action the General Partner determines is necessary or desirable to ensure that the assets of the Fund are not deemed to be “plan assets” subject to Title I of ERISA;

8.2.5 to bring, defend, settle and dispose of Proceedings, provided that no Covered Person shall be exculpated or indemnified or otherwise held harmless except to the extent required under Sections 16.1 (*Exculpation of Covered Persons*) or 16.2 (*Indemnification of Covered Persons*);

8.2.6 to engage or discharge custodians, attorneys and accountants, provided that any engagement, arrangement, transaction or agreement with any Interested Person shall (i) contain terms that are no less favorable to the Fund or the relevant Portfolio Company than could be obtained in arm's-length negotiations with unrelated third Persons for similar services, and (ii) require the prior written consent of the Advisory Committee or a Majority in Interest;

8.2.7 subject to the other terms of this Agreement, to execute, deliver and perform its obligations under contracts and agreements of every kind necessary or incidental to the accomplishment of the Fund's purposes and to take or omit to take such other actions in connection with the investment and other activities of the Fund, as may be necessary or advisable in order to further the purposes of the Fund;

8.2.8 to borrow money for short-term bridging purposes and issue guarantees subject to the limitations set forth in Section 7.2 (*Limitation on Indebtedness*);

8.2.9 to prepare and file all tax returns of the Fund, to make such elections under applicable tax law as to the treatment of items of the Fund's income, gain, loss, deduction and credit, and as to all other relevant matters, as are necessary or appropriate; and

8.2.10 to enter into, execute, acknowledge and deliver any and all contracts, agreements or other instruments and to carry on any other activities necessary for, in connection with, or incidental to any of the foregoing or the Fund's investment and other activities.

### 8.3 Management Fee.

8.3.1 The Fund shall pay the [Fund Manager] an annual management fee with respect to each Limited Partner ("**Management Fee**") calculated with respect to such Limited Partner in accordance with Section 8.3.2 below, beginning as of the Initial Investment Date<sup>13</sup> and continuing until the earlier of (i) the last day of the initial Term (excluding, for the avoidance of doubt and notwithstanding Section 18.1 (*Term*), any extension thereto), and (ii) the appointment of a liquidator other than the General Partner. The Management Fee shall be payable in quarterly installments in advance commencing on the Initial Investment Date and on each of January 1, April 1, July 1 and October 1 thereafter (each a "**Payment Date**"). Any payment for a period of less than a calendar quarter shall be adjusted on a *pro rata* basis according to the actual number of days during such period.

8.3.2 Subject to Section 8.4 (*Management Fee Offset*) below, the Management Fee payable with respect to each Limited Partner shall be an amount equal to:

8.3.2.1 until the termination of the Commitment Period, or, if earlier, the effective date on which a management fee begins to accrue with respect to a Successor Fund, [ ]% *per annum* of the Commitment of such Limited Partner; and

8.3.2.2 thereafter, or during such time as the Commitment Period is suspended in accordance with Article 11 (*Key Person Event; Suspension*), [ ]% *per annum* of the Capital Contributions made by such Limited Partner to fund the Acquisition Cost of Portfolio Investments other than Temporary Investments, less an amount equal to the Acquisition Cost of Portfolio Investments, other than Temporary Investments, that have been realized (in whole or in part), written off or Permanently Written Down as of the end of the most recent financial quarter.

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<sup>13</sup> Initial Closing Date may be appropriate for some funds.

## 8.4 Management Fee Offset.

8.4.1 Each quarterly installment of the Management Fee with respect to each Limited Partner shall be reduced, but not below zero, by an amount equal to such Limited Partner's *pro rata* share (based on its Commitment) of the aggregate amount of Fee Income paid since the preceding Payment Date. To the extent that the Management Fee is not reduced as of any given Payment Date by the amounts referred to in the preceding sentence (or any portion thereof determined with respect to a previous Payment Date and carried over to the current Payment Date pursuant to this sentence) because the Management Fee has been reduced to zero, the excess shall be carried over to the next succeeding Payment Date (and to one or more subsequent Payment Dates) and applied as a reduction of the Management Fee, but not below zero, for such succeeding Payment Date (or a subsequent Payment Date). If on termination of the Fund, any amount of Fee Income remains that has not been applied to reduce the Management Fee pursuant to this Section 8.4 (*Management Fee Offset*), the Fund Manager shall cause such amounts to be paid to the Non-Defaulting Partners (excluding any such Non-Defaulting Partners that have elected by written notice to the General Partner not to receive such amounts) *pro rata* in proportion to their respective Commitments.

8.4.2 For the purposes of determining the Value of any Fee Income in the form of Securities, awards, options, warrants or other non-cash consideration, such Value shall be equal to the net cash proceeds thereof as and when such proceeds are received; provided that the Value of any such non-cash Fee Income the Value of which has not been determined on or before the dissolution of the Fund shall be determined on such date by reference to the Value of such Portfolio Company upon such disposition. Such Value shall be disclosed to the Advisory Committee and shall be subject to Section 13.2.5.5.

8.4.3 The reduction of Management Fees described in this Section 8.4 (*Management Fee Offset*) may be (i) allocated among the Fund Vehicles and other investment entities managed by the General Partner, the Fund Manager or their Affiliates, whether formed prior to, on or after the date hereof which own the same Securities, based on the relative cost basis of each such entity's interest in the relevant Portfolio Company, and (ii) deducted from the Management Fee otherwise payable by the Fund in the fiscal quarter immediately following the date of receipt of the relevant Fee Income or the calculation of the Value of the relevant non-cash Fee Income pursuant to Section 8.4.2; provided, however, that no such Fee Income shall be allocated to any entity that does not pay a management fee that will be reduced by that entity's allocable portion of such Fee Income (and for the avoidance of doubt any such allocable portion of such Fee Income shall be allocated among such other entities).

### 8.4.4 Plan Asset Regulations.

8.4.4.1 Each Limited Partner acknowledges that the assets of the Fund are not intended to constitute Plan Assets of such Limited Partner for purposes of any applicable non-U.S., state or local law governing the investment and management of the assets of that Limited Partner, and that, as a result, none of the Fund, the General Partner or any of their Affiliates intends to be acting as a fiduciary within the meaning of any applicable non-U.S., state or local law relating to governmental plans or foreign plans with respect to such Limited Partner or the Fund assets; provided, that this provision is not intended to negate the standard of care set forth in Section 20.5 (*Standard of Care*).

8.4.4.2 The General Partner shall use its reasonable best efforts to ensure that the Fund either (i) qualifies as a VCOC on and after the "initial valuation date" (as defined in the Plan Asset Regulation) of the Fund or (ii) otherwise is not deemed to hold Plan Assets under the Plan Asset Regulation. If participation by "Benefit Plan Investors" is "significant" as determined under the Plan Asset Regulation, at the Fund's expense, the General Partner shall furnish to each ERISA Partner (x) within ten (10) Business Days following the Fund's first long-term Portfolio Investment, an opinion of counsel addressed to the Fund with respect to the VCOC status of the Fund and (y)

within sixty (60) days following the end of each “annual valuation period” (as defined in the Plan Asset Regulation) of the Fund succeeding the date of the Fund’s first long-term Portfolio Investment, a certificate from the Fund as to the Fund’s qualification as a VCOC.

**8.5 UBTI; ECI.** [The Fund may engage in transactions (including transactions described in Section 7.2) that will cause Tax Exempt Partners and Non-U.S. Partners to recognize UBTI or ECI, respectively, as a result of their investment in the Fund; provided that the Fund shall use its reasonable best efforts not to invest more than (i) [15]% of the Partners’ aggregate Commitments (measured as of the date any such investment is made) in a manner that the General Partner reasonably believes would cause such Commitments to be used or further invested, directly or indirectly, to cause Tax Exempt Partners to recognize UBTI as a result of their investment in the Fund or (ii) [15]% of the Partners’ aggregate Commitments (measured as of the date any such investment is made) in a manner that the General Partner reasonably believes would cause such Commitments to be used or further invested, directly, or indirectly, to cause Non-U.S. Partners to recognize ECI as a result of their investment in the Fund. Each Limited Partner hereby acknowledges and agrees that pursuant to the first sentence of this Section 8.5, the Fund may engage in transactions that will cause Tax Exempt Partners to recognize UBTI and Non-U.S. Partners to recognize ECI as a result of their investment in the Fund.]<sup>14</sup>

#### **8.6 Regulated Partner Matters.**

8.6.1 In the event that, in its reasonable judgment, the General Partner believes that (i) the investment in the Fund by a Limited Partner that is a governmental plan, foreign plan or other regulated entity (other than a Benefit Plan Investor) (each, a “**Regulated Partner**”) may result in (A) any violation of any law applicable to such Regulated Partner, (B) the treatment of the assets of the Fund as assets of such Regulated Partner or (C) the treatment of the Fund or the General Partner as a fiduciary under any law applicable to such Regulated Partner and (ii) any of the foregoing conditions will or may result in any adverse consequences to the Fund or the General Partner (both of (i) and (ii), a “**Regulatory Issue**”), then the General Partner, in its discretion, may (x) require that such Regulated Partner provide (at such Regulated Partner’s expense) an opinion of counsel, reasonably acceptable to the General Partner in form and substance, that no Regulatory Issue exists, or (y) in the event such an opinion is not delivered within a reasonable time after being requested, (1) in accordance with the provisions of Amendment 19 (*Amendments; Power of Attorney*), amend this Agreement to cure any illegality or adverse consequences to the Fund, (2) amend, terminate or restructure any then-existing or contemplated arrangements to cure any illegality or other adverse consequences to the Fund, (3) redeem such Regulated Partner’s Interest, in whole or in part, at a price reasonably acceptable to such Regulated Partner, (4) require the Transfer of all or a portion of the Regulated Partner’s Interest to one or more Limited Partners, or (5) dissolve the Fund and wind up its affairs in accordance with Article 18 (*Term, Dissolution and Winding up of the Fund*).

8.6.2 Effective upon the date specified by the General Partner in the notice sent to a Regulated Partner notifying such Regulated Partner of the General Partner’s determination to completely or partially redeem such Regulated Partner’s Interest pursuant to Section 8.6.1, such Regulated Partner shall cease to be a Partner of the Fund for purposes of the withdrawn portion of its Interest only and, in addition to its right to receive payment for such Interest, shall continue to be entitled, with respect to its remaining Interest only, to the rights of a Partner under this Agreement including the right to have any allocations made to its Capital Account (as such may be adjusted), the right to receive distributions, and the right to approve, consent or vote with respect to matters as provided in this Agreement.

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<sup>14</sup> To update as needed in the event the Fund anticipates significant participation from Tax Exempt Partners or Non -U.S. Partners. Some funds use parallel funds and others may use corporate blocker structures.

8.6.3 [The Fund shall pay the purchase price with respect to any Interest of a Regulated Partner that is being redeemed pursuant to Section 8.6.1 to such Regulated Partner in cash by paying to such Regulated Partner the portion of each distribution that would have been payable to such Regulated Partner had such Interest not been redeemed until the purchase price has been fully paid; provided that (i) if the Regulatory Issue is a result of a breach of a representation, warranty or covenant made by the Regulated Partner whose Interests are being redeemed, or a change in law with respect to such Regulated Partner, the purchase price shall be the lesser of (A) the Value on the applicable redemption effective date and (B) the Value on the date on which cash is allocated to make redemption payments; and (ii) if the Regulatory Issue is not a result of a breach of a representation warranty or covenant made by the Regulated Partner whose Interests are being redeemed, or a change in law applicable to such Regulated Partner, if a Majority in Interest of the Regulated Partners whose Interests are being redeemed at such time disagree with the General Partner's determination of the Value of the applicable Interests, the General Partner and such Regulated Partners shall negotiate in good faith to resolve such disagreement, and if such parties continue to disagree after negotiations are held, either party may request that an independent evaluator reasonably acceptable to the other party be retained, whose valuation shall be final and binding on the Fund and all of the Partners, and the Fund shall bear the cost of such independent evaluator. The General Partner shall be under no obligation to sell, finance or refinance any Fund property or assets or to take any other action to effect such redemption that, in the judgment of the General Partner, may adversely affect the Fund or any Partner.]

## 8.7 FCC Provisions.

8.7.1 During any Communications Portfolio Investment Period or if the General Partner reasonably determines that it is necessary to ensure that an interest in a FCC Regulated Entity complies with the Communications Act or FCC Ownership Rules, each Limited Partner agrees that in addition to the general limitations set forth in this Agreement (without creating any additional rights hereunder and notwithstanding any other rights of such Limited Partner under this Agreement):

8.7.1.1 Neither such Limited Partner (including its directors, officers, managers, partners, members or other equivalent non-corporate officials) nor any of its Affiliates shall:

8.7.1.1.1 be an employee of the Fund or any FCC Regulated Entity if such Person's functions, directly or indirectly, relate to the media or common carrier enterprises of the Fund or any FCC Regulated Entity;

8.7.1.1.2 serve, in any material capacity, as an independent contractor or agent with respect to the Fund's media and common carrier enterprises or with respect to any FCC Regulated Entity;

8.7.1.1.3 communicate with the Fund, General Partner, the Fund Manager or the management of any FCC Regulated Entity on matters pertaining to the day-to-day operations of its business;

8.7.1.1.4 perform any services for the Fund or any FCC Regulated Entity that materially relate to the media or common carrier activities of the Fund or any FCC Regulated Entity, with the exception of making loans to, or acting as a surety for, the Fund or any FCC Regulated Entity to the extent such loan or action would not cause attribution under the "equity/debt plus" component of the FCC Attribution Rules; or

8.7.1.1.5 become actively involved in the management or operation of the media and common carrier businesses of the Fund or any FCC Regulated Entity;

8.7.1.2 Such Limited Partner shall not vote on the admission of a new general partner to the Fund (unless such admission may be rejected by the General Partner in its absolute discretion); and

8.7.1.3 Such Limited Partner shall not have the right to vote for the removal of the General Partner except (i) as provided in Section 10.1.2.1 and (ii) where the General Partner is subject to bankruptcy proceedings, as described in Sections 17-402(a)(4)-(5) of the Act.

8.7.2 The General Partner shall notify the Limited Partners if at any time it intends to distribute any securities of an FCC Regulated Entity to the Limited Partners. Further, the General Partner may not distribute such securities to any Limited Partner that notifies the General Partner not to distribute such securities to such Limited Partner within [ten (10)] Business Days of receipt of the General Partner's notice with respect thereto. The General Partner shall use reasonable efforts to dispose of such securities retained in the Fund at such Limited Partner's expense and distribute the net proceeds to each such Limited Partner in accordance with the provisions of this Agreement or make such other arrangements for the disposition of such securities as are acceptable to the General Partner and have been approved by such Limited Partner.

8.7.3 Each Limited Partner shall provide the General Partner with such information as the General Partner may reasonably request from time to time in order to determine whether a particular interest in any FCC Regulated Entity would comply with the Communications Act or the FCC Ownership Rules.

8.7.4 The General Partner shall deliver to a Limited Partner within a reasonable period of time following receipt of such Limited Partner's request therefor, all non-confidential information concerning the Fund's interests in FCC Regulated Entities as such Limited Partner determines is reasonably necessary to ensure compliance by it and its affiliates with the Communications Act and the FCC Ownership Rules and the reporting obligations imposed thereunder, consistent with the restrictions set forth in Section 8.7 (*FCC Provisions*).

## 9. EXCLUSIVITY AND POTENTIAL CONFLICTS OF INTERESTS

9.1 **Successor Fund.** Until the earliest of (i) the termination of the Commitment Period, (ii) the date when 80% of Commitments have been funded, invested, committed or reserved for investments (including Follow-on Investments) or funded or reserved for Fund Expenses; (iii) the date when 60% of Commitments have been funded for investments; and (iv) the termination of the Fund, the General Partner and the Fund Manager shall not, and hereby commit that none of their Affiliates shall, directly or indirectly, accrue any management or advisory fees relating to any vehicle or account (other than any Fund Vehicle)<sup>15</sup>, having investment objectives that materially overlap with the Investment Objectives (“**Successor Fund**”), in each case except with the prior written consent of a Majority in Interest.

9.2 **Time and Attention.** Prior to the termination of the Commitment Period, the General Partner shall cause each of the General Partner, Fund Manager, and the Key Persons to devote substantially all of such Person's business time to the affairs of the Fund, the General Partner, the Investment Manager, any Alternative Vehicles, any Parallel Vehicles, any co-investment, Prior Funds, or other investment vehicles permitted by this Agreement. After the termination of the Commitment Period, the General Partner shall cause each of the General Partner, Fund Manager, and Key Persons to devote that portion of their time to the affairs of the Fund as is necessary for the management of the Fund.

9.3 **Co-investment Opportunities.**

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<sup>15</sup> For some funds, marketing or closing may be appropriate.

9.3.1 The [Fund Manager] may, but shall have no obligation to, provide co-investment opportunities (whether by way of a direct investment in a Portfolio Company or as an investment through an intermediate holding vehicle) to electing Limited Partners or [strategic third parties] [any third party], provided that no co-investment opportunity shall be allocated to any Interested Person without the prior written consent of the Advisory Committee. All co-investments shall be made in accordance with the General Partner's co-investment policy.

9.3.2 Any co-investment shall be made and divested at substantially the same time and on the same terms (save as required for legal, tax or regulatory purposes), including the same form or forms of consideration (and in the same proportions of forms of consideration) as the corresponding investment by the Fund.

9.3.3 In the case of a co-investment, the co-investor shall bear its *pro rata* share (based on capital committed to such co-investment) of any fees, expenses and liabilities relating to the relevant Portfolio Investment.

9.3.4 The General Partner shall provide notice to each Limited Partner of all co-investments offered and made by any Fund Vehicle[, including the identity of all co-investors].

9.4 **Deal-flow**<sup>16</sup>. Subject to Section 9.3 (*Co-investment Opportunities*), the General Partner and the Fund Manager hereby agree that until the end of the Commitment Period, all investment opportunities received by any of the General Partner, the Fund Manager, any of the Key Persons or any Affiliate of any of the foregoing, will first be allocated to the Fund or, when permitted, to a Successor Fund to the extent that (i) such investment opportunities fall within the Investment Objectives, (ii) the Fund has available Remaining Commitments, and (iii) the participation by the Fund in such investment opportunity would be in the best interest of the Fund as determined in good faith by the General Partner.

## 9.5 **Other Conflicts of Interest**<sup>17</sup>.

9.5.1 The General Partner and the Fund Manager shall not, and hereby commit that the Fund shall not, directly or indirectly knowingly undertake any conduct constituting an actual or potential conflict of interest between (i) the Fund, any Portfolio Investment or any Portfolio Company on the one hand, and (ii) any Interested Person on the other hand (including the Fund directly or indirectly entering into any investment, divestment or other business transaction with any Interested Person whether or not on arm's length terms and conditions) without the prior written consent of the Advisory Committee.

9.5.2 Each of the General Partner and the Fund Manager shall promptly disclose to the Advisory Committee all actual or material potential conflicts of interest described at Section 9.5.1 of which it is aware.

9.5.3 For the avoidance of doubt, the General Partner and the Fund Manager hereby acknowledge and agree that nothing disclosed (as a "Risk Factor" or otherwise) in the Fund's offering documentation, as the same may be modified from time to time, shall be deemed solely by virtue of such

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<sup>16</sup> With respect to a General Partner that has other existing or anticipated permitted accounts, an alternative approach may be considered such that the General Partner's allocation policy as previously provided to the Limited Partners will apply to deal-flow with respect to the Fund and any "other accounts", and that the Limited Partners will have oversight of any changes with respect to such allocation policy.

<sup>17</sup> For some General Partners, a strict prohibition on conflict transactions will be impractical so greater detail here may be required as to whether, when and how the General Partner and the Fund Manager will be permitted to engage in a conflict transaction. In most cases, it would be appropriate to prohibit acquisitions, dispositions, distributions, restructurings and any other transfers with the General Partner or any of its Affiliates without the prior written consent of the Advisory Committee.

disclosure to be a permissible conflict of interest under this Agreement or to otherwise reduce or eliminate the requirement for Advisory Committee disclosure or prior written consent as set forth in this Section 9.5 (*Other Conflicts of Interest*).

## **10. REMOVAL OF THE GENERAL PARTNER; TERMINATION OF THE FUND**

### **10.1 Removal/Termination Notice.**

10.1.1 The General Partner shall notify the Limited Partners immediately upon any occurrence of any Removal Conduct.

10.1.2 At any time:

10.1.2.1 after [a court has confirmed that] Removal Conduct has occurred, a written notice approved by a Majority in Interest may be delivered to the General Partner informing it that the Limited Partners are electing to remove the General Partner or terminate the Fund (such notice, a “**Removal For Cause Notice**”); or

10.1.2.2 a written notice approved by 75% in Interest may be delivered to the General Partner informing it that the Limited Partners are electing to remove and replace the General Partner or terminate the Fund (such notice, a “**Removal Without Cause Notice**”).

10.2 **Consequences of Removal Notice.** In connection with the delivery of a Removal For Cause Notice or a Removal Without Cause Notice in accordance with Section 10.1 (*Removal/Termination Notice*) in which the Limited Partners elect to remove the General Partner:

10.2.1 On the date stipulated in such notice (which shall be no earlier than the date of such notice) (the “**Removal Date**”), the General Partner shall be removed as general partner of the Fund.

10.2.2 A Majority in Interest shall appoint a replacement general partner, with such replacement being effective upon such Person’s acceptance of such appointment on such terms as may be agreed with a Majority in Interest.

10.2.3 On the Removal Date:

10.2.3.1 with respect to the delivery of a Removal For Cause Notice:

(a) the right of the Fund Manager to receive installments of the Management Fee shall immediately and automatically terminate without further compensation, and no further payments of the Management Fee shall be made to the Fund Manager;

(b) the right of the removed General Partner to receive further distributions of Carried Interest from the Fund (including pursuant to Article 14 (*Distributions; Allocations*)) shall immediately and automatically terminate, no further distributions of Carried Interest shall be made to the removed General Partner, and any amounts retained in the Escrow Account pursuant to Section 14.7.2 shall immediately be returned to the Fund for distribution to the Limited Partners; and

(c) in respect of its Commitment, the removed General Partner shall be treated as a Limited Partner, without any further action being required by any Person, and

for the avoidance of doubt, in that regard, shall be considered an “Affiliated Partner” for the purposes of Section 10.2 (*Consequences of Removal Notice*).

10.2.3.2 with respect to the delivery of a Removal Without Cause Notice:

(a) the right of the Fund Manager to receive installments of the Management Fee shall immediately and automatically terminate without further compensation, and no further payments of the Management Fee shall be made to the Fund Manager<sup>18</sup>;

(b) the removed General Partner shall be treated as a Limited Partner with respect to its Commitment and for the avoidance of doubt, in that regard, shall be considered an “Affiliated Partner” for the purposes of Section 10.2 (*Consequences of Removal Notice*);

(c) subject to Section 10.2.3.2(d) below, the removed General Partner shall be entitled to receive further distributions of Carried Interest [immediately and automatically reduced to [ ]% of the Carried Interest to which it is otherwise entitled] with respect to Portfolio Investments made prior to the date of such removal at the same time as such amounts would have been distributed to it pursuant to this Agreement if it had not been removed, and the removed General Partner shall not be entitled to receive any Carried Interest with respect to any Portfolio Investment made on or after the date of such removal, and the provisions of Section 14.7 (*Clawback*) shall continue to apply to any and all such distributions and Article 14 (*Distributions; Allocations*) shall be deemed amended accordingly, provided that the amounts of such distributions of Carried Interest shall be calculated without regard to Portfolio Investments made, Fund Expenses allocable solely to Portfolio Investments made, or Management Fee accrued, in each case after the Removal Date; and

(d) notwithstanding anything to the contrary provided herein, the Fund shall be entitled to retain, and the removed General Partner and the Fund Manager shall not be entitled to receive, any amounts to which the removed General Partner or the Fund Manager would otherwise be entitled pursuant to this Section 10.2.3.2 unless and until such time as each of the removed General Partner and the Fund Manager have fully complied with Section 10.3 (*Co-operation on Removal*);

10.2.3.3 if requested to do so in, or by a notice approved by a Majority in Interest at any time on or after the date of delivery of, a Removal For Cause Notice or a Removal Without Cause Notice, the removed General Partner and the replacement General Partner appointed by a Majority in Interest shall cause any of the following:

(a) the Fund to admit such Person or Persons as may be approved by such Majority in Interest as a Partner to the Fund entitling the holder of such Interest to some or all of the distributions to which the General Partner is no longer entitled;

(b) some or all of the distributions of the Fund to which the General Partner is no longer entitled to be distributed to the existing Limited Partners in proportion

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<sup>18</sup> In some cases (e.g., for a small or emerging manager), removal without cause may be permitted only after the first one or two years, and the Management Fee may continue at pre-removal rate for a 6-18 month period.

to their respective Commitments or such other proportion as may be agreed by a Majority in Interest prior to such distribution;

(c) (i) the Fund to issue to the removed General Partner a non-interest bearing promissory note (or equivalent instrument) that entitles the removed General Partner to the payment of the amounts to which it is entitled pursuant to this Section 10.2 (*Consequences of Removal Notice*) at such time and in such amounts as if it had continued to be a Partner at the time of the relevant distributions, or (ii) the removed General Partner to be paid an amount in cash equal to the amount of Carried Interest to which it would have been entitled as General Partner pursuant to Section 10.2.3.2 or Section 10.2.3.3 (as the case may be) based on a deemed liquidation of the Fund and realization of all of its assets at such time, and the removed General Partner may be required to cease to be a partner; and

(d) the appointment of the Fund Manager to be immediately terminated;

10.2.4 the obligation of the Affiliated Partners to invest in new Portfolio Investments shall terminate, provided (for the avoidance of doubt) that (i) such Affiliated Partners shall remain obligated to make all Capital Contributions and other payments that they are required to make (including pursuant to Section 6.2 (*Terms and Conditions; Capital Contributions*) and Article 16 (*Exculpation and Indemnification*)) with respect to any Portfolio Investments made or indebtedness of the Fund incurred, on or before the date of removal (including Portfolio Investments with respect to which final approval of the General Partner's or Fund Manager's investment committee has been given and legally binding commitments have been entered into by the Fund prior to the date of such removal) and any related Follow-on Investments, and (ii) the removed General Partner and the Fund Manager shall continue to be bound by the provisions of Section 14.7 (*Clawback*);

10.2.5 notwithstanding Section 10.2.2 above, at any time on or after the date of a Removal for Cause Notice or a Removal Without Cause Notice, by delivery of written notice to an Affiliated Partner, a Majority in Interest may require such Affiliated Partner to transfer a portion or all of its Interest to such Person as a Majority in Interest may approve in consideration for the issue to such Affiliated Partner by the Fund of a non-interest bearing promissory note or equivalent instrument, pursuant to which such Affiliated Partner is entitled to receive payments in such amounts and at such times as it would have received pursuant to Section 10.2.2 if it had continued to be a Limited Partner; and

10.2.6 each of the removed General Partner and the Fund Manager hereby irrevocably constitutes and appoints any such Person as may be stipulated in any Removal For Cause Notice or a Removal Without Cause Notice (and any of such Person's officers, employees or directors), with full power of substitution, as the true and lawful attorney and agent of the removed General Partner and the Fund Manager (as the case may be), to execute, acknowledge, verify, swear to, deliver, record and file, in its or its assignee's name, place and stead, all instruments, documents, forms and certificates that may from time to time be required by the laws of any jurisdiction to give effect to the provisions of this Article 10 (*Removal of the General Partner; Termination of the Fund*) including the power and authority to execute, verify, swear to, acknowledge, deliver, record and file all forms, certificates and other instruments, including any amendments to this Agreement, as may be necessary for such purposes.

**10.3 Co-operation on Removal.** If the General Partner is removed or replaced, the removed General Partner and the Fund Manager shall:

10.3.1 provide to the replacement General Partner (or such other Person as has been notified to the removed General Partner and the Fund Manager with the approval of a Majority in Interest) or the

liquidator of the Fund, all books of accounts, records, registers and other documents belonging to the Fund; and

10.3.2 use its best efforts to transfer control of the Fund and all assets of the Fund to such replacement General Partner or other Person without delay.

10.4 **Consequences of Termination Notice.** Upon the delivery of a Removal For Cause Notice or a Removal Without Cause Notice in accordance with Section 10.1 (*Removal/Termination Notice*) in which the Limited Partners elect to terminate the Fund, the Fund shall be dissolved and wound up in accordance with Section 18.2 (*Dissolution*) and Section 18.3 (*Winding Up*); provided that with respect to a termination of the Fund on delivery of a Removal for Cause Notice, the right of the General Partner to receive further distributions of Carried Interest from the Fund shall immediately and automatically terminate, no further distributions of Carried Interest shall be made to the General Partner, and any amounts retained in the Escrow Account pursuant to Section 14.7.2 shall immediately be returned to the Fund for distribution to the Limited Partners[]; provided, further that with respect to a termination of the Fund on delivery of a Removal Without Cause Notice, the General Partner's entitlement to receive further distributions of Carried Interest shall be immediately and automatically reduced to [ ]% of the Carried Interest to which it is otherwise entitled].

## 11. KEY PERSON EVENT; SUSPENSION

11.1 The General Partner shall immediately notify each Limited Partner in writing of the occurrence of any Key Person Event.

11.2 Upon the occurrence of a Key Person Event, the Commitment Period shall automatically and immediately be suspended until a Majority in Interest approves in writing a remediation plan for such Key Person Event or otherwise waives such suspension generally or with respect to one or more specified Portfolio Investments.

11.3 The Commitment Period shall be automatically suspended upon the delivery to the General Partner of a written notice approved by [ ]% in Interest to suspend the Commitment Period.

11.4 If a Majority in Interest does not approve a remediation plan for, or otherwise waive a suspension related to, any Key Person Event or suspension under Section 11.3 within [ninety (90)] days of any suspension of the Commitment Period, then the Commitment Period shall automatically and immediately be terminated.

11.5 At any time during which the investment activities of the Fund are suspended or terminated pursuant to this Article 11 (*Key Person Event; Suspension*), no Drawdown Notices may be issued to any Limited Partner without the prior written consent of the Advisory Committee, other than to:

11.5.1 pay Fund Expenses;

11.5.2 complete Portfolio Investments (including, subject to Section 7.1.4.5 (*Investment Restrictions*), Follow-on Investments) that the Fund became legally bound to complete prior to such suspension or termination, provided that, unless otherwise approved by the Advisory Committee, such Portfolio Investments must be closed within six months of the Key Person Event and the General Partner shall cause the Limited Partners to be notified of all such investments within ten (10) Business Days following such termination or suspension; and

11.5.3 repay indebtedness and satisfy liabilities of the Fund, in each case incurred prior to such suspension.

## **12. GENERAL MEETING OF PARTNERS**

12.1 The Fund shall have a meeting of Partners (a “**General Meeting**”) at a time and in accordance with this Article 12 (*General Meeting of Partners*) at a place to be determined by the General Partner (but at least once each year beginning in the year after the year of the Initial Closing Date), and the General Partner shall call additional General Meetings upon delivery to the General Partner of written request to do so approved by Limited Partners (other than Affiliated Partners and Defaulting Partners) representing at least [20]% of the aggregate Commitments (excluding the Commitments of Affiliated Partners and Defaulting Partners). The General Partner shall give at least sixty (60) days’ notice of the time and place of a General Meeting to each Limited Partner, which notice shall set out the agenda for such General Meeting.

12.2 The Partners may participate in a General Meeting by telephone or similar communications equipment by means of which all Persons participating in the meeting can hear and speak to each other.

12.3 A Person designated by the General Partner shall keep written minutes of all of the proceedings and votes of any such General Meeting.

12.4 A copy of the written minutes and of any materials distributed at such meeting will be made available to all Limited Partners within [thirty (30)] days after the meeting.

## **13. ADVISORY COMMITTEE**

### **13.1 Appointment and Replacement of Members.**

13.1.1 The General Partner shall establish an advisory committee of the Fund (the “**Advisory Committee**”) no later than the Final Closing Date consisting of at least [three (3)] and a maximum of [seven (7)] members that are appointed by the Fund Manager, each of which shall be a representative of a Limited Partner or investor in a Feeder Entity that is not an Interested Person, provided that no Limited Partner shall be represented by more than one member on the Advisory Committee.

13.1.2 Any member of the Advisory Committee shall immediately cease to be a member of the Advisory Committee if the Limited Partner that such Person represents (i) becomes a Defaulting Partner, (ii) Transfers its entire Commitment (other than to an Affiliate of such Limited Partner) or (iii) otherwise withdraws from the Fund.

13.1.3 Any Advisory Committee member may resign by giving the General Partner prior written notice, and the Limited Partner that is represented by the resigning member shall be entitled to designate a successor member thereto.

### **13.2 Scope of Authority.**

13.2.1 The Advisory Committee shall provide such advice and opinions to the General Partner as requested by the General Partner, as required pursuant to this Agreement or that the Advisory Committee may otherwise choose to provide, provided that, notwithstanding anything to the contrary provided herein, the members of the Advisory Committee shall take no part in the management or control of the business or affairs of the Fund.

13.2.2 Each of the General Partner, the Fund Manager and the Limited Partners acknowledge and agree that, to the fullest extent permitted by applicable law, (i) none of the Advisory Committee, any member of the Advisory Committee nor any Limited Partner that such a member represents shall owe any fiduciary duties to the Fund, the General Partner, the Fund Manager or any Limited Partner, and (ii) in making any determinations, each member of the Advisory Committee shall be entitled to consider only such interests and factors as such member desires, including the interests of the Limited Partner that such member represents, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Fund or any other Person.

13.2.3 The General Partner shall inform the Advisory Committee in writing of any matters requiring Advisory Committee approval pursuant to this Agreement and may not proceed with any such matter unless and until such approval is obtained.

13.2.4 The General Partner shall at all times seek to implement the best practices described in the ILPA Principles for the Advisory Committee.

13.2.5 The General Partner shall:

13.2.5.1 furnish to the Advisory Committee such information concerning the Fund and the Fund's assets as the Advisory Committee may request, provided that the cost of furnishing any such information shall be a Fund Expense;

13.2.5.2 disclose to the Advisory Committee on an annual basis:

(a) all Fee Income paid or payable; and

(b) the calculations and a list of the Management Fee, Carried Interest, and other Fund Expenses incurred in the relevant Fiscal Year, in each case, during such year;

13.2.5.3 promptly notify the Advisory Committee of:

(a) the commencement of any Proceeding against the Fund, any Prior Fund, the General Partner, the Fund Manager, any Key Person or any of their Affiliates, relating to the business of the Fund, the General Partner or the Manager, and the outcome, when resolved, of any such Proceeding; provided, that the Advisory Committee in its capacity as a committee of the Fund shall have access to any additional details of any such Proceeding upon request to the extent permitted by law;

(b) the commencement of any Proceeding (other than routine examinations) by any regulatory or administrative body with authority over the Fund, the General Partner, the Fund Manager, any Key Person or any of their Affiliates that involves an allegation of a material violation of law by any of the foregoing Persons, and the outcome, when resolved, of any Proceeding (including routine examinations); provided, that the Advisory Committee in its capacity as a committee of the Fund shall have access to any additional details of any Proceeding upon request to the extent permitted by law;

(c) any Change of Control; and

(d) any conflicts of interest that it is required to disclose pursuant to Section 9.5 (*Other Conflicts of Interest*).

13.2.5.4 inform the Advisory Committee of any co-investment opportunity that has been offered by the General Partner or any of its Affiliates to any Person;

13.2.5.5 if the Advisory Committee requests, subject any Value determined by or on behalf of the Fund or the General Partner to confirmation or (if not so confirmed) adjustment by an independent recognized investment banking, accounting or other appraisal firm selected by the General Partner, consented in writing by the Advisory Committee, and appointed by (and acting on behalf of) the Fund; and

13.2.5.6 promptly notify the Advisory Committee of any claim for indemnification made pursuant to Section 16.2 (*Indemnification of Covered Persons*) that the General Partner intends to satisfy from the Fund's assets; and

13.2.5.7 promptly notify the Advisory Committee of any approvals required under the Advisers Act (including under Section 206(3) thereof) or any consent to an assignment that would result in any "assignment" (within the meaning of the Advisers Act) with respect to the General Partner, the Fund Manager, or any other investment advisory affiliate of the General Partner. The written consent of the Advisory Committee to any such approvals under this Section 13.2.5.7 shall constitute consent of the Limited Partners and the Fund for purposes of the Advisers Act.

### 13.3 Meetings.

#### 13.3.1 Meetings of the Advisory Committee:

13.3.1.1 shall be called by the General Partner at any time to consider matters for which the consent, approval, review or waiver of the Advisory Committee is required by this Agreement or is requested by the General Partner, provided that the General Partner shall call at least one meeting of the Advisory Committee per year; and

13.3.1.2 may be called at any time by any Limited Partner that has a representative member on the Advisory Committee.

13.3.2 Written notice of each Advisory Committee meeting shall be given to each member of the Advisory Committee at least ten (10) Business Days prior to the date on which the meeting is to be held. Attendance at any meeting of the Advisory Committee by a member of the Advisory Committee shall constitute waiver of such notice. Any notice calling for an Advisory Committee meeting shall contain a description of the matters to be discussed together with all relevant documents to be discussed at such meeting.

13.3.3 Members of the Advisory Committee may participate in a meeting of the Advisory Committee by telephone or similar communications equipment by means of which all Persons participating in the meeting can hear and speak to each other.

13.3.4 The Advisory Committee may at any time meet *in camera* without any Interested Person or any representative of any Interested Person present.

13.3.5 Minutes of Advisory Committee meetings (other than *in camera* meetings) shall be drawn up by the General Partner, which shall send a copy of the same to each member of the Advisory Committee, and the minutes shall be included in the quarterly reports provided to all Limited Partners.

### 13.4 Advisory Committee Resolutions.

13.4.1 All actions taken by the Advisory Committee shall be by a written consent setting forth the action so taken and (unless a higher threshold has been specified in this Agreement) approved by a majority of the members of the Advisory Committee, which such written consent may be given by email or any other written form.

13.4.2 Each member of the Advisory Committee shall have one vote.

13.4.3 Except as expressly provided in this Article 13 (*Advisory Committee*), the Advisory Committee shall conduct its business in such manner and by such procedures as a majority of its members considers appropriate.

### 13.5 Fees; Expenses; Indemnity, etc.

13.5.1 The members of the Advisory Committee shall not receive any advisory fees or other fees or compensation.

13.5.2 Each member of the Advisory Committee shall pay its own costs relating to such membership but shall be reimbursed by the Fund for reasonable out-of-pocket expenses incurred in attending meetings of the Advisory Committee.

13.5.3 The AC Covered Persons shall be exculpated and indemnified by the Fund as provided in Section 16.2 (*Indemnification of Covered Persons*).

13.5.4 The Advisory Committee shall be entitled to appoint professional advisors, and the General Partner shall cause the reasonable fees and expenses of any such advisors to be paid by the Fund as a Fund Expense.

13.6 **Insurance.** The General Partner shall require the Fund at all times to maintain insurance for the benefit of each member of the Advisory Committee and the Limited Partner that such member represents to adequately cover any potential liability (including against claims arising out of breach of duty, breach of trust or negligence) of such Person with respect to the functions carried out by the relevant member of the Advisory Committee.

## 14. DISTRIBUTIONS; ALLOCATIONS

### 14.1 General.

14.1.1 Subject to Section 14.1.2, the General Partner may cause the Fund to make distributions of cash, securities and other property to the Partners at any time and from time to time in the manner described in this Agreement. Except as otherwise provided herein, Distributable Proceeds comprised of Temporary Investment Income shall generally be distributed on an [annual] basis and Distributable Proceeds other than Temporary Investment Income shall be distributed as soon as practicable after receipt by the Fund but in all events within [forty-five (45)] days of receipt by the Fund.

14.1.2 Notwithstanding anything to the contrary provided herein, neither the Fund nor the General Partner on behalf of the Fund shall be required to make a distribution to any Partner on account of its interest in the Fund to the extent such distribution would violate any applicable law.

14.1.3 Each distribution shall be accompanied by a distribution notice consistent with the requirements of the ILPA Capital Call and Distribution Notice Template (and including at least a description of the source and nature of the Distributable Proceeds, the calculation of the amount being

distributed including Carried Interest, and any amounts that increase Remaining Commitments pursuant to Section 6.4 (*Reinvestment*)).

**14.2 Distributions of Temporary Investment Income.** Subject to 6.5 (*Use of Distributable Proceeds to Fund Drawdowns*), Distributable Proceeds comprised of Temporary Investment Income shall be distributed among the Partners (other than Defaulting Partners) in proportion to their Sharing Percentages with respect to the relevant Portfolio Investment.

**14.3 Distributions of Distributable Proceeds.** Subject to 6.5 (*Use of Distributable Proceeds to Fund Drawdowns*), Distributable Proceeds (other than Temporary Investment Income) from any Portfolio Investment shall be initially apportioned among the Partners in proportion to their Sharing Percentages with respect to the applicable Portfolio Investment. The amount so apportioned to any Affiliated Partner shall be distributed to such Person and, except as otherwise provided in this Article 14 (*Distributions; Allocations*) and Section 6.6 (*Defaulting Partners*), the amount so apportioned to each other Partner shall be distributed between the General Partner and such Partner as follows:

14.3.1 First, 100% to such Partner until such Partner has received cumulative distributions pursuant to this Section 14.3.1 equal to such Partner's aggregate Capital Contributions;

14.3.2 Second, 100% to such Partner until the cumulative amount distributed to such Partner pursuant to this Section 14.3.2 is equal to the Preferred Return for such Partner;

14.3.3 Third, [80]% to the General Partner and [20]% to such Partner until the General Partner has received cumulative distributions with respect to such Partner pursuant to this Section 14.3.3 equal to [20]% of the cumulative amount of distributions made or being made to (i) such Partner pursuant to Section 14.3.2 and this Section 14.3.3 and (ii) the General Partner with respect to such Partner pursuant to this Section 14.3.3; and

14.3.4 Fourth, thereafter, (i) [20]% to the General Partner and (ii) [80]% to such Partner.

#### **14.4 Distributions in Kind.**

14.4.1 Prior to the final distribution of assets in connection with the dissolution and winding up of the Fund, the Fund may distribute only cash or Marketable Securities to a Partner.

14.4.2 If any Limited Partner notifies the General Partner in writing that it elects not to receive any distributions of Securities, then (i) no such distribution shall be made to such Limited Partner and (ii) the General Partner shall use commercially reasonable efforts to sell on behalf of such Limited Partner any Securities that would otherwise have been distributed to such Limited Partner for cash, from which the General Partner's reasonable out-of-pocket expenses shall first be deducted; provided that, without the written consent of the Advisory Committee or the applicable Limited Partner, the General Partner shall not sell any such Securities to itself or to any of its Affiliates. The General Partner shall use commercially reasonable efforts to obtain the best price and best execution in connection with the sale of such Securities, but shall have no liability to such Limited Partner for failure to so obtain the best price or best execution and to the maximum extent permitted by applicable law, unless otherwise agreed by the General Partner in writing, each such Limited Partner shall reimburse the Fund and the General Partner for the reasonable costs of the General Partner in acting on such request or such arrangement other than any cost or liability arising from the General Partner's fraud or willful misconduct; provided that if the General Partner is selling identical Securities in comparable amounts for its own account or for the account of any Affiliate at the same time that it is selling Securities on behalf of such Limited Partner, the General Partner agrees that it shall not sell such Securities for the account of such Limited Partner at a price lower than the price it obtains

for itself or such Affiliate, subject to legal, tax, regulatory, accounting and other similar considerations applicable to such Limited Partner. Any proceeds received by the Fund pursuant to this Section 14.4.2 shall be distributed to the applicable Limited Partner as soon as reasonably practicable.

14.4.3 In the event that a distribution of Marketable Securities or assets is made to any Limited Partner, such Marketable Securities or assets shall be deemed to have been sold at the Value determined by the General Partner (subject to Section 13.2.5.5), (i) in the case of Marketable Securities, using the average of the closing prices recorded on the market where the Securities are traded over the five (5) trading days preceding the date of distribution and the five (5) trading days following the date of distribution, and (ii) in the case of other assets, considering all pertinent factors, information and data, and, in either case, all of the proceeds of such sale shall be paid by or on behalf of the Fund and the General Partner to the relevant Limited Partner and be deemed to have been distributed in the form of Distributable Proceeds to such Limited Partner pursuant to Section 14.3 (*Distributions of Distributable Proceeds*).

14.5 **Tax Distributions.** Notwithstanding the priorities set forth in Section 14.3 (*Distributions of Distributable Proceeds*) above, the General Partner shall have the authority to cause the Fund to make distributions pursuant to this Section 14.5 to all Partners *pro rata* to their respective Commitments up to the excess, for each Partner, of such Partner's aggregate Tax Amounts for the relevant fiscal year and all prior fiscal years, over the cumulative amount of distributions previously made to such Partner pursuant to Article 14 (*Distributions; Allocations*) with respect to such Fiscal Year and all prior Fiscal Years. Such distributions shall be treated for all purposes hereof, other than this Section 14.5 (*Tax Distributions*), as advances of distributions pursuant to Section 14.2 (*Distributions of Temporary Investment Income*) and Section 14.3 (*Distributions of Distributable Proceeds*) and shall be applied to reduce the amount of future distributions to such Partner pursuant to Section 14.2 (*Distributions of Temporary Investment Income*) and Section 14.3 (*Distributions of Distributable Proceeds*).

#### 14.6 **Withholding.**

14.6.1 If the Fund incurs an obligation to pay (directly or indirectly) any amount in respect of taxes with respect to amounts allocated or distributed to one or more Partners (including as a result of an audit or other tax proceeding), including but not limited to withholding taxes imposed on any Partner's or former Partner's share of the Fund's gross or net income or gains (or items thereof), income taxes, and any interest, penalties or additions to tax or any taxes or other liabilities under Section 15.3 (*Tax Information*) (a "**Tax Liability**"), or if the amount of a payment or distribution of cash or other property to the Fund is reduced as a result of withholding by other parties in satisfaction of any such Tax Liability:

14.6.1.1 All payments made by the Fund in satisfaction of such Tax Liability and all reductions in the amount of a payment or distribution that the Fund otherwise would have received shall be treated, pursuant to this Section 14.6 (*Withholding*), as distributed to those Partners or former Partners to which the related Tax Liability is attributable at the time pursuant to Article 14 (*Distributions; Allocations*), and therefore shall reduce distributions such Partners would otherwise be entitled to under this Agreement; and

14.6.1.2 Notwithstanding anything to the contrary provided herein, Capital Accounts of the Partners may be adjusted by the General Partner in an equitable manner so that, to the extent feasible, the burden of taxes withheld at the source or paid by the Fund is borne by those Partners to which such tax obligations are attributable.

14.6.2 For purposes of this Section 14.6, any obligation to pay any amount in respect of taxes (including withholding taxes and any interest, penalties or additions to tax) incurred by the Fund or the

General Partner with respect to income of or distributions made to any Partner or former Partner shall constitute a Fund Expense.

14.6.3 Notwithstanding anything to the contrary provided herein, the General Partner, in its reasonable discretion, will determine the amount, if any, of any Tax Liability attributable to any Partner or former Partner. For this purpose, the General Partner shall be entitled to treat any Limited Partner as ineligible for an exemption from or reduction in rate of such Tax Liability under a tax treaty or otherwise except to the extent that such Limited Partner provides the General Partner with such evidence as the General Partner or the relevant tax authorities may require to establish such Limited Partner's entitlement to such exemption or reduction, and may treat a Tax Liability as attributable to a Limited Partner to the extent the Tax Liability is due to the Limited Partner failing to provide such information or certifications regarding the Limited Partner or its beneficial owners as the General Partner may reasonably request or as the relevant tax authorities may require.

#### 14.7 Clawback.

14.7.1 If, upon any of (i) the first anniversary following the end of the Commitment Period, (ii) a Removal Date, (iii) the liquidation of the Fund and final distribution to the Partners pursuant to Section 18.3.2.2; or (iv) any re-advance of any amounts pursuant to Section 16.3 (*Limited Partner Giveback*), with respect to any Limited Partner, either:

(I) the General Partner has received cumulative distributions of Carried Interest pursuant to Section 14.3 (*Distributions of Distributable Proceeds*), Section 14.5 (*Tax Distributions*) and Section 18.3 (*Winding Up*) attributable to such Limited Partner that exceed the amount of distributions of Carried Interest that the General Partner should have received, taking into account in the aggregate all Capital Contributions, all distributions by the Fund pursuant to Section 14.3 (*Distributions of Distributable Proceeds*), Section 14.5 (*Tax Distributions*) and Section 18.3 (*Winding Up*), and all amounts returned pursuant to Section 16.3 (*Limited Partner Giveback*) attributable to such Limited Partner at such time; or

(II) the distributions received by such Limited Partner pursuant to Section 14.3 (*Distribution of Distributable Proceeds*) and Section 18.3 (*Winding Up*) to the extent in accordance with Section 14.3 (*Distribution of Distributable Proceeds*) are less than the sum of (a) the Capital Contributions made by such Limited Partner and (b) the Preferred Return with respect to such Limited Partner,

then within ten (10) Business Days of such occurrence, (i) the General Partner shall notify each Limited Partner in writing (providing detailed calculations), and (ii) the General Partner shall contribute to the Fund the lesser of:

(1) the greater of (a) the amount of the excess distributions described in clause (I) of Section 14.7.1 and (b) the amount of the shortfall described in clause (II) of Section 14.7.1; and

(2) the amount of distributions of Carried Interest made to the General Partner pursuant to Section 14.3 (*Distributions of Distributable Proceeds*) and Section 18.3 (*Winding Up*) attributable to such Limited Partner, less the sum of any taxes actually paid or payable by the General Partner (or its direct or indirect owners) thereon, as disclosed and evidenced to the Limited Partners; provided that the amount of such taxes shall be deemed reduced by the amount of any tax benefit that would be realized by the General Partner (or its direct or indirect beneficial owners) in respect of the contribution pursuant to this Section 14.7.1,

and the General Partner shall cause the Fund, subject to Section 14.6 (*Withholding*) and applicable law, to distribute such amount to such Limited Partner; provided that any requirement of the General Partner to make any contribution to the Fund pursuant to this Section 14.7.1 shall be satisfied first by the amount, if any, held in the Escrow Account at such time.

14.7.2 [Notwithstanding the priorities set forth in Section 14.3 (*Distributions of Distributable Proceeds*) and, except as provided in Section 14.5 (*Tax Distributions*), the General Partner shall deposit [30]% of all amounts that would otherwise be distributed to the General Partner with respect to each Partner pursuant to Sections 14.3.3 and 14.3.4 above into a separate account of the Fund held with the Fund's third-party commercial bank for the account of the applicable Partner (the "**Escrow Account**"), until such time as such applicable Partner has received aggregate distributions in an amount equal to its Commitment and any Preferred Return calculated on the aggregate Capital Contributions made by such Partner, whereupon the amounts held in the Escrow Account shall be released to the General Partner. The General Partner shall be entitled to any Temporary Investment Income arising from the amounts that are held in the Escrow Account. The balance of amounts retained in the Escrow Account shall, in any event, immediately prior to completion of the final liquidation of the Fund be released to the General Partner after the deduction of the amount (if any) the General Partner would otherwise be liable to return to the Fund pursuant to Section 14.7.1, which amount shall be distributed to the relevant Partner in accordance with the provisions thereof.]

14.7.3 The General Partner shall ensure that each partner of the General Partner (which, for purposes of this Section 14.7.3, shall include each indirect owner of any such partner) who is entitled to receive any portion of Carried Interest shall have entered into an undertaking in favor of the Fund and for the benefit of the Limited Partners pursuant to which, in the event the General Partner is obligated to make a contribution to the Fund pursuant to Section 14.7.1, such partner of the General Partner shall be obligated, on a joint and several basis, to pay directly to the Fund its pro rata share of such contribution amount (based on amounts received as Carried Interest) to the extent the General Partner has insufficient funds or has otherwise failed to meet its obligation under Section 14.7.1. The Fund and the Limited Partners shall be direct and third-party beneficiaries, respectively, of and entitled to enforce such undertaking. Any contributions made to the Fund pursuant to this Section 14.7.3 shall be distributed to the Limited Partners pursuant to Section 14.7.1.<sup>19</sup>

14.7.4 The obligations of the General Partner and the Fund pursuant to this Section 14.7 (*Clawback*) shall survive (i) the removal and replacement of the General Partner and the Fund Manager pursuant to Article 10 (*Removal of the General Partner; Termination of the Fund*), and (ii) the dissolution and liquidation of the Fund, and shall at all times apply to any former General Partner with respect to the distributions to which it is entitled. For the avoidance of doubt, for the purposes of this Section 14.7 (*Clawback*) reference to the "General Partner" shall be interpreted to include any former General Partner.

## 14.8 Capital Accounts.

14.8.1 There shall be established on the books and records of the Fund a capital account (a "**Capital Account**") for each Partner.

14.8.1.1 There shall be added to the Capital Account of each Partner (i) such Partner's Capital Contributions (including Liabilities of the Fund assumed by such Partner as provided in

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<sup>19</sup> Alternatively, the General Partner may provide such undertaking in its organizational documents or the language may be revised to require each Carried Interest recipient to return distributions and, with respect to this obligation, become a signatory of the Agreement. In either case, the General Partner should provide copies of the undertaking (typically in the form of a personal guaranty) or of an extract from the General Partner's organizational documents, and evidence of the signatures of all such Carried Interest recipients.

Regulations Section 1.704-1(b)(2)(iv)(c)) to the Fund and (ii) such Partner's distributive share of Net Income and any item in the nature of income or gain that is specially allocated to the Partner pursuant to Section 14.11 (*Special Allocations*).

14.8.1.2 There shall be subtracted from the Capital Account of each Partner (i) the amount of any money (including Liabilities of such Partner assumed by the Fund as provided in Regulations Section 1.704-1(b)(2)(iv)(c)), and the Gross Asset Value of any other property, distributed to such Partner and (ii) such Partner's distributive share of Net Loss and any item in the nature of loss or expense that is specially allocated to such Partner pursuant to Section 14.10 (*Loss Limitation*) or Section 14.11 (*Special Allocations*).

14.8.1.3 The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Section 704(b) of the Code and Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. If the General Partner determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Regulations, the General Partner may make such modifications.

14.8.2 Notwithstanding anything to the contrary provided herein, no Partner shall have any obligation to make up or otherwise make a Capital Contribution with respect to a deficit balance in its Capital Account. A negative balance in a Partner's Capital Account shall not create any Liability on the part of that Partner to any third party.

14.9 **General Application.** Except as expressly provided herein, the items of income, gain, loss or deduction of the Fund comprising Net Income or Net Loss for a Fiscal Year shall be allocated by the General Partner among the Partners in a manner such that the Capital Account of each Partner, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to:

14.9.1 the distributions that would be made to such Partner pursuant to Section 18.3.2.2 hereof if (x) the Fund were dissolved, its affairs wound up and its assets sold for cash equal to their Gross Asset Values, (y) all Fund Liabilities were satisfied (limited in the case of each Nonrecourse Liability to the Gross Asset Value of the assets securing such Liability) and (z) the net assets of the Fund were distributed in accordance with Section 18.3.2.2 to the Partners immediately after making such allocations, minus

14.9.2 such Partner's share of Partnership Minimum Gain and Partner Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of the assets.

14.10 **Loss Limitation.** Notwithstanding anything to the contrary provided in Section 14.9 (*General Application*), the amount of items of Fund expense and loss allocated pursuant to Section 14.9 (*General Application*) to any Partner shall not exceed the maximum amount of such items that can be so allocated without causing such Partner to have an Adjusted Capital Account Deficit at the end of any Fiscal Year, unless each Partner would have an Adjusted Capital Account Deficit. All such items in excess of the limitation set forth in this Section 14.10 shall be allocated first, to the other Partners until they would not be entitled to any further allocation, and thereafter to the Partners as determined by the General Partner in its sole and absolute discretion.

14.11 **Special Allocations.** Notwithstanding anything to the contrary provided in this Article 14 (*Distributions; Allocations*), special allocations shall be made in respect of any minimum gain chargeback as required by Section 1.704-2 of the Regulations, and any qualified income offset as required by Section 1.704-1(b)(2)(ii)(d)(3) of the Regulations. If any Partner has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount, if any, that such Partner is obligated to

restore pursuant to this Agreement, and (ii) the amount such Partner is deemed obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Partner shall be specially allocated items of Fund income and gain in the amount of such excess as quickly as possible; provided, that such an allocation shall be made only if and to the extent that a Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article 14 (*Distributions; Allocations*) have been tentatively made as if this sentence were not in this Agreement. Nonrecourse Deductions shall be allocated to the Partners as determined by the General Partner. Partner Nonrecourse Deductions shall be allocated to the Partner who bears the economic risk of loss with respect to the Liability to which such Partner Nonrecourse Deductions are attributable in accordance with Section 1.704-2(j) of the Regulations. Each Partner's share of any Nonrecourse Liabilities, for purposes of Section 1.752-3(a)(3) of the Regulations, shall be determined by the General Partner.

#### 14.12 **Tax Allocations.**

14.12.1 Each item of income, gain, loss, deduction or credit for federal income tax purposes that corresponds to an item of income, gain, loss or expense that is either taken into account in computing Net Income or Net Loss or is specially allocated pursuant to Section 14.9 (*General Application*), Section 14.10 (*Loss Limitation*) or Section 14.11 (*Special Allocations*) (a "**Book Item**") shall be allocated among the Partners in the same proportion as the corresponding Book Item; provided, that in the case of any Fund asset the Gross Asset Value of which differs from its adjusted tax basis for federal income tax purposes, income, gain, loss and deduction with respect to such asset shall be allocated solely for federal income tax purposes in accordance with the principles of Sections 704(b) and (c) of the Code (using any permissible method determined by the General Partner) so as to take account of the difference between the Gross Asset Value and the adjusted tax basis of such asset.

14.12.2 All tax credits shall be allocated among the Partners as determined by the General Partner, in its sole and absolute discretion, consistent with applicable law.

14.12.3 The tax allocations made pursuant to this Section 14.12 (*Tax Allocations*) shall be solely for tax purposes and shall not affect any Partner's Capital Account or share of non-tax allocations or distributions under this Agreement.

14.12.4 The Limited Partners are aware of the income tax consequences of the allocations made by this Agreement and shall report their shares of Net Income and Net Loss and other items of Fund gross income, gain, loss and deduction for income tax purposes consistently with this Agreement as determined by the General Partner and as reported to them (or to be reported to them) on Internal Revenue Service Form 1065, Schedule K-1 (or such successor form).

14.13 **No Interest.** No Partner shall be entitled to receive interest on that Limited Partner's Capital Contributions or the balance of that Partner's Capital Account.

14.14 **Right of Set Off.** Where any Limited Partner owes any amount or has incurred any liability to the Fund under this Agreement, the General Partner shall be entitled to set off the amount of that liability against any sum or sums that would otherwise be due to that Limited Partner under this Agreement. Any exercise by the General Partner of the right of set off under this Section 14.14 (*Right of Set Off*) shall be without prejudice to any other rights or remedies available to the Fund under this Agreement or otherwise.

### 15. **BOOKS AND RECORDS; REPORTS TO LIMITED PARTNERS**

15.1 **Maintenance of Books and Records.** The General Partner shall keep or require the Fund to keep or cause to be kept at the address of the Fund, the Register and full and accurate accounts of the transactions

of the Fund in proper books, accounts and records of account and other records in accordance with [the Act], until the final liquidation of the Fund and for a period of at least seven years thereafter (and shall notify the Limited Partners before it ceases to keep such records and, if requested to do so by any Limited Partner, provide copies of such books, accounts and records to such Limited Partner). Such books, accounts and records shall be maintained in accordance with GAAP.

## 15.2 Audits and Reports.

15.2.1 The books, accounts and records of the Fund as of the end of each Fiscal Year shall be audited by the Auditor. Until the final liquidation of the Fund, the General Partner shall cause the Fund to prepare and provide to each Limited Partner the following:

15.2.1.1 within ninety (90) days after the end of each Fiscal Year (commencing after December 31 of the Fiscal Year of the Initial Closing Date), a financial report audited by the Auditor as of the end of such Fiscal Year, prepared in compliance with GAAP, which shall include, among other things, (i) the audited financial statements of the Fund, (ii) confirmation that the amounts of Management Fee and Carried Interest that have been distributed, the amount of Carried Interest retained in the Escrow Account pursuant to Section 14.7.2 and the amounts of any Fee Income applied to reduce the Management Fee in accordance with Section 8.4 (*Management Fee Offset*) are correct, and (iii) each Limited Partner's closing Capital Account balance as of the end of such Fiscal Year; and

15.2.1.2 within forty-five (45) days after the end of each calendar quarter (commencing with the first full calendar quarter after the date of the first Drawdown), an unaudited report as of the end of such quarter made up in compliance with GAAP.

15.2.2 Each financial report provided to the Limited Partners pursuant to Section 15.2.1 shall be consistent with the requirements of the ILPA Reporting Template and consist of at least:

15.2.2.1 the assets and liabilities of the Fund as of the end of such Fiscal Year or calendar quarter, as appropriate;

15.2.2.2 the unaudited financial statements of the Fund for the relevant quarter;

15.2.2.3 the Value of each Portfolio Investment;

15.2.2.4 the net profit or net loss of the Fund for such Fiscal Year or calendar quarter, as appropriate;

15.2.2.5 a detailed description of all Fund Expenses paid by or on behalf of the Fund (i) during the relevant Fiscal Year, and (ii) since the Initial Closing Date;

15.2.2.6 the amount of any Reserves;

15.2.2.7 each Limited Partner's closing Capital Account balance as of the end of the relevant quarter; and

15.2.2.8 the amount of debt for which the Fund generally, and any Portfolio Investment particularly, is directly or indirectly encumbered, as well as whether or not any such debt is recourse to the Fund or to a Portfolio Company or is cross collateralized among other investments or vehicles managed by any Interested Person.

15.2.3 The General Partner shall provide to each Limited Partner, together with the financial reports described in Section 15.2.1:

15.2.3.1 descriptive investment information with respect to each Portfolio Company;

15.2.3.2 the results of operations of each Portfolio Company;

15.2.3.3 any reporting on environmental, social and governance risks and opportunities in the Fund as deemed appropriate by the General Partner or as requested by such Limited Partner;

15.2.3.4 a report on the status and performance of the Fund and each of the Portfolio Investments containing a confirmation of (i) the aggregate amount of the unreturned Capital Contribution, and (ii) the Remaining Commitment, of such Limited Partner; and

15.2.3.5 a report of the total debt and credit in use by the Fund, including with respect to any Credit Facility:

(a) the balance and percentage of total outstanding uncalled capital;

(b) the number of days outstanding of each Drawdown;

(c) the current use of the proceeds from such Credit Facility;

(d) the net internal rate of return with and without the use of the Credit Facility;

(e) terms of the Credit Facility (including but not limited to any upfront fees as well as drawn and undrawn fees);

(f) costs to the Fund (including but not limited to interest and fees); and

(g) any such further information as the General Partner shall deem appropriate.

15.2.4 Within 120 days of the end of each fiscal year, the chief financial officer or comparable officer of the General Partner or the Fund Manager shall provide to each Limited Partner a letter executed by such officer certifying that to such person's knowledge (a) the annual audited financial statements provided to the Limited Partner fairly present in all material respects the financial condition of the Fund as of such date, (b) the General Partner has no knowledge of the existence of any material breach of this Agreement or any other agreement to which the Fund is a party or of any breach of fiduciary duties, and (c) all distributions by the Fund to the Limited Partners have been made in accordance with this Agreement.

15.2.5 The General Partner shall use reasonable efforts to provide to each Limited Partner such other information as is reasonably requested by such Limited Partner for any purpose reasonably related to such Limited Partner's interest as a Limited Partner, including access to the Fund's administrators and the Auditor and any information they possess with respect to the Fund. In addition, the General Partner shall, at the request of a Limited Partner, use its best efforts to provide such Limited Partner with any other information related to the General Partner or the Fund or its Portfolio Investments that such Limited Partner is required to provide by that Limited Partner's governing authorities.

### 15.3 **Tax Information.**

15.3.1 The General Partner shall, within ninety (90) days after the end of each Fiscal Year (commencing after December 31 of the Fiscal Year of the Initial Closing Date), prepare and send, or cause to be prepared and sent, to each Limited Partner copies of such information, including copies of Internal Revenue Service Form 1065, Schedule K-1 (or such successor form) or any successor schedule or form, and such other information that such Limited Partner may reasonably request, for the United States federal, state, local and non-United States tax reporting purposes of such Limited Partner arising from the Fund's activities.

15.3.2 Each Limited Partner shall provide to the General Partner such information that is in such Limited Partner's possession or is reasonably available to it as the General Partner may reasonably request to comply with any applicable tax and anti-money laundering laws and regulations.

15.3.3 For each taxable year that the Partnership Tax Audit Rules are applicable to the Fund, the following provisions shall apply:

15.3.3.1 [The General Partner is hereby designated as the "partnership representative" within the meaning of Section 6223(a) of the Code (the "**Partnership Representative**"), and shall appoint an individual chosen by the General Partner in its sole and absolute discretion to serve as the "designated individual" under the Partnership Tax Audit Rules (the "**Designated Individual**"). The Fund and each Limited Partner agree that they shall be bound by the actions taken by the Partnership Representative and the Designated Individual, as described in Section 6223(b) of the Code. The Limited Partners consent to the election set forth in Section 6226(a) of the Code and agree to take any action and furnish the Partnership Representative and the Designated Individual with any information reasonably necessary to give effect to such election if the Partnership Representative or the Designated Individual decides to make such election. In the event that an election set forth in Section 6226(a) of the Code is not made, then the Partnership Representative and the Designated Individual shall exercise reasonable best efforts to (i) cause any liability at the Fund level for taxes (and any interest, penalties or additions to tax) to be reduced pursuant to Section 6225(c)(3) of the Code (and any comparable provision of applicable state or local tax law) based on the status of the Limited Partners and (ii) allocate to the applicable Limited Partners the economic benefit of any such reduction. Any imputed underpayment imposed on the Fund pursuant to Section 6232 of the Code (and any related interest, penalties or other additions to tax) that the Partnership Representative or the Designated Individual reasonably determines is attributable to one or more Limited Partners shall promptly be paid by such Limited Partners to the Fund (pro rata in proportion to their respective shares of such underpayment) within [fifteen (15)] days following the Partnership Representative's or the Designated Individual's request for payment (and any failure to pay such amount shall result in a subsequent reduction in distributions otherwise payable to such Limited Partner plus interest on such amount calculated at the Prime Rate); and]<sup>20</sup>

15.3.3.2 Each Limited Partner shall provide to the Fund such information, forms or representations which the Partnership Representative and the Designated Individual may reasonably request with respect to the Fund's compliance with applicable tax laws, including, any

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<sup>20</sup> ILPA believes the proposed language bracketed here reflects current market practice for addressing tax audit provisions of the Bipartisan Budget Act of 2015. Current practice is still evolving, however, with respect to this law, and so, for this reason, ILPA believes it is appropriate to bracket the provision in order to accommodate additional investor protections that may become part of market practice as the law is better understood, or to reflect future action by Congress or the Internal Revenue Service to address anomalies under the law. Of particular concern to ILPA and many institutional investors is the Act's imposition of potential liability on fund investors for the unpaid portion of any taxes allocable to a fund investor who has gone bankrupt or is otherwise unwilling or unable to pay. This risk applies equally to taxable and tax-exempt investors, but tax-exempt investors may face unique challenges with language that requires them, essentially, to pay or bear taxes they never owed. Until Congress or the Service acts on this, ILPA encourages inclusion of LPA language confirming that no limited partner will bear tax-audit-related liability in excess of the amount that the limited partner would have properly been allocated in the relevant tax year, if any.

information, forms or representations requested by the Partnership Representative and the Designated Individual to assist in obtaining any exemption, reduction or refund of any withholding or other taxes imposed by any taxing authority or other governmental agency upon the Fund or amounts paid to the Fund.

15.3.4 Each Limited Partner shall provide to the General Partner such information, forms or representations that the General Partner may reasonably request with respect to the Fund's compliance with applicable tax laws. Without limiting the foregoing, each Limited Partner agrees to provide to the General Partner such information regarding the Limited Partner and its beneficial owners, and any forms with respect thereto, as the General Partner may request from time to time in order for the Fund to comply with its obligations under Sections 1471 through 1474 of the Code, all rules, regulations and other guidance issued thereunder, and all administrative and judicial interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and all applicable intergovernmental agreements entered into between the United States and another country (or local country legislation enacted pursuant to such intergovernmental agreement) (collectively, "FATCA"). Notwithstanding anything to the contrary provided herein, each Limited Partner hereby waives the application of any non-U.S. law to the extent that such law would prevent the Fund or the General Partner from reporting to the U.S. Internal Revenue Service, the U.S. Treasury or any other governmental authority any information required to be reported under FATCA with respect to such Limited Partner and its beneficial owners.

15.3.5 Notwithstanding anything to the contrary provided herein, each Limited Partner further agrees that, if such Limited Partner fails to comply with any of the requirements of this Section 15.3 (*Tax Information*) in a timely manner or if the General Partner determines that such Limited Partner's participation in the Fund would otherwise have a material adverse effect on the Fund or the Limited Partners as a result of FATCA, then (i) the General Partner, in its sole discretion, may (A) cause such Limited Partner to Transfer its Interest to a third party (including an existing Limited Partner) or otherwise withdraw from the Fund in exchange for consideration which the General Partner, in its sole discretion, after taking into account all relevant facts and circumstances surrounding such transfer or withdrawal (including the desire to effect such transfer or withdrawal as expeditiously as possible in order to minimize any adverse effect on the Fund and the other Limited Partners as a result of FATCA), deems to be appropriate or (B) take any other action the General Partner deems in good faith to be reasonable to minimize any adverse effect on the Fund and the other Limited Partners as a result of FATCA; and (ii) unless otherwise agreed by the General Partner in writing, such Limited Partner shall, to the maximum extent permitted by applicable law, indemnify the Fund for all losses, costs, expenses, damages, claims, and demands (including, but not limited to, any withholding tax, penalties, or interest suffered by the Fund) arising as a result of such Limited Partner's failure to comply with the above requirements in a timely manner.

15.3.6 Any cost or expense incurred by the Partnership Representative or the Designated Individual in connection with such Person's duties in such capacity shall be paid by the Fund, and the Fund shall reimburse the Partnership Representative and the Designated Individual for their respective reasonable out-of-pocket costs and expenses incurred in such capacities, including travel expenses and the costs and expenses incurred to engage accountants, legal counsel, or experts to assist the Partnership Representative or the Designated Individual in discharging their duties hereunder.

15.3.7 Except as otherwise expressly provided herein, the Partnership Representative and the Designated Individual shall have full and absolute discretion over all tax matters with respect to the Fund, including, but not limited to, the filing of tax returns, tax proceedings, and tax elections.

15.3.8 Notwithstanding anything to the contrary provided herein, the provisions of Section 14.6 (*Withholding*) and this Section 15.3 (*Tax Information*) will survive the liquidation or dissolution of the

Fund, and each Limited Partner agrees to continue to be bound to the terms of Section 14.6 (*Withholding*) and this Section 15.3 (*Tax Information*) following such Limited Partner's withdrawal from the Fund.

#### **15.4 Code Section 83 Safe Harbor Election.**

15.4.1 By executing this Agreement, each Partner authorizes and directs the Fund to elect to have the "Safe Harbor" described in the proposed Revenue Procedure set forth in Internal Revenue Service Notice 2005-43 (the "**IRS Notice**") apply to any interest in the Fund transferred to a service provider by the Fund on or after the effective date of such Revenue Procedure in connection with services provided to the Fund. For purposes of making such Safe Harbor election, the General Partner is hereby designated as the "partner who has responsibility for U.S. federal income tax reporting" by the Fund and, accordingly, execution of such Safe Harbor election by the General Partner constitutes execution of a "Safe Harbor Election" in accordance with Section 3.03(1) of the IRS Notice. The Fund and each Partner hereby agree to comply with all requirements of the Safe Harbor described in the IRS Notice, including the requirement that each Partner shall prepare and file any U.S. federal income tax returns such Partner is required to file reporting the income tax effects of each "Safe Harbor Partnership Interest" issued by the Fund in a manner consistent with the requirements of the IRS Notice. A Partner's obligations to comply with the requirements of this Section 15.4 (*Code Section 83 Safe Harbor Election*) shall survive such Partner's ceasing to be a Partner of the Fund and the termination, dissolution, liquidation and winding up of the Fund, and, for purposes of this Section 15.4 (*Code Section 83 Safe Harbor Election*), the Fund shall be treated as continuing in existence.

15.4.2 Each Partner authorizes the General Partner to amend this Section 15.4 (*Code Section 83 Safe Harbor Election*) to the extent necessary to achieve similar tax treatment with respect to any interest in the Fund transferred to a service provider by the Fund in connection with services provided to the Fund as set forth in Section 4 of the IRS Notice (e.g., to reflect changes from the rules set forth in the IRS Notice in subsequent U.S. Department of Treasury or Internal Revenue Service guidance).

#### **15.5 Listed Transactions; Prohibited Tax Shelter Transactions.**

15.5.1 The General Partner shall use commercially reasonable efforts to cause the Fund not to invest, directly or indirectly, in any investment that, to the knowledge of the General Partner, constitutes a "listed transaction" as defined in Regulations Section 1.6011-4(b)(2) or "reportable transaction" as defined in Regulations Section 1.6011-4(b)(1). If the General Partner reasonably determines that the Fund has engaged in one of the foregoing transactions, the General Partner shall provide the affected Limited Partners with notice thereof and, at the request of an affected Limited Partner and at such Limited Partner's expense, render reasonable assistance to such Limited Partner in preparing and filing IRS Form 8886 (Reportable Transaction Disclosure Statement) and such other forms as may be required by such Limited Partner on account of such transaction.

15.5.2 The General Partner shall cause the Fund not to engage, directly or indirectly, in a transaction that, as of the date the Fund enters into a binding contract to engage in such transaction, would cause a Limited Partner subject to the excise tax in Section 4965 of the Code to be treated as a party to a "prohibited tax shelter transaction" for purposes of Section 4965 of the Code. If the General Partner reasonably determines that the Fund has engaged, directly or indirectly, in a transaction that is a prohibited tax shelter transaction, the General Partner shall promptly notify the affected Limited Partners of such determination and permit such Limited Partners to be excused from participating in such transaction or having any economic rights or liabilities associated with such transaction.

### **16. EXCULPATION AND INDEMNIFICATION**

**16.1 Exculpation of Covered Persons.** No GP Covered Person shall be liable to the Fund or any Partner for any losses, claims, demands, actions, judgments, arbitral decisions, orders, fines, penalties or liability of any nature, including reasonable attorneys' fees, out-of-pocket expenses and court costs ("**Damages**") suffered or incurred by the Fund or any Partner, except to the extent that any such Damages are based upon, arise out of or otherwise are in connection with any Exculpation Exclusion Event. No AC Covered Person shall be liable to anyone for any Damages suffered or incurred by the Fund, any Limited Partner, the General Partner, any Interested Person or any Affiliates of any of the foregoing except to the extent found by a court to be based upon, arise out of or otherwise be in connection with the fraud or bad faith of the relevant Advisory Committee member. For the avoidance of doubt, the actions or omissions of an Advisory Committee member made in the interest of the Limited Partner associated with such Advisory Committee member shall not be deemed bad faith.

**16.2 Indemnification of Covered Persons.**

16.2.1 Each GP Covered Person shall be indemnified and held harmless by the Fund, from and against any and all Damages that it suffers or incurs as a result of acts or omissions conducted by it on behalf of the Fund or its management of the affairs of the Fund. Notwithstanding the foregoing, no GP Covered Person shall be indemnified for or be held harmless from any Damages to the extent such Damages are based upon, arise out of or are otherwise in connection with an Indemnification Exclusion Event. In all cases, no GP Covered Person shall be indemnified or held harmless hereunder without first using best efforts to be indemnified by, held harmless or otherwise reimbursed from other available sources (including Portfolio Companies and insurance coverage of either a Portfolio Company or as provided for pursuant to Section 13.6 (*Insurance*), to the fullest extent permitted by applicable law). Any indemnification amount paid hereunder shall be reduced by amounts received from such other sources and each GP Covered Person shall refund any indemnification payments to the extent of amounts subsequently received from such other sources.

16.2.2 Each AC Covered Person shall be indemnified and held harmless by the Fund from and against any and all Damages suffered or incurred by any of them as a result of acts or omissions of the Advisory Committee or any member thereof. Notwithstanding the foregoing, no AC Covered Person shall be entitled to indemnification hereunder against any Damages to the extent found by a court to be based upon, arise out of or otherwise are in connection with the bad faith of the relevant Advisory Committee member. For the avoidance of doubt, the actions or omissions of an Advisory Committee member made in the interest of the Limited Partner associated with such Advisory Committee member shall not be deemed bad faith.

16.2.3 Expenses incurred by a Covered Person in defending a claim or proceeding may be paid by the Fund in advance of the final disposition of such claim or proceeding; provided that (i) the Covered Person undertakes to repay such amount if it is ultimately determined that such Person was not entitled to be indemnified, and (ii) no expenses may be advanced to any Covered Person named as a party in any action brought by or on behalf of [ ]% in Interest.

16.2.4 The General Partner shall promptly report the commencement of any Proceeding or any claim for indemnification under this Section 16.2 (*Indemnification of Covered Persons*), and the material details and developments in respect thereof, to the Limited Partners.

16.2.5 Except as otherwise provided herein, the provisions of this Section 16.2 (*Indemnification of Covered Persons*) shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification under this Section 16.2 (*Indemnification of Covered Persons*) and no amendments of

this Agreement without the consent of such Covered Person shall reduce or restrict the indemnification under this Section 16.2 (*Indemnification of Covered Persons*).

### 16.3 Limited Partner Giveback.

16.3.1 Subject to Section 16.3.2 and Section 16.4 (*Other Sources of Recovery*), the Fund may require the Partners to return distributions to the Fund to the extent not previously returned in an amount sufficient to satisfy all or any portion of the indemnification and other obligations of the Fund pursuant to Section 16.2 (*Indemnification of Covered Persons*), whether such obligations or liabilities arise before or after the last day of the Term or, with respect to any Partner, before or after such Partner's withdrawal from the Fund, provided that the Partners shall return distributions with respect to their share of any such indemnification obligation or liability as follows:

16.3.1.1 if the obligation or liability arises out of a Portfolio Investment:

(a) first, by each Partner returning amounts distributed to such Partner in connection with such Portfolio Investment in the reverse order in which such amounts were originally distributed pursuant to Section 14.1 (*General*) so that each Limited Partner retains cumulative distributions from the Fund (net of any returns of distributions pursuant to this Section 16.3 (*Limited Partner Giveback*) and pursuant to Section 14.7 (*Clawback*)) equal to the cumulative amount that would have been distributed to and retained by such Partner had the amount originally distributed with respect to such Portfolio Investment been, at the time of such distribution, reduced by the amount of such obligation or liability; and

(b) thereafter, by the Partners in proportion to their Sharing Percentage with respect to such Portfolio Investment; or

16.3.1.2 in any other circumstances, in the reverse order in which distributions were originally made pursuant to Section 14.1 (*General*) so that each Limited Partner retains cumulative distributions from the Fund (net of any returns of distributions under this Section 16.3 (*Limited Partner Giveback*) and under Section 14.7 (*Clawback*)) following such return equal to the cumulative amount that would have been distributed to and retained by such Partner taking into account all Capital Contributions and other payments made by each Partner to the Fund and all distributions made to each Partner by the Fund as of the date of determination.

16.3.2 A Limited Partner's aggregate liability under this Section 16.3 (*Limited Partner Giveback*) is limited to an amount equal to the lesser of (i) [30]% of all distributions received by such Limited Partner from the Fund, and (ii) [25]% of such Limited Partner's Commitment. Notwithstanding the foregoing, no Limited Partner shall be required to return to the Fund any amount distributed by the Fund to such Limited Partner after the earlier of (A) the second anniversary of such distribution, provided that, if at the end of such period, there are any Proceedings actually taking place against the Fund that the General Partner determines are likely to require the return of such distribution in the future, the General Partner may notify such Limited Partner within thirty (30) days following the end of such period that the obligation to return all or any portion of such distribution for the purpose of meeting the obligations of the Fund shall (subject to clause (B) of this Section 16.3.2) survive until the date that each such Proceeding is ultimately resolved and satisfied, and (B) the second anniversary of the end of the Term of the Fund. Any amounts returned by a Partner pursuant to this Section 16.3 (*Limited Partner Giveback*) shall be treated as reductions of the applicable distribution amounts received by such Partner and shall not be treated as Capital Contributions; provided, that for purposes of calculating the Preferred Return with respect to each Limited Partner such amounts shall be treated as having been received by such Limited Partner as distributions when initially

received and returned by such Limited Partner when actually returned. Nothing in this Section 16.3 (*Limited Partner Giveback*), express or implied, is intended or shall be construed to give any Person other than the Fund or the Partners any legal or equitable right, remedy or claim under or with respect to this Section 16.3 (*Limited Partner Giveback*) or any provision contained herein.

**16.4 Other Sources of Recovery.** Without limiting the obligations of GP Covered Persons under the last sentence of Section 16.2.1, the Fund shall obtain the funding needed to satisfy its obligations under Section 16.2 (*Indemnification of Covered Persons*) to the fullest extent possible (i) from applicable insurance policies (including any insurance policies referred to in Section 13.6 (*Insurance*)), and (ii) from Persons other than the Limited Partners (for example, out of the Fund’s assets or from Portfolio Companies), then (iii) from Remaining Commitments, before finally causing the Fund to make payments pursuant to Section 16.2 (*Indemnification of Covered Persons*) and before finally requiring the Limited Partners to return distributions to the Fund pursuant to Section 16.3 (*Limited Partner Giveback*) to the minimum extent necessary to fund such part of any indemnification obligation that remains unfulfilled from other sources. The General Partner shall obtain and maintain prudent insurance policies to mitigate the risk to the Fund of the indemnification obligations of the Fund described in this Article 16 (*Exculpation and Indemnification*).

## **17. TRANSFERS; SUBSTITUTE PARTNERS**

**17.1 Transfers by Limited Partners.** Except as set forth in this Article 17 (*Transfers; Substitute Partners*), no Partner may Transfer all or any of its Interest.

### **17.2 Conditions to Transfer.**

17.2.1 Any Transfer by a Limited Partner pursuant to the terms of this Section 17 (*Transfers; Substitute Partners*) shall (unless waived by the General Partner) require the prior written consent of the General Partner, which shall not be unreasonably withheld if (i) the Person to whom such Transfer is to be made (the “**Transferee**”) is an Affiliate of the Limited Partner proposing to effect such Transfer (the “**Transferor**”) or (ii) such Transfer meets the following criteria:

17.2.1.1 the Transferor or the Transferee shall have undertaken to pay all reasonable expenses incurred by the Fund and (unless otherwise waived by the General Partner) the General Partner in connection therewith (whether or not such proposed Transfer is completed) and such amounts paid shall not be treated as Capital Contributions and shall not reduce the Transferor’s or Transferee’s Remaining Commitment;

17.2.1.2 the General Partner shall have received from the Transferee and Transferor:

- (a) confirmation of the identity of the Transferee;
- (b) confirmation that the Transferee is an “accredited investor” within the meaning of Regulation D promulgated under the Securities Act [and a “qualified purchaser” as such term is defined under the Investment Company Act];
- (c) a completed Subscription Agreement with respect to the Interest that is the subject of the Transfer, and such assignment agreement and other documents, instruments and certificates as may be reasonably requested by the General Partner, pursuant to which such Transferee shall have agreed to be bound by this Agreement, including if requested a counterpart of this Agreement executed by or on behalf of such Transferee;

(d) a certificate or representation to the effect that the representations set forth in the Subscription Agreement of such Transferor are (except as otherwise disclosed to and consented to by the General Partner) true and correct with respect to such Transferee as of the date of such Transfer; and

(e) such other documents, opinions, instruments and certificates as the General Partner shall have reasonably requested;

17.2.1.3 the Transferee will constitute only one Partner of the Fund within the meaning of Regulations Section 1.7704-1(h);

17.2.1.4 the Transfer will not cause (i) all or any portion of the assets of the Fund to constitute Plan Assets or be subject to Applicable Law, or (ii) the General Partner to become a fiduciary with respect to any existing or contemplated Limited Partner pursuant to ERISA, the Code or the applicable provisions of any Applicable Law; and

17.2.1.5 the Transfer will not cause the Fund, the General Partner or any Limited Partner to be in violation of the Securities Act, or “Blue Sky” or other applicable securities or other laws, or to become subject to any laws, regulations or taxation to which the Fund, the General Partner or such Limited Partner is not subject but for such Transfer (including, by way of example and not in limitation, cause the Interests to be required to be registered under the Securities Exchange Act of 1934 or cause the Fund to be required to register as an “investment company” under the Investment Company Act).

17.2.2 Notwithstanding anything to the contrary provided herein, upon the acceptance by the Fund and the General Partner of the Subscription Agreement provided by a Transferee in relation to the Interest that is the subject of a Transfer, the Transferee shall be admitted to the Fund as a substitute partner of the Fund (a “**Substitute Partner**”), and shall succeed to all of the rights and obligations of the Transferor, with respect to such Interest, and the General Partner shall list any such Substitute Partner as a partner of the Fund in the Register.

17.2.3 If any BHCA Partner’s interest in the Fund exceeds 24.99% of all Interests, or if any BHCA Partner delivers an opinion of counsel setting forth a basis for its reasonable belief that its continued interest in the Fund will violate the BHCA, the General Partner shall consent to the Transfer of all or any portion of such BHCA Partner’s Interest in the Fund upon full satisfaction (as reasonably determined by the General Partner) of the other provisions of this Section 17.2 (*Conditions to Transfer*).

17.3 **Prohibited Transfers.** Notwithstanding anything to the contrary provided herein, without the prior written consent of [85]% in Interest:

17.3.1 the General Partner may not Transfer any of its Interest;

17.3.2 no Change of Control shall occur; and

17.3.3 Except as required under Section 10.2.3.3, the Fund Manager shall not cease to be the fund manager of the Fund.

17.4 **Void Transfers.** Unless effected in accordance with and as permitted by this Agreement, to the fullest extent permitted by applicable law, any purported Transfer not effected in accordance with and as permitted by this Agreement shall, to the fullest extent permitted by applicable law, be void *ab initio* and the Fund shall not recognize the rights of the purported Transferee, including the right to receive

distributions (directly or indirectly) from the Fund or to acquire an interest in the capital or profits of the Fund.

## **18. TERM, DISSOLUTION AND WINDING UP OF THE FUND**

18.1 **Term.** The term of the Fund commenced on the Initial Closing Date and the Fund shall continue, unless the Fund is sooner dissolved in accordance with this Agreement, until the [tenth] anniversary of the Initial Closing Date, provided that, unless the Fund is sooner dissolved in accordance with this Agreement, the term of the Fund may be extended by the General Partner for up to two successive periods of one year, with (i) the first such extension requiring the prior written consent of the Advisory Committee, and (ii) the second such extension requiring the prior written consent of a Majority in Interest (such term, including any such extensions, being referred to as the “**Term**”).

### **18.2 Dissolution.**

18.2.1 The Fund will be dissolved and its affairs shall be wound up upon the first to occur of any of the following events:

18.2.1.1 an event of withdrawal (as defined in the Act) with respect to a General Partner, other than an event of withdrawal set forth in Section 17-402(a)(4) or (5) of the Act; provided, that the Fund shall not be dissolved and required to be wound up in connection with any of the events specified in this Section 18.2.1.1 if (i) at the time of the occurrence of such event there is at least one remaining General Partner of the Fund who is hereby authorized to and shall carry on the business of the Fund or (ii) at such time there is no remaining General Partner, if within one hundred and twenty (120) days after such event of withdrawal, the Limited Partners agree in writing or vote to continue the business of the Fund and to appoint, effective as the day of withdrawal, one or more additional General Partners, or (iii) the Fund is continued without dissolution in a manner permitted by the Act or this Agreement;

18.2.1.2 there being no Limited Partners of the Fund unless the business of the Fund is continued in accordance with the Act and this Agreement;

18.2.1.3 the entry of a decree of judicial dissolution under Section 17-802 of the Act;

18.2.1.4 the expiration of the Term as provided in Section 18.1 (*Term*); or

18.2.1.5 the termination of the Fund pursuant to Section 10.4 (*Consequences of Removal Notice*).

18.2.2 Any dissolution of the Fund shall be effective on the date the event giving rise to the dissolution occurs but, to the fullest extent permitted by law, the existence of the Fund shall not be terminated unless and until all its affairs have been liquidated as provided in this Article 18 (*Term, Dissolution and Winding Up of the Fund*).

### **18.3 Winding Up.**

18.3.1 Upon the dissolution of the Fund, the General Partner or, if the General Partner has been removed, a liquidator appointed by a Majority in Interest, shall liquidate the assets of the Fund in an orderly manner. The General Partner or liquidator shall use all reasonable efforts to fully liquidate the Fund on commercially reasonable terms within twelve (12) months from the date of termination, provided that the term for such liquidation may be extended by the General Partner or liquidator with the consent of a

Majority in Interest. This Agreement shall remain in full force and effect during and after the period of winding up.

18.3.2 The General Partner or such other liquidator referred to in Section 18.3.1 shall apply or distribute the proceeds of the liquidation referred to in Section 18.3.1 and any remaining Fund assets, as follows and in the following order of priority:

18.3.2.1 first:

(a) to creditors in satisfaction of the debts and liabilities of the Fund (other than any loans or advances that may have been made by any of the Limited Partners to the Fund);

(b) to the expenses of liquidation, whether by payment thereof or the making of reasonable provision for payment thereof; and

(c) subject to the prior written consent of the Advisory Committee, to the establishment of any reasonable and prudent reserves for the payment of Fund Expenses, including liabilities and other obligations (whether fixed or contingent); and

18.3.2.2 second, to the Partners in accordance with Section 14.2 (*Distributions of Temporary Investment Income*) and Section 14.3 (*Distribution of Distributable Proceeds*).

## 19. AMENDMENTS; POWER OF ATTORNEY

19.1 **Amendments.** Any modification or amendment to this Agreement duly adopted in accordance with the terms of this Agreement may be executed in accordance with Section 19.5 (*Power of Attorney*). Except as otherwise provided in Section 10.2 (*Consequences of Removal Notice*), Section 20.6.2, Section 19.2 (*Certain Amendments Not Requiring Consent of Limited Partners*), Section 19.3 (*Certain Amendments Requiring Specified Consent*) and Section 19.4 (*Notices of Amendments*), this Agreement may be modified, supplemented or amended only with the prior written consent of (i) the General Partner and (ii) 75% in Interest.

19.2 **Certain Amendments Not Requiring Consent of Limited Partners.** The General Partner may modify or amend this Agreement without the consent of the Limited Partners in each of the following instances, provided that any such modification or amendment does not materially adversely affect the rights, obligations or Interests of the Limited Partners:

19.2.1 to change the name of the Fund;

19.2.2 to cure any typographical error;

19.2.3 to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling, regulation or statute of any governmental body that will not be inconsistent with this Agreement;

19.2.4 [to prevent the Fund or the General Partner from, in any manner, being deemed an “investment company” subject to the provisions of the Investment Company Act]; and

19.2.5 to update Schedule 1 (*Partner Commitments*) from time to time to ensure that it is complete and accurate.

**19.3 Certain Amendments Requiring Specified Consent.** Notwithstanding the provisions of Section 19.1 (*Amendments*) or Section 19.2 (*Certain Amendments Not Requiring Consent of Limited Partners*), no modification of or amendment to this Agreement shall be made that will:

19.3.1 modify or amend the Investment Objectives, the Investment Policy, Section 4.1, (*Maximum Fund Size*), Section 7.1 (*Investment Restrictions*) or the provisions set out in Article 19 (*Amendments; Power of Attorney*), without the prior written consent of [90]% in Interest;

19.3.2 modify or amend any Section which refers to the approval of the Limited Partners by a specified majority (or a majority of a certain class of Limited Partners) without the prior written consent of the Limited Partners representing at least such majority;

19.3.3 adversely affect the rights of any ERISA Partner, BHCA Partner, Tax Exempt Partner or Non-U.S. Partner in a manner that does not similarly and adversely affect the other Limited Partner generally, without the written consent of a majority in interest of the ERISA Partners, BHCA Partners, Tax Exempt Partners or Non-U.S. Partners, respectively;

19.3.4 modify the definitions of “ERISA Partner”, “Applicable Law”, “Limited Partner Regulatory Problem”, “BHCA”, “BHCA Interest”, “BHCA Partner”, “Tax Exempt Partner”, “UBTI”, “Non-U.S. Partner” or “ECI”; or

19.3.5 adversely affect the rights of a Limited Partner in a manner that (i) discriminates against such Limited Partner *vis-à-vis* any other Limited Partner, (ii) modifies Article 14 (*Distributions; Allocations*), (iii) modifies Section 8.3 (*Management Fee*) or (iv) increases the Commitment of a Limited Partner without the prior written consent of each Limited Partner affected thereby.

**19.4 Notices of Amendments.** Within ten (10) Business Days after the adoption of any amendment in accordance with this Article 19 (*Amendments; Power of Attorney*), the General Partner shall send to each Limited Partner a copy of such amendment, identifying the applicable amendments and, if applicable, the percentage in Interest that voted in favor of the Amendment.

**19.5 Power of Attorney.**

19.5.1 Each Limited Partner hereby unconditionally and irrevocably constitutes and appoints the General Partner with full power of substitution as its true and lawful attorney and agent, to execute, acknowledge, verify, deliver, record and file, in its name, place and stead all amendments to this Agreement duly approved and adopted in accordance with this Agreement. The power of attorney granted to the General Partner by each Limited Partner pursuant to this Agreement and any Subscription Agreement shall automatically be revoked upon the bankruptcy, dissolution, disability or incompetence of the General Partner or if the General Partner is no longer the general partner of the Fund, in each case upon the occurrence of any such event. The General Partner shall provide each Limited Partner with a copy of any agreement, instrument or other document that is signed by the General Partner as attorney-in-fact for such Limited Partner pursuant to the power of attorney set forth in this Agreement or in the Subscription Agreement executed by such Limited Partner, in each case within ten (10) Business Days of such signing.

19.5.2 The power of attorney granted to the General Partner by each Limited Partner pursuant to this Agreement and any Subscription Agreement shall be limited solely to ministerial matters. Subject to the rights granted to the General Partner to exercise a power of attorney in connection with amendments to this Agreement duly approved and adopted in accordance with this Agreement or pursuant to Section 6.6 (*Defaulting Partners*), the General Partner shall not exercise any power of attorney granted to it by a Limited Partner in any manner that could materially and adversely affect the interests of such Limited

Partner in the Fund. The foregoing provisions shall govern in the event of any inconsistency with the terms of any power of attorney as set forth in the Subscription Agreement.

## 20. MISCELLANEOUS

20.1 **Confidentiality.** Each Limited Partner shall keep confidential and shall not disclose without the prior written consent of the General Partner any information regarding the Fund, any other Fund Vehicle, any Portfolio Investment or Portfolio Companies comprising trade secrets or proprietary commercial or financial information of any Interested Person provided to it by the General Partner or the Fund Manager, provided that a Limited Partner may disclose any such information:

20.1.1 to any other Limited Partner or investors in any other Fund Vehicle or any representative thereof;

20.1.2 as has become generally available to the public other than as a result of the material breach of this Section 20.1 (*Confidentiality*) by such Limited Partner or any agent or Affiliate of such Limited Partner;

20.1.3 as may be required or as may be appropriate to be included in any report, statement or testimony required to be submitted to any municipal, state or national regulatory body having jurisdiction over (or entitled to receive reports from) such Limited Partner;

20.1.4 as may be required by any law, order, regulation, rule or policy (including any internal policy of a Limited Partner that has been disclosed to the General Partner in writing at or prior to the date of such Limited Partner's subscription to the Fund) to which the Limited Partner is subject;

20.1.5 to the extent necessary to exercise or assert any rights that such Limited Partner may have at law or pursuant to this Agreement, the Subscription Agreement or its Side Letter;

20.1.6 to its employees and professional advisors, external independent auditors, custodians and fund administrators, so long as such Persons are bound by duties of confidentiality; and

20.1.7 as may be required in connection with an audit or examination by any governmental or regulatory authority to which any Limited Partner is subject, including tax authorities, notwithstanding that this shall not limit the disclosure of the tax treatment or tax structure of the Fund (or any transactions undertaken by the Fund).

20.2 **Specific Authorized Disclosures.** Notwithstanding anything to the contrary provided herein, including the provisions of Section 20.1 (*Confidentiality*), each Limited Partner (and each of its employees, agents or representatives) may disclose to any and all Persons (i) the name of the Fund, (ii) the fact that the Limited Partner has made an investment in the Fund and the date of the Limited Partner's admission to the Fund, (iii) the amount of the Limited Partner's Commitment, (iv) the amount of the Limited Partner's unfunded Commitment and Capital Contributions, (v) the distributions made to the Limited Partner by the Fund, (vi) the Management Fees allocated to or paid by the Limited Partner, together with other fees and expenses (including Fund Expenses) charged to the Limited Partner in connection with its investment in the Fund, (vii) the Carried Interest paid to the General Partner or Fund Manager, as appropriate and (viii) the fair market value of the Limited Partner's Interest in the Fund. The Limited Partner's disclosure of the information described in this Section 20.2 shall not constitute a breach of this Agreement or any confidentiality or non-disclosure agreement to which the Limited Partner and the General Partner or any of its Affiliates are parties.

**20.3 Public Records Law and Other Required Disclosure.**<sup>21</sup> In the event that a Limited Partner that is subject to Public Records Laws is required to disclose information or a Limited Partner is otherwise required to disclose information that it is permitted to disclose pursuant to Section 20.1 (*Confidentiality*), and such disclosure would render such information available publicly, the General Partner may, if it in good faith deems such action to be advisable, to the fullest extent permitted by the Act, limit the information that is disclosed to such Limited Partner to prevent disclosure or future disclosure of such information, including by limiting the ability of the Limited Partner to receive, make or retain copies of such information, or may require the Limited Partner to return such information previously provided to it to the extent legally permitted; provided that the Fund shall nevertheless be required to provide the reports, statements and information provided pursuant to Article 15 (*Books and Records; Reports to Limited Partners*) to the extent such information relates to the Fund as a whole or is information regarding such Limited Partner's individual Capital Account. In the event that the General Partner so determines to limit the information to be provided to a Limited Partner, the General Partner shall use reasonable best efforts to make such information available to such Limited Partner through an alternate means, provided that such information would not thereby become subject to public disclosure, and may to accomplish such objective limit the taking of notes or the photographing, printing, recording or otherwise documenting such information.

**20.4 Miscellaneous Confidentiality Matters.**

20.4.1 Any confidentiality agreement to which a Limited Partner may be required to agree in order to access any website maintained by the General Partner, the Fund Manager or the Fund for the purpose of making certain documents available or delivering notices to the Limited Partners (or for any other purpose) shall be subject to (and governed by) the confidentiality provisions of this Agreement, such that the terms of this Agreement shall control over any conflicting terms of the website.

20.4.2 A Limited Partner shall not be obligated to return or destroy any information, including documents or copies of any documents, provided to the Limited Partner by the General Partner, the Fund Manager or the Fund to the extent such return or destruction would violate any law or document retention policy to which the Limited Partner is subject.

20.4.3 Nothing in the Fund Documents shall prevent a Limited Partner from using any information furnished it regarding the Fund in connection with the exercise of its rights as a Limited Partner.

**20.5 Standard of Care.** The General Partner and the Fund Manager each shall manage and control the Fund and its business and affairs reasonably and in good faith and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. The foregoing duties apply to all investment decisions, delegations of authority, and all other acts or omissions of the General Partner or the Fund Manager under this Agreement or any other Fund Document. This Section 20.5 (*Standard of Care*) supplements, and does not replace, the fiduciary duties applicable to the General Partner or the Fund Manager, as the case may be, pursuant to the Act or any other applicable law. In the event of any inconsistency between this Section 20.5 (*Standard of Care*) and any other provision of this Agreement or of any other Fund Document, this Section 20.5 (*Standard of Care*) shall govern. For the avoidance of doubt, (i) the General Partner and the Fund Manager each shall exercise its "good faith," "discretion," "sole discretion," "reasonable discretion," "reasonable and good faith discretion," or other subjective standard of care set forth in this Agreement in a manner consistent with this Section 20.5 (*Standard of Care*), and (ii) whenever taking an action or making a determination under this Agreement in its "discretion," "sole discretion," "reasonable discretion," "reasonable and good faith discretion," or under a grant of similar

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<sup>21</sup> Investors subject to Public Records Laws will need individualized language in their Side Letters.

authority or latitude, each of the General Partner and the Fund Manager shall not place its interests or those of its Affiliates ahead of those of the Fund or the Limited Partners.

## 20.6 Entire Agreement.

20.6.1 This Agreement and the other Fund Documents constitute the entire agreement among the Fund, the General Partner, the Fund Manager and the Limited Partners with respect to the subject matter hereof, and supersede any prior agreement or understanding among them with respect to such subject matter. The representations and warranties of the Fund Parties and the Limited Partners herein and in the relevant Subscription Agreements shall survive the execution and delivery of this Agreement.

20.6.2 Notwithstanding anything to the contrary provided herein or in any Subscription Agreement, the General Partner, without the approval of any Limited Partner or any other Person, may in its reasonable and good faith discretion enter into a side letter or similar agreement to or with one or more Partners (other than Affiliated Partners), executed in connection with the admission of such Partner to the Fund which has the effect of establishing rights under, altering or supplementing the terms of, or confirming the interpretation of this Agreement and the relevant Subscription Agreements with respect to such Partner(s) in order to meet certain requirements of such Partner(s) (each such side letter or agreement, a “**Side Letter**”), provided that the General Partner shall provide notice to each Limited Partner of the terms of all Side Letters reasonably promptly following the Final Closing Date and, if any such Side Letter grants more favorable rights to any Partner than those provided to another Partner, each such other Partner shall have the benefit of the more favorable rights, except (a) any rights granted solely with respect to a particular regulatory, legal or tax situation or policy (including any internal policy of a Partner that has been disclosed to the General Partner in writing at or prior to the date of such Partner’s subscription to the Fund) applicable to a Partner but not applicable to such other Partner, (b) any consent to, or limitation of the General Partner’s discretion with respect to, Transfers in favor of Affiliates of the recipient of such Side Letter, (c) any excuse rights granted pursuant to Section 6.7 (*Excused Limited Partners*) and (d) any right to nominate a representative on the Advisory Committee. The terms of any Side Letters shall be binding on the General Partner and the Fund Manager and shall govern with respect to the Partner that has entered such Side Letter notwithstanding the provisions hereof or of any Subscription Agreement.

## 20.7 Notices.

20.7.1 Each notice relating to this Agreement shall be in writing and shall be delivered in person, by e-mail or through the electronic data room.

20.7.2 All notices shall be delivered as follows:

20.7.2.1 notices to any Limited Partner shall be delivered to such Limited Partner at its last known address, or e-mail address as set forth in its Subscription Agreement or as otherwise notified to the Fund or the General Partner;

20.7.2.2 notices to the General Partner shall be delivered to the General Partner at [REDACTED], attention: [REDACTED], e-mail: [REDACTED]; and

20.7.2.3 [notices to the Fund Manager shall be delivered to the Fund Manager at [REDACTED], attention: [REDACTED], e-mail: [REDACTED];].

20.7.2.4 notices to the Fund shall be delivered to the Fund at [REDACTED], attention: [REDACTED], e-mail: [REDACTED].

20.7.3 Any Limited Partner, the General Partner and the Fund may designate a new address for notices by giving written notice to that effect to the General Partner. The General Partner may designate a new address for notices by giving written notice to that effect to each of the Limited Partners.

20.7.4 A notice given in accordance with the foregoing Section 20.7.2 shall be deemed to have been effectively given (i) three (3) Business Days after such notice is mailed by registered or certified first class mail, return receipt requested and postage pre-paid, (ii) one (1) Business Day after such notice is sent by courier or other one-day service provider, to the proper address, or when delivered in person or by pre-paid delivery service, and (iii) one (1) Business Day after such notice is sent by e-mail, provided that no automatic notice of failure to deliver has been received by the delivering party.

20.7.5 The General Partner shall cause Schedule 1 (*Partner Commitments*) at all times to contain the name, Commitment and accurate contact details of each Limited Partner and shall notify each Limited Partner of each change to Schedule 1 (*Partner Commitments*) within ten (10) Business Days of such change.

20.8 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be taken to be an original and all of which taken together shall constitute a single agreement.

20.9 **Successors and Assigns.** This Agreement shall inure to the benefit of the parties hereto, and, subject to Article 17 (*Transfers; Substitute Partners*), their respective successors, permitted assigns and, in the case of individual Covered Persons, heirs and legal representatives.

20.10 **Invalidity.** Every term and provision of this Agreement is intended to be severable. If any provision of this Agreement is held to be invalid or unenforceable by any judicial or competent authority, all other provisions of this Agreement will remain in full force and effect and will not in any way be impaired. Furthermore, if any provision of this Agreement is held to be invalid or unenforceable or would be so held if it were not for this Section 20.10 (*Invalidity*), but would be valid or enforceable if some part of parts of the provision were deleted, the provision in question will apply with the minimum modifications necessary to make it valid and enforceable.

20.11 **No Third Party Beneficiaries.** The provisions of this Agreement, including Article 6 (*Capital Contributions*), are intended solely to benefit the Limited Partners and the General Partner and (in the case of Sections 16.1 (*Exculpation of Covered Persons*) and 16.2 (*Indemnification of Covered Persons*), the AC Covered Persons) and, to the fullest extent permitted by applicable law, shall not be construed as conferring any benefit or right upon any other Person (including any creditor of the Fund) and no such other Person shall be a third party beneficiary of this Agreement or have any right to enforce any term of this Agreement.

20.12 **Waiver.** No failure to exercise and no delay in exercising on the part of any of the Limited Partners any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.

## 21. GOVERNING LAW AND DISPUTE SETTLEMENT

21.1 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Delaware.

21.2 **Jurisdiction.** The Partners and the Fund Manager irrevocably agree that the courts of [ ] are to have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.<sup>22</sup>

*[SIGNATURE PAGES FOLLOW]*

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<sup>22</sup> Arbitration may be provided as an alternative, although many investors have restrictions or preferences against agreeing to arbitration. If arbitration is used, the Agreement should specify the location, arbitration rules, number of arbitrators, parties' right to use discovery, requirement of written decision, and other details as appropriate.

**EXECUTED** on the date first written above.

**GENERAL PARTNER<sup>23</sup>**

[ ]

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Name:

Title:

**FUND MANAGER**

[ ] (in its capacity as Fund Manager, but not with the intention or effect that it becomes a Partner)

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Name:

Title:

**[LIMITED PARTNERS]**

[ ]

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Name:

Title:

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<sup>23</sup> Consider whether Carried Interest recipients should be signatories to the Agreement for purposes of the Carried Interest clawback. See Section 14.7.3.

**SCHEDULE 1: PARTNER COMMITMENTS**

<b>Limited Partners</b>	<b>Commitments</b>	<b>Address; Attention; Email</b>
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
<b>Total Commitments</b>	[ ] (excluding the commitment of the General Partner)	

## **SCHEDULE 2: INVESTMENT POLICY**

*[Agreed form of investment policy to be inserted]*